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7
8 Counsel for Plaintiff LUIS A. MARTINEZ TRUJILLO

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF TULARE**

11 LUIS A. MARTINEZ TRUJILLO, on behalf
12 of all others similarly aggrieved,

13 Plaintiff,

14 vs. FORD SPRAYING, INC., a California
15 corporation, and DOES 1 through 50,
16 inclusive,

17 Defendants.

CASE NO. VCU298017

Assigned for All Purposes to:
Hon. Gary Johnson
Dept. 7

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

Date: February 10, 2025
Time: 8:30 a.m.
Dept.: 7

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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 Luis A. Martinez Trujillo. 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.

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2. On May 4, 2023, after notice to the LWDA and exhaustion of administrative remedies, Plaintiff filed a complaint against Defendant alleging a single cause of action under the Private Attorneys General Act (“PAGA”) for several alleged violations of the Labor Code and IWC Wage Orders. Plaintiff filed his complaint on behalf of individuals who worked for Defendant as non-exempt employees in California during the relevant time frame. Defendant operates an agricultural spraying business located in Ivanhoe, California, and provides spraying services in the surrounding areas. Plaintiff Trujillo worked for Ford as a non-exempt employee for approximately two years, from January 2021 to December 2022.

3. Plaintiff alleges Defendant failed to pay all wages due to the class members because it failed to include non-discretionary, non-hourly compensation, such as shift differential pay, in the calculation of the “regular rate” used to determine the correct overtime rate. As a result, per Plaintiff, Ford underpaid for overtime. Plaintiff further alleged Ford failed to provide all required meal and rest breaks on a fully compliant basis, and that review of employee time records suggests meal periods frequently were untimely, and that required meal and rest breaks were not provided on shifts over 10 hours. Plaintiff further contends Ford did not pay an extra hour of premium pay in lieu of missed or non-compliant breaks. Plaintiff next contended that he and other class members had to use their personal phones on company business without reimbursement, and that their wage statements were inaccurate and did not include all information required by the Labor Code.

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1 civil penalties for the alleged failure to pay all wages due, failure to provide meal and rest breaks,
2 failure to reimburse business expenses, failure to provide accurate wage statements, and failure to
3 pay wages due on separation of employment.

4 7. Ford has at all times denied Plaintiff's allegations and maintained its meal break
5 and payroll policies and procedures comply with California law, that it provided its employees
6 with required meal and rest breaks, that it properly tracked employee time and paid Plaintiff and
7 all other employees all wages due at the correct hourly and overtime rates. Additionally, Ford
8 strongly contends the case cannot be maintained as any kind of class or representative action,
9 arguing that to the extent class members missed meal breaks, that such breaks were non-
10 compliant, or that any unpaid "off the clock" work occurred, it was intermittent and infrequent
11 and evidence of such violations would be purely anecdotal, and therefore individualized issues
12 predominate and trial would be unmanageable.

13 8. After Plaintiff filed his complaint, the Parties engaged in substantial meet and
14 confer discussions regarding discovery, potential law and motion, and other case management
15 issues, and ultimately agreed to attempt early mediation, and further agreed to explore settlement
16 on a class action basis. Thereafter, the Parties engaged in additional informal discovery to
17 facilitate an exchange of information necessary to engage in a meaningful mediation.
18 Consequently, my office reviewed payroll records, personnel policies/handbooks, meal break
19 policies, personnel files, and a random sampling of paystubs and time records produced by Ford
20 for several hundred pay periods. Defendant also provided documents and information reflecting
21 the estimated total amount of workweeks and pay periods they worked, number of class members,
22 and average hourly pay rates, among other relevant data.

23 9. The Parties then engaged the Hon. Howard Broadman (Ret.), a highly respected
24 mediator with extensive wage and hour class action experience and, on February 7, 2024,
25 participated in a mediation with Judge Broadman. The arms-length negotiations were hard-
26 fought and adversarial as the Parties exchanged extensive information on their legal and factual
27 positions, and made numerous offers and counter-offers. Ultimately, the Parties reached
28 agreement on all major issues to resolve the matter on both a class and PAGA basis. The Parties

thereafter collaboratively drafted the Settlement Agreement setting forth the full and final settlement terms. Finally, in order to fully effectuate the settlement, the Parties stipulated to the filing of First Amended Complaint alleging class claims consistent with the PAGA allegations.

