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6
7 **SUPERIOR COURT OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

9
10 GERARDO GUTIERREZ, individually, and
on behalf of all others similarly situated,

11 Plaintiff,

12 vs. FRAICHE CATERING, INC., a
13 California corporation, and DOES 1 through
50, inclusive,

14 Defendants.

CASE NO. CGC-23-605255

DECLARATION OF J. KIRK DONNELLY IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, AND REQUEST FOR
ATTORNEY'S FEES AND COSTS

[Filed concurrently with Notice of Motion and
Motion; Memorandum of Points & Authorities;
Declaration of Nick Castro; [Proposed] Order]

Date: July 12, 2024

Time: 9:30 a.m.

Dept.: 302

DECLARATION OF J. KIRK DONNELLY

I, J. KIRK DONNELLY, Declare:

1. I am an attorney duly licensed to practice in California and before this Court, and I am the principal of the Law Offices of J. Kirk Donnelly, APC, counsel of record for plaintiff Gerardo Gutierrez. I make this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement and Request for Attorney's Fees and Costs. If called to testify as to the within facts, I would and could competently do so.

FACTUAL BACKGROUND AND PROCEDURAL POSTURE

2. On March 20, 2023, Plaintiff, on behalf of himself and all others similarly situated, filed a class action complaint against Defendant for several alleged violations of the Labor Code and IWC Wage Orders. Plaintiff filed his claims on behalf of a putative class of individuals who worked for Fraiche in several job categories, including dishwasher, cook, lead cook, event coordinator/specialist/producer, financial controller, marketing manager, bartender, server and/or delivery. Defendant Fraiche provides high-end event catering services throughout the Bay Area, and caters corporate events, weddings, anniversaries, private parties, etc., and also provides “do it yourself” catering where Fraiche delivers the food but does not provide staff for the event. While many of Fraiche’s employees work full-time, many others such as the servers, bartenders and drivers, are part-time, and work intermittently depending on the availability of work, how much they wanted to work, etc. Their pay records suggest they worked as little as 4-5 hours in a pay period up to 40-50 hours or more in a pay period.

3. Plaintiff Gerardo Gutierrez worked for Fraiche as a full-time cook and lead cook from about 2015 to May 2020, when he moved out of state. He then returned to work for Fraiche in February 2022 until September 2022, when he was seriously injured in a car accident and went out on disability. He claims he was terminated in and around December 2022 when Fraiche allegedly did not allow him to return to work after he recovered from his injuries.

4. Plaintiff alleged that Fraiche failed to pay the class all wages due by (a) paying certain individuals by “salary,” i.e. paying them a set amount per week regardless of hours worked, thereby failing to pay for overtime hours worked, and (b) failing to include all forms of

1 compensation received in the employees' "regular rate of pay" used for calculating the correct
2 overtime rate, which resulted in underpayment of overtime wages. Plaintiff also alleged Fraiche
3 failed to provide all required meal and rest breaks on a fully compliant basis. Based on
4 information obtained from Plaintiff and review of payroll and time records and other information
5 received from Fraiche, Plaintiff alleges numerous de facto violations where the class members'
6 meal breaks were late or lasted less than 30 minutes, and second meal periods were not provided
7 on shifts lasting longer than 10 hours. Further, class members never received an extra hour of
8 premium pay in lieu of a missed meal or rest break. Plaintiff next contends he and the class
9 members had to use their own personal phones for work purposes, such as receiving texts and
10 phone calls from supervisors, taking pictures of their work, navigating to catering jobs, etc., all
11 without any reimbursement from Fraiche.

12 5. Based on these allegations, Plaintiff's class action complaint asserted claims for
13 damages for: (1) failure to pay all wages due, (2) failure to provide all required meal and rest
14 breaks or compensation in lieu thereof; (3) failure to reimburse business expenses; (4) failure to
15 provide accurate, itemized wage statements; (4) failure to pay all wages due upon termination of
16 employment; and (5) unfair competition. Plaintiff filed a First Amended Complaint on April 11,
17 2023 that added a claim for civil penalties under PAGA based on the same alleged violations.
18 The FAC is the operative complaint for purposes of settlement.

19 6. Fraiche has at all times denied Plaintiff's allegations and maintained its meal and
20 rest break and payroll policies and procedures comply with California law, and that it provided
21 the class members with required meal and rest breaks. Fraiche also argued it accurately tracked
22 and paid for all hours worked by its employees, including overtime hours. Additionally, Fraiche
23 strongly contends the case cannot be maintained as any kind of class or representative action,
24 arguing that to the extent class members missed meal and/or rest breaks, that such breaks were
25 non-compliant, it would have been intermittent and infrequent and evidence of such missed
26 breaks or off the clock work would be purely anecdotal, and therefore individualized issues would
27 predominate and trial would be unmanageable. [Donnelly Decl., ¶ 8.]

28 7. After Plaintiff filed his complaint, and after the Parties met and conferred on

1 discovery, potential law and motion, and other case management issues, they ultimately agreed to
2 attempt early mediation. The Parties then engaged in substantial informal discovery to facilitate
3 an exchange of information necessary to engage in a meaningful mediation. Consequently, we
4 reviewed payroll records, personnel policies/handbooks, meal and rest break policies, personnel
5 files, and a random sampling paystubs and time records produced by Fraiche for about 25% of the
6 class. Defendant also provided documents reflecting its wage and hour policies and practices
7 during the class period, and data regarding the total number of current and former employees, the
8 estimated total amount of workweeks and pay periods they worked, and average hourly pay rates,
9 among other relevant data.

10 8. The Parties then engaged Mark LeHocky, Esq., a highly respected mediator with
11 extensive wage and hour class action experience and, on November 13, 2023, participated in a
12 full day mediation with Mr. LeHocky. By the end of the day, and after a mediator's proposal, the
13 Parties were able to reach agreement on all major issues.

14 **THE PROPOSED SETTLEMENT TERMS**

15 9. Under the settlement, Fraiche will pay \$175,000.00 into a common fund, the Gross
16 Settlement Amount. Reasonable attorney's fees of up to 1/3 of the GSA, or \$58,333.33, litigation
17 costs of up to \$8,000, an enhancement award of up to \$2,500 to Plaintiff, settlement
18 administration costs of no more than \$6,500, and \$5,000 for PAGA civil penalties, all will be paid
19 from the Gross Settlement Amount. The remainder of approximately \$94,667 will be allocated
20 pro rata among the Participating Class Members based on their total compensation earned during
21 the Class Period. No portion of the Class Settlement Amount will revert to Fraiche. [Donnelly
22 Decl., ¶ 11.]

23 10. At least \$94,667 from the Gross Settlement Amount will be distributed to the
24 Participating Class Members. This is a cash settlement that does not require Participating Class
25 Members to submit a claim form to receive their settlement share. Participating Class Members
26 will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of
27 each settlement share will be allocated to wages and the remaining eighty percent will be
28 allocated to expenses, penalties and interest, which allocation is consistent with Fraiche's

1 potential liability as discussed below. Fraiche will pay all applicable employer-side payroll taxes
2 separately from the GSA. Subject to the Court’s approval, any amounts not claimed (because a
3 class member does not cash his or her settlement check) will be forwarded to the California State
4 Controller’s Unclaimed Property Fund.