THE PROPOSED SETTLEMENT TERMS

10. Under the settlement, Ford will pay \$130,000.00 into a common fund, the Gross Settlement Amount (“GSA”). Reasonable attorney’s fees of up to one-third of the GSA, or \$43,333.33, actual litigation costs of up to \$9,000 (only \$8,413.52 is requested), a modest enhancement award of up to \$7,500 for plaintiff, settlement administration costs of \$5,500, and \$5,000 for alleged civil penalties under PAGA, all will be paid from the GSA. Consistent with PAGA, \$3,750 of that amount will go the LWDA for the State’s share of the civil penalties, and the remaining \$1,250 will be distributed pro rata to the Aggrieved Employees. The remainder of approximately \$62,750 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to Ford.

11. As noted, the settlement obligates Ford to pay \$130,000 to resolve the Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$62,750 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. One-third of each settlement share will be allocated to wages and the remaining two-thirds percent will be allocated to expenses, penalties and interest. Ford will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court’s approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to Valley Children’s Hospital as proposed *cy pres* beneficiary.

12. Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Ford during the Class Period while employed as a non-exempt employee. Thus, each Class Member’s Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid

1 wages, unpaid premium wages for missed meal breaks, unreimbursed expenses, and potential
2 statutory penalties under applicable law. These methods are intended to ensure each Class
3 Member receives a portion of the available settlement funds corresponding to the relative value of
4 his or her potential claims. The proposed allocation provides a reasonable way to compensate
5 Class Members based on the amount of time they worked for Ford, and the number of instances
6 they missed a break, were not provided compensation in lieu of such missed breaks, or lost wages
7 due to alleged miscalculated and underpaid overtime.

8 13. All Participating Class Members will be deemed to release Ford from all claims
9 alleged in the operative complaint, or that could have been brought based on the allegations in the
10 operative complaint, including PAGA claims, from May 4, 2019 through April 9, 2024. The
11 release is limited to the claims that were actually pleaded or could have been pleaded based on the
12 alleged facts in the operative complaint.

13 14. The Parties allocated \$5,000 to payment of civil penalties under PAGA for such
14 claims against Ford, as addressed in more detail below, and Plaintiff submits this amount is fair,
15 reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor
16 Code section 2699(l)(2), my office gave submitted the settlement agreement and this motion, and
17 notice of the settlement and the final approval hearing, to the LWDA via its online portal.

18 **The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of**
19 **Reasonableness**

20 15. Prior to mediation, the parties engaged in extensive informal discovery to facilitate
21 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
22 Ford's payroll practices, pay stubs and time records for a sampling of pay periods, meal and rest
23 break policies, etc., and information from Defendant regarding class size and breakdown of job
24 positions, work weeks, rates of pay, and other information used to formulate a damages model.
25 Plaintiff's counsel is confident they obtained sufficient information to enable them to understand
26 the law and facts of this case and make an informed decision regarding the proposed settlement
27 and whether it is in the best interests of the class.

28 16. Using that data, we ran various calculations and estimated Ford's likely maximum

1 exposure on the class claims at approximately \$568,000, including \$10,700 on the unpaid wage
2 claims, \$160,380 on the meal break claims, \$64,200 on the rest break claims, \$35,660 on the
3 expense reimbursement claim, \$149,700 on the wage statement claims, and \$147,600 on the
4 waiting time penalty claims.

5 17. On the unpaid wage claims, Plaintiff alleged he and other employees were not paid
6 all overtime wages due because Ford did not include certain forms of compensation, primarily
7 shift differential pay for working a night shift, in the “regular rate of pay” used to calculate the
8 correct overtime rate. As a result, Plaintiff contends Ford frequently underpaid the Class
9 Members for their overtime. While Plaintiff believes this is one of his stronger claims, he also
10 recognizes the exposure is nominal, as the amount lost typically is only a few dollars per work
11 week.