5 11. Each Participating Class Member will receive a pro rata share of the Net
6 Settlement Amount based on their total wages paid by Fraiche during the Class Period while
7 working in a covered job position. Thus, each Individual Settlement Payment will be calculated
8 using formulaic criteria equally applied to all Class Members in order to proportionately
9 compensate them for the actual value of their claims relative to fellow class members. Similarly,
10 each Class Member’s Individual Settlement Payment will be calculated using criteria that would
11 typically be used in determining appropriate amounts of unpaid wages and damages in wage and
12 hour litigation under applicable law. These methods are intended to ensure each Class Member
13 receives a portion of the available settlement funds corresponding to the relative value of his or
14 her potential claims. The proposed allocation provides the most reasonable way to compensate
15 Class Members based on the amount of time they worked for Fraiche and the number of instances
16 they were not compensated properly or may have been denied required breaks. The pro rata
17 allocation formula, based on earnings for each class member versus earnings of entire class, will
18 account for the fact that certain Class Members, primarily the “full time” employees, worked
19 longer tenures, worked more hours, and/or earned a higher hourly wages, and accordingly have
20 proportionally more damages than those “part-time” employees who may have worked only a few
21 shifts per month.

22 12. All Participating Class Members will be deemed to release defendant Fraiche from
23 all claims alleged in the operative complaint, or that could have been brought based on the facts
24 asserted in the operative complaint, including PAGA claims, from March 20, 2019 to October 1,
25 2023. The release is limited to the claims that were actually pleaded or could have been pleaded
26 based on the alleged facts in the operative complaint.

27 13. As noted, the Parties allocated \$5,000 to payment of alleged civil penalties under
28 PAGA, which amount Plaintiff submits is fair, reasonable, and adequate, and furthers PAGA’s

1 underlying purposes. As required by Labor Code section 2699(l)(2), my office gave notice of the
2 settlement and the approval hearing to the LWDA via its online portal. A true and correct copy of
3 the LWDA's acknowledgement of receipt is attached hereto as Exhibit 1.

4 14. Prior to mediation, the parties engaged in extensive informal discovery to facilitate
5 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
6 Fraiche's payroll practices, pay stubs and time records for a sampling of class members, meal and
7 rest break policies, etc., and information from Defendant regarding class size and breakdown of
8 job positions, work weeks, rates of pay, and other information used to formulate a damages
9 model. Plaintiff's counsel are confident they obtained sufficient information to enable them to
10 understand the law and facts of this case and make an informed decision regarding the proposed
11 settlement and whether it is in the best interests of the class.

12 15. Using that data, Plaintiff ran various calculations under different theories of
13 liability and estimated Fraiche's maximum exposure on the class claims at approximately
14 \$885,000, including about \$182,000 on the unpaid wage/salary claim, \$43,000 on the regular
15 rate/underpaid overtime claim, \$272,000 on the meal and rest break claims, \$15,000 on the
16 expense reimbursement claims, \$139,000 on the wage statement claims, and \$234,000 on the
17 waiting time penalty claims.

18 16. First, on the unpaid wage claims, Plaintiff alleged Fraiche wrongfully paid both he
19 and other class members with a base salary regardless of the number of hours worked, or
20 essentially treated them as an "exempt" employee. In order to qualify as exempt, however, an
21 employee must be primarily engaged in duties that meet the test of the exemption, customarily
22 and regularly exercise discretion and independent judgment in performing his or her duties, and
23 earn a monthly salary equivalent to no less than two times the state minimum wage. Here,
24 Plaintiff contends Defendant failed to pay class members on the required salary basis, that the
25 duties and responsibilities of the class members' job positions did not involve management or
26 administration of the business, and they didn't exercise any discretion/independent judgment such
27 that they met the requirements of any potentially applicable overtime exemption. Accordingly,
28 Plaintiff argues he and other class members were entitled to receive overtime wages in

1 conformance with California law on top of any salary paid for the base 40 hour work week.

2 17. Plaintiff also alleges Defendant failed to incorporate regular bonus payments made
3 to the Class Members into the regular rate of pay calculations when paying overtime as required.
4 In particular, Plaintiff argues amounts Fraiche paid to the class members as “tips” were not true
5 gratuities but rather a share of mandatory charges Fraiche imposed on client bills. Under
6 California law, these “tips” are more properly characterized as a bonus and must be included in
7 the calculation of the regular rate of pay for purposes of determining overtime and double time
8 pay. Plaintiff contends Fraiche paid overtime at 1.5 times the base hourly rate only, and did not
9 pay any overtime due on the tip/bonus payments. In response, Fraiche denies Plaintiff’s
10 contentions, claiming its compensation policies properly paid Plaintiff and the class members for
11 all hours worked, noting there is nothing improper about paying non-exempt employees a
12 “salary” for 40 hours of work per week, and that its records show Plaintiff and the class members
13 rarely worked more than 40 hours per week and that it paid for documented overtime at the
14 correct rates.

15 18. Plaintiff also contends Fraiche failed to maintain a fully compliant written meal
16 and rest break policy and, regardless of whether the policies were compliant, that Fraiche failed to
17 provide all required meal and rest periods to Class Members. In support of this argument,
18 Plaintiff contends Defendant’s own records show numerous “de facto” violations where meal
19 periods were not recorded, especially with respect to second meal periods, or started after the fifth
20 hour of work and thus were non-compliant. Plaintiff’s review of the pay records provided further
21 suggested Fraiche did not pay the required premium pay for these documented violations. 19.

22 19. Defendant denies Plaintiff’s contentions, claiming it made meal and rest breaks
23 available to Class Members in compliance with California law. Defendant contends its meal and
24 rest break policies are lawful and that Class Members were frequently reminded they were
25 required to take all meal and rest breaks. Defendant also contends that time records demonstrate
26 that Class Members took duty-free, timely meal and rest breaks. Finally, Defendant argues that
27 Plaintiff’s meal and rest break claims are not susceptible to common proof, as the claims would
28 require individualized inquiry, including whether there was an unlawful companywide policy,

1 whether employees had the opportunity to take meal and rest periods, whether they voluntarily
2 chose to forego their meal and rest periods, and whether Defendant ever prevented them from
3 taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to a
4 ruling that class treatment is not appropriate.

5 20. On the expense reimbursement claim, Plaintiff alleges that throughout his
6 employment, he and the class members were required to use their personal cell phones in order to
7 communicate with supervisors and other employees during work hours, take pictures of their
8 work, and navigate to catering job locations. However, Defendant did not reimburse Plaintiffs
9 and the class members for this expense. On the other hand, Defendant argued there would be no
10 conceivable need for employees to use their phones for work and that any use of employee
11 phones was purely for personal convenience and therefore not reimbursable.

12 21. Plaintiff also alleged derivatively that, as a result of the above alleged violations,
13 Defendant failed to provide accurate wage statements and failed to timely pay all wages that were
14 due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff's
15 derivative claims would also fail. Defendant also contends it would not be liable for waiting time
16 penalties because a "good faith dispute" exists over the payment of past wages. Further,
17 Defendant contends Plaintiff would have to prove that Defendant "willfully" failed to pay Class
18 Members appropriate wages due upon separation of employment. Defendant contends that any
19 failure to pay wages upon separation was not willful.

20 22. As far as potential PAGA liability, the Aggrieved Employees theoretically are
21 entitled to penalties totaling upwards of \$350,000 should Plaintiff prevail on all claims and
22 establish violations of the multiple Labor Code sections at issue. As with the class claims,
23 Plaintiff discounted the potential PAGA penalties since the Court possesses wide discretion to
24 reduce such penalties, or to decline to award penalties at all. Accordingly, the Parties allocated
25 \$5,000 to PAGA penalties, which amount Plaintiff submits is reasonable under the circumstances
26 and in line with comparable settlements in other wage and hour class actions in California.
27 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
28 and will be able to weigh in as necessary. J

1 23. Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of
2 which, if successful, could have derailed Plaintiffs' case. Accordingly, Plaintiff faced risky issues
3 going forward with this litigation, and given the need to secure class certification, try the case,
4 and deal with post-trial appeals, it would have taken years to realize any recovery in this action.
5 Plaintiff and I discounted the value of the class claims consistent with the risks discussed above,
6 and carefully weighed the likelihood of the class receiving substantially greater benefit if the
7 litigation continued. Plaintiff and I concluded – in light of these very real and substantial risks –
8 settlement on the proposed terms and without prolonged and costly litigation was in the best
9 interests of the class.