12 18. On the meal and rest break claims, while Ford’s written policies generally
13 appeared compliant, Plaintiff’s review of the time and payroll records suggested numerous de
14 facto violations, as many meal periods appeared untimely and did not start until after the fifth
15 hour of work. Plaintiff argued even a “minor infringement” of Wage Order meal period
16 requirements, such as a meal period starting a few minutes later, triggers an employer’s premium
17 pay obligations and that a rebuttable presumption of liability applies when time records show
18 shortened, delayed, or missed meal periods. Accordingly, Plaintiff contends that even if Ford
19 argues many of the untimely lunch breaks were only a couple of minutes late, that position is
20 unlikely to avoid liability. Plaintiff also argued Ford failed to provide third rest breaks on shifts of
21 10 or more hours.

22 19. In response, Ford emphasized its written policies are compliant, and that it
23 provided class members with the opportunity to take all required meal and rest breaks and thus
24 met its obligations under the law. Ford argued further that most if not all Class Members waived
25 their second meal periods and also that, in light of its compliant policies, whether a class member
26 missed a meal period, received a late meal period, or missed a rest break would have been
27 aberrational and against company policy. Ford also noted it paid for documented violations, as
28 reflected in the payroll records produced in the pre-mediation production. Thus, per Ford, these

1 issues are not amenable to class or representative treatment since their resolution would require
2 individualized inquiries as to why a break was missed or non-compliant.

3 20. On the expense reimbursement claim, Plaintiff claimed that he and the Class
4 Members regularly had to use their personal phones while on the clock and for work purposes to,
5 inter alia, communicate with supervisors, take pictures of their work, send it reports on fuel
6 consumed by company vehicles, and so on. Per Plaintiff, Ford did not pay any reimbursement for
7 use of personal phones. Ford on the other hand argued that any use of personal mobile devices
8 was unnecessary to perform the job and therefore was purely for personal convenience. If so,
9 then the expense was neither reasonable nor necessary, and therefore no reimbursement was
10 required.

11 21. On the claims under Labor Code section 226, for inaccurate wage statements,
12 Plaintiff argued his wage statements did not include the employer address, as required by Section
13 226(a)(8), and further misstated total hours worked, in violation of Section 226(a)(2), in many
14 instances because the statements “double counted” certain hours worked. Plaintiff also alleged
15 derivative wage statement violations based on the alleged underpaid overtime and meal/rest break
16 violations, and further alleged derivative Labor Code 203 violations for failure to timely pay all
17 wages due on separation of employment. Being derivative, these claims accordingly are subject to
18 the same risks and uncertainties applicable to the primary claims, plus additional risks posed by
19 the need to take into account the discretionary nature of such awards and the “good faith” and
20 other defenses available to Defendant. Thus, while these claims largely are derivative of the
21 unpaid wage claims, they also are subject to additional defenses.

22 22. As far as potential PAGA liability, the allegedly aggrieved employees theoretically
23 are entitled to penalties totaling about \$500,000 in civil penalties should Plaintiff prevail on all
24 claims and establish violations of the multiple Labor Code sections at issue. As with the class
25 claims, Plaintiff discounted the potential PAGA penalties based on Ford’s various defenses on the
26 merits and also accounted for the Court’s wide discretion to reduce such penalties, or to decline to
27 award penalties at all. Accordingly, the Parties allocated \$5,000 to PAGA penalties, and Plaintiff
28 submits this amount is reasonable under the circumstances and in line with comparable

1 settlements in other wage and hour class actions in California. Additionally, the LWDA has been
2 informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as
3 necessary.

4 23. The settlement obviates the significant risk that this Court may find any kind of
5 class or representative resolution unachievable or deny certification of all or some of Plaintiff's
6 claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims,
7 continued litigation would be lengthy and expensive as the parties pursued merits discovery, a
8 probable motion to decertify, as well as trial and possible appeals, and would substantially delay
9 any recovery by the class with no assurance of recovering significantly more than the proposed
10 settlement. While Plaintiff and I are confident in the merits of these claims, legitimate
11 controversies exist regarding each one of them. We also recognize proving the amount of wages
12 and penalties due each Class Member would be an expensive, time-consuming, and uncertain
13 proposition.

14 24. Plaintiff and I discounted the value of the class claims consistent with the risks
15 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
16 benefit if the litigation continued. We concluded – in light of these very real and substantial risks
17 – settlement on the proposed terms and without prolonged and costly litigation was in the best
18 interests of the class, as the overall \$130,000 recovery represents a significant percentage of
19 Defendant's potential exposure. Given these risks, a total recovery for the class of \$130,000,
20 which will result in average award of some \$747 per class member, is a significant result well
21 within the range of reasonableness considering all potential outcomes, and it will provide direct
22 monetary awards to all Class Members in short order.