10 24. The overall recovery represents a significant percentage of Defendant's potential
11 exposure and, given the risks addressed above, a total recovery for the class of \$175,000, which
12 will result in average awards of some \$466 per class member, and with a maximum award of over
13 \$8,500, is a significant result well within the range of reasonableness considering all potential
14 outcomes, and it will provide direct monetary awards to all Class Members without further delay.

15 **PLAINTIFF'S ENHANCEMENT AWARD**

16 25. Under the terms of the settlement, Plaintiff seeks a modest incentive award of
17 \$2,500 for his service in bringing these claims on behalf of the Class. The request is reasonable
18 given the risks he undertook on behalf of the Class Members. By contacting and retaining
19 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class
20 Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also
21 exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even
22 through a simple google search) for the benefit of other employees, placing himself at risk of
23 discrimination by future prospective employers. As set forth in more detail in his declaration
24 submitted with the preliminary approval motion, among taking many other actions assisting in the
25 successful litigation of this case, Plaintiff provided substantial factual information and documents
26 to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
27 kept abreast of all significant developments. Accordingly, the requested enhancement payment to
28 Plaintiff is appropriate and justified as part of the settlement.

1 **SETTLEMENT ADMINISTRATION COSTS**

2 26. The settlement provides for a payment to ILYM for its services as the Settlement
3 Administrator. As set forth in the Declaration of Nick Castro, ILYM has performed and will
4 continue to perform its required duties through final distribution of the settlement funds and
5 incurred \$6,500.00 in fees and expenses. Accordingly, Plaintiff respectfully requests the Court
6 approve payment of \$6,500 to ILYM from the GSA.

7 **ATTORNEY'S FEES AND COSTS**

8 27. Per the terms of the settlement, up to one-third of the gross settlement amount is
9 allocated to payment of reasonable attorney's fees. Here, the parties did not negotiate the
10 inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to
11 the Class was completed. The requested fee and cost award was a product of these arms-
12 length negotiations and fairly reflects the marketplace value of the services rendered by Class
13 Counsel in this case for the reasons addressed herein.

14 28. My firm's efforts in this matter included: (1) extensive pre-lawsuit investigation
15 of the claims of Plaintiff and the putative class, including legal research, obtaining Plaintiff's
16 employment records, research into similar claims and claims against other employers in the same
17 industry, and attempts to locate and contact other Fraiche employees; (2) drafting a PAGA notice
18 letter; (3) drafting the initial complaint and related documents; (4) case management, including
19 communications with defense counsel, meeting and conferring/preparing case management
20 statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and
21 informal discovery needed for meaningful settlement discussions; (6) engaging in substantial
22 informal discovery, including propounding informal discovery "requests" and reviewing
23 documents and other information produced; (7) drafting a mediation brief and accompanying
24 damages model after review and analysis of defendant's informal discovery production; (8)
25 attending an all-day mediation; (9) negotiating and drafting the settlement agreement and related
26 documents; (10) drafting the motion for preliminary approval and attending the hearing thereon;
27 (11) administration of the settlement, including addressing application of the escalator clause,
28 communications with the Settlement Administrator and settlement class members; (12) drafting

1 the motion for final approval and motion for attorney's fees, and attending the final approval
2 hearing; and (13) extensive communications with the Plaintiff regarding case status, case
3 investigation and document review, mediation, and settlement terms. Additionally, Class Counsel
4 will incur additional time to attend the final approval hearing and following final approval to,
5 inter alia, respond to class member inquiries, work with the Settlement Administrator on the
6 distribution of settlement funds, and on the compliance hearing. A true and correct summary of
7 our work performed and time expended is attached hereto as Exhibit 2.