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

1 26. As is fully detailed in the Donnelly Declaration, Class Counsel's efforts
2 included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class,
3 including legal research, obtaining Plaintiff's employment records, research into similar claims
4 and claims against other employers in the same industry, and attempts to locate and contact other
5 FMA employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related
6 documents; (4) case management, including communications with defense counsel, meeting and
7 conferring/preparing case management statements, etc.; (5) lengthy discussions with defense
8 counsel regarding settlement/mediation and informal discovery needed for meaningful settlement
9 discussions; (6) engaging in substantial informal discovery, including propounding informal
10 discovery "requests" and reviewing documents and other information produced; (7) drafting a
11 mediation brief and accompanying damages model after review and analysis of defendant's
12 informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting
13 the settlement agreement and related documents; (10) drafting the amended complaint; (11)
14 drafting the motion for preliminary approval and supplemental papers re: changing the notice
15 period; (11) administration of the settlement, communications with the Settlement Administrator
16 and settlement class members; (12) drafting the motion for final approval and motion for
17 attorney's fees, and attending the final approval hearing; and (13) extensive communications with
18 the Plaintiff regarding case status, case investigation and document review, mediation, and
19 settlement terms. Additionally, Class Counsel will incur additional time to attend the final
20 approval hearing and following final approval to, inter alia, respond to class member inquiries,
21 work with the Settlement Administrator on the distribution of settlement funds, and on the
22 compliance hearing.

23 27. I am a 1989 graduate of the College of William and Mary, and a 1995 graduate
24 *cum laude* of the University of San Diego School of Law, where I was selected to the Order of the
25 Coif and the Order of Barristers. Prior to 2003, I was a litigation associate with Ross Dixon &
26 Bell, LLP (now Troutman Pepper LLP), in Orange County, California, where my practice focused
27 on complex business, employment, and insurance coverage disputes. In 2003, I became
28 associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs' wage and

1 hour class action firms in California. In 2008, I founded the Law Offices of J. Kirk Donnelly.
2 Since 2003, my practice has focused on representing plaintiffs in wage and hour and consumer
3 law matters, including both class actions and individual matters.

4 28. I have served as class and/or PAGA counsel in a number of wage and hour class
5 and representative actions, including Martinez v. 'T' McGee Electric, Inc., Case No.
6 CIVSB2114427 (San Bernardino County Superior Court); Herrera v. Stone Etc., Inc., et al., Case
7 No. 21STCV43188 (Los Angeles Superior Court); Acosta v. Turlock Walnut Company, Case No.
8 22-CV-001051 (Stanislaus County Superior Court); Velasquez v. Water Damage Rescue, Inc.
9 Case No. 21STCV46033 (Los Angeles County Superior Court); Galindo v. Berro Management
10 Company, Inc., Case No. 22STCV25853 (Los Angeles Superior Court); Quintero, et al. Greg
11 Markarian Ag Enterprises, Inc., Case No. 23CV-00106 (Merced County Superior Court); George
12 v. Retail Merchandising Solutions, Inc., Case No. RG16828194 (Alameda County Superior
13 Court); Bolanos v Lyneer Staffing Solutions LLC, Case No. 23STCV21860 (Los Angeles County
14 Superior Court); Buford v. Medical Solutions, LLC, Case No. 18-CV-04104 YGR (N.D. Cal.);
15 Bautista v. Western Care Construction, Case No. S-CV-0049217 (Placer County Superior Court);
16 Delgado v Vander Woude Farms, Case No. ____ (Merced County Superior Court); Herrera v. TVI,
17 Inc., et al., Case No. CIVDS1722863 (San Bernardino County Superior Court); Rios v AMI
18 Foods, Inc. Case No. 22CV005381 (Alameda County Superior Court); Freeman v. Bank of
19 America, N.A., Case No. CGC18471710 (San Francisco County Superior Court); Gutierrez v.
20 Fraiche Catering, Inc., Case No. CGC-23-605255 (San Francisco Superior Court); Gomez v.
21 Giulietta Italian Foods, Inc., Case No. 22CV392988 (Santa Clara County Superior Court),
22 Echeverria v. Technicote, Inc., Case No. RIC1714621 (Riverside County Superior Court), Acosta
23 v. ECC Capital Corporation, Case No. 30-2009-00180086 (Orange County Superior Court),
24 Tiffany v. Hometown Buffet, Inc., Case No. 06-CV-2524 SMA (N.D. Cal.), Mendoza v. Bear
25 Stearns Residential Mortgage Corporation, Case No. 08-CV-6916 DSF (C.D. Cal.), In Re: First
26 Franklin Employment Cases, JCCP No. 4598 (San Diego County Superior Court), Mendoza v.
27 ECC Capital Corporation, Case No. 08-CV-6916 JN (C.D. Cal.), Acosta v. Bear Stearns, Case
28 30-2009-00180086 (Orange County Superior Court); George v. Mercado Latino, Inc., Case No.