8 29. I am a 1989 graduate of the College of William and Mary, and a 1995 graduate
9 *cum laude* of the University of San Diego School of Law, where I was selected to the Order of the
10 Coif and the Order of Barristers. Prior to 2003, I was a litigation associate with Ross Dixon &
11 Bell, LLP (now Troutman Pepper LLP), in Orange County, California, where my practice focused
12 on complex business, employment, and insurance coverage disputes. In 2003, I became
13 associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs' wage and
14 hour class action firms in California. In 2008, I founded the Law Offices of J. Kirk Donnelly.
15 Since 2003, my practice has focused on representing plaintiffs in wage and hour and consumer
16 law matters, including both class actions and individual matters. I have served as class and/or
17 PAGA counsel in a number of wage and hour class and representative actions, including Martinez
18 v. 'T' McGee Electric, Inc., Case No. CIVSB2114427 (San Bernardino County Superior Court);
19 Herrera v. Stone Etc., Inc., et al., Case No. 21STCV43188 (Los Angeles Superior Court); Acosta
20 v. Turlock Walnut Company, Case No. 22-CV-001051 (Stanislaus County Superior Court);
21 Galindo v. Berro Management Company, Inc., Case No. 22STCV25853 (Los Angeles Superior
22 Court); George v. Retail Merchandising Solutions, Inc., Case No. RG16828194 (Alameda County
23 Superior Court); Bolanos v Lyneer Staffing Solutions LLC, Case No. 23STCV21860 (Los
24 Angeles County Superior Court); Buford v. Medical Solutions, LLC, Case No. 18-CV-04104
25 YGR (N.D. Cal.); Bautista v. Western Care Construction, Case No. S-CV-0049217 (Placer
26 County Superior Court); Herrera v. TVI, Inc., et al., Case No. CIVDS1722863 (San Bernardino
27 County Superior Court); Freeman v. Bank of America, N.A., Case No. CGC18471710 (San
28 Francisco County Superior Court), Gomez v. Giuletta Italian Foods, Inc., Case No. 22CV392988

(Santa Clara County Superior Court), Echeverria v. Technicote, Inc., Case No. RIC1714621 (Riverside County Superior Court), Acosta v. ECC Capital Corporation, Case No. 30-2009-00180086 (Orange County Superior Court), Tiffany v. Hometown Buffet, Inc., Case No. 06-CV-2524 SMA (N.D. Cal.), Mendoza v. Bear Stearns Residential Mortgage Corporation, Case No. 08-CV-6916 DSF (C.D. Cal.), In Re: First Franklin Employment Cases, JCCP No. 4598 (San Diego County Superior Court), Mendoza v. ECC Capital Corporation, Case No. 08-CV-6916 JN (C.D. Cal.), Acosta v. Bear Stearns, Case 30-2009-00180086 (Orange County Superior Court); George v. Mercado Latino, Inc., Case No. CIVDS1822302 (San Bernardino County Superior Court), Verduzco v. Ramco Enterprises, LP, et al., Case No. 18CV004104 (Monterey County Superior Court); Gonzalez v. Power Design, Inc., Case No. 19STCV31839 (Los Angeles County Superior Court); Weston v. Cuesta Investments, Case No. 18CV04823 (Santa Barbara County Superior Court); Martinez v. DNNEY Trade Co., Case No. 18STCV09631 (Los Angeles County Superior Court); Navarro v. Ressac, Case No. 19STCP00319 (Los Angeles County Superior Court); Villalta v. Stars Recreation Center, Case No. FCS054507 (Solano County Superior Court); Anglin v. Sonnikson and Stahl Construction, Case No. CIVMSC19-00149 (Contra Costa County Superior Court); Rosendahl v. Riverside Metro Auto Group, Case No. RIC1903707 (Riverside County Superior Court); Hawkins v. SAS Retail Services, Inc., Case No. 30-2017-00958467-CU-OE-CXC (Orange County Superior Court); Salazar v. National Labor Contractors, et al., Case No. CIVDS1905225 (San Bernardino County Superior Court); Reyes v. Assa Abloy Door Controls and Accessories Group, Inc., Case No. 56-2019-00523849-CU-OE-VTA (Ventura County Superior Court); Valencia v The Original Mowbray's Tree Service, Incorporated, Case No. CIVDS1825518 (San Bernardino County Superior Court); Castillo v. Gaither's Family Homes, Inc., Case No. VCU277188 (Tulare County Superior Court); Canales v. Fashion Design, LLC, Case No. 30-2019-010529520CU-OD-CXC (Orange County Superior Court); and Thomas v Californian-Magnolia Convalescent Hospital, Inc., Case No. RIC1901197 (Riverside Superior Court).

30. During the approximately five years I was associated with DCC, the firm was appointed class counsel in over 20 class actions alleging violations of federal and California wage

1 and hour laws. I played an integral role in litigating these matters, which included some of the
2 largest and most complex wage and hour class actions ever brought in California. For instance,
3 while I was with DCC, the firm was co-lead counsel in Bahramipour v. Citigroup Global
4 Markets, Inc., Case No. 04-0440-CW (N.D. Cal.), a class action on behalf of stockbrokers
5 employed by Citigroup (as well as several predecessor entities) for unpaid overtime,
6 reimbursement of business expenses, and improper deductions from wages. Although the matter
7 initially was filed on behalf of a class of California-only employees, it eventually evolved into a
8 nationwide class action on behalf of over 17,000 class members, and ultimately settled for
9 approximately \$106 million. Likewise, I played a prominent role in litigating Takacs v. A.G.
10 Edwards & Sons, Inc., Case No. 04-CV-1852 JAH (S.D. Cal.), one of the first class actions
11 brought in California on behalf of stock brokers seeking recovery of overtime wages and
12 reimbursement for business expenses and improper wage deductions, and one of the most
13 extensively litigated such cases. The matter resulted in a comprehensive opinion denying
14 defendant's motion for summary judgment, found at 444 F.Supp.2d 1100, which opinion decided
15 several issues present in all of the stock broker overtime cases in the plaintiffs' favor.

16 31. My firm has obtained several multi-million dollar wage and hour class
17 action/PAGA settlements while serving as lead counsel in recent years, including a \$9.75 million
18 wage and hour class action/PAGA settlement in Freeman v. Bank of America, N.A., a \$1.4
19 million dollar wage and hour class action settlement in Mendoza v. Bear Stearns Residential
20 Mortgage Corporation, a \$1.2 million dollar class action settlement in In re: First Franklin
21 Employment Cases, and a \$1.2 million dollar wage and hour class action/PAGA settlement in
22 George v. Retail Merchandising Solutions, Inc.

23 32. Based upon the qualifications and experience set forth above, I believe an hourly
24 rate of \$900 is reasonable for my time, and for my paralegal Adriana Barba I believe an hourly
25 rate of \$175 is reasonable.

26 33. I request the Court apply the above hourly billing rates in this case, as it reasonable
27 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
28 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour

1 class action firms in the Bay Area, Los Angeles and San Diego markets, for partner-level
2 attorneys with experience comparable to mine. These rates have range from \$650 to \$850 per
3 hour for calendar years 2017-2023. Some examples include attorney Matthew Matern of Matern
4 Law Group in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig
5 Ackermann of Ackermann & Tilajef, PC with approximately 25 years of experience \$850/hour
6 (2021), Michael Malk of Malk APC in Los Angeles, with approximately 16 years of experience
7 \$650/hour (2018), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego,
8 35 years and 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of
9 Crosner Legal PC, 14 years of experience \$800/hour (2023), and James Kawahito of Kawahito
10 Law Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

11 34. The requested rates also comport with the adjusted Laffey Matrix, which provides
12 that reasonable hourly rates for attorneys with 20+ years of experience, such as myself, is \$997.
13 The adjusted Laffey Matrix may be found at <http://www.laffeymatrix.com/see.html>. Similarly,
14 the Westlaw Court Express Legal Billing Report Volume 17, Number 3, for the California region
15 suggests billing rates for partner-level attorneys with experience comparable to mine ranged from
16 \$810-1,220/hour as of 2015. A true and correct copy of the Billing Report is attached hereto as
17 Exhibit 3.

18 35. After the analysis above, my firm's lodestar is \$59,835.00, based on 74.7 attorney
19 and paralegal hours spent litigating this case through the filing of this motion. Further, we will
20 almost certainly spend additional time addressing settlement administration matters, responding
21 to class member questions, submitting the compliance report and amended judgment, etc. Given
22 that the base lodestar is slightly higher than the fees requested on a percentage of the recovery
23 basis, there is no request for a lodestar enhancement.

24 36. As noted, my firm has represented Plaintiff for over a year and half with respect to
25 this matter and has expended a significant amount of time and resources in that representation.
26 My firm agreed to litigate this case on a purely contingent basis and in so doing assumed
27 considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with
28 these cases in general. Under all relevant factors (as outlined herein and in the accompanying

memorandum), Plaintiff respectfully requests the Court award his counsel the requested fees of \$58,333.33 based on the common fund theory with a corresponding lodestar cross-check and no lodestar modifier.

37. This case posed considerable contingent risk, for the reasons addressed above; if there had been recovery then my firm would not have received any fees for the time invested litigating the case. Throughout the pendency of this case, my firm has received no compensation or reimbursement for its efforts representing Plaintiff and the Class.

38. My firm assumes a great deal of contingent risk in every wage and hour class action it undertakes. Attorneys at my firm have been involved in a number of cases where plaintiffs and their counsel invested hundreds of hours to time and tens of thousands in costs with no return. For example, in a matter alleging misclassification on behalf of a putative class of assistant managers at major restaurant chain, after three years of exceptionally adversarial litigation and the investment of over 1,000 hours of attorney time and over \$100,000 in costs, the trial court denied plaintiffs' motion for class certification. In another misclassification case on behalf of assistant managers at large restaurant chain, the parties reached a settlement after three years of litigation, secured preliminary approval and completed the notice process to the settlement class, only to have the defendant file for bankruptcy a few days before the final approval hearing. Lastly, in a matter against a large regional bank seeking expense reimbursement on behalf of outside salespersons, after more than a year of combative litigation and shortly before plaintiff's class certification motion was due, the defendant was taken over by federal regulators. In each of these instances the plaintiff's firm received nothing despite the investment of hundreds of hours of attorney time and thousands of dollars in out-of-pocket costs.

39. Reimbursement for litigation costs and expenses is capped at \$8,000 under the terms of Settlement Agreement. A true and correct itemization of the costs and expenses incurred by my firm is set forth below:

Expense Category	Amount

1	Court Filing Fees/ Service of Process/Attorney Service/Chamber's Copies	\$1,923.75
2	Mediation Fees	\$6,350.00
3	Postage/Overnight/Fax	\$24.85
4	PAGA Filing Fee	\$75.00
5	Photocopying	(waived)
6	Legal Research	(waived)
7	Total Costs and Expenses	\$8,373.60

40. These costs and expenses are reasonable in amount and were necessary to the successful resolution of the case. I respectfully request the Court approve payment of \$8,000.00 in litigation costs and expenses to my firm consistent with the cap provided for in the Settlement Agreement.

41. For all the foregoing reasons, I respectfully request that the Court approve the settlement in all particulars.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of June 2024, at Carlsbad, California.


Declarant