1 CIVDS1822302 (San Bernardino County Superior Court), Verduzco v. Ramco Enterprises, LP, et
2 al., Case No. 18CV004104 (Monterey County Superior Court); Gonzalez v. Power Design, Inc.,
3 Case No. 19STCV31839 (Los Angeles County Superior Court); Weston v. Cuesta Investments,
4 Case No. 18CV04823 (Santa Barbara County Superior Court); Martinez v. DNNEY Trade Co.,
5 Case No. 18STCV09631 (Los Angeles County Superior Court); Navarro v. Ressac, Case No.
6 19STCP00319 (Los Angeles County Superior Court); Villalta v. Stars Recreation Center, Case
7 No. FCS054507 (Solano County Superior Court); Anglin v. Sonnikson and Stahl Construction,
8 Case No. CIVMSC19-00149 (Contra Costa County Superior Court); Rosendahl v. Riverside
9 Metro Auto Group, Case No. RIC1903707 (Riverside County Superior Court); Hawkins v. SAS
10 Retail Services, Inc., Case No. 30-2017-00958467-CU-OE-CXC (Orange County Superior
11 Court); Salazar v. National Labor Contractors, et al., Case No. CIVDS1905225 (San Bernardino
12 County Superior Court); Reyes v. Assa Abloy Door Controls and Accessories Group, Inc., Case
13 No. 56-2019-00523849-CU-OE-VTA (Ventura County Superior Court); Valencia v The Original
14 Mowbray's Tree Service, Incorporated, Case No. CIVDS1825518 (San Bernardino County
15 Superior Court); Castillo v. Gaither's Family Homes, Inc., Case No. VCU277188 (Tulare County
16 Superior Court); Canales v. Fashion Design, LLC, Case No. 30-2019-010529520CU-OD-CXC
17 (Orange County Superior Court); and Thomas v Californian-Magnolia Convalescent Hospital,
18 Inc., Case No. RIC1901197 (Riverside Superior Court).

19 29. During the approximately five years I was associated with DCC, the firm was
20 appointed class counsel in over 20 class actions alleging violations of federal and California wage
21 and hour laws. I played an integral role in litigating these matters, which included some of the
22 largest and most complex wage and hour class actions ever brought in California. For instance,
23 while I was with DCC, the firm was co-lead counsel in Bahramipour v. Citigroup Global
24 Markets, Inc., Case No. 04-0440-CW (N.D. Cal.), a class action on behalf of stockbrokers
25 employed by Citigroup (as well as several predecessor entities) for unpaid overtime,
26 reimbursement of business expenses, and improper deductions from wages. Although the matter
27 initially was filed on behalf of a class of California-only employees, it eventually evolved into a
28 nationwide class action on behalf of over 17,000 class members, and ultimately settled for

1 approximately \$106 million. Likewise, I played a prominent role in litigating Takacs v. A.G.
2 Edwards & Sons, Inc., Case No. 04-CV-1852 JAH (S.D. Cal.), one of the first class actions
3 brought in California on behalf of stock brokers seeking recovery of overtime wages and
4 reimbursement for business expenses and improper wage deductions, and one of the most
5 extensively litigated such cases. The matter resulted in a comprehensive opinion denying
6 defendant's motion for summary judgment, found at 444 F.Supp.2d 1100, which opinion decided
7 several issues present in all of the stock broker overtime cases in the plaintiffs' favor.

8 30. My firm has obtained several multi-million dollar wage and hour class
9 action/PAGA settlements while serving as lead counsel in recent years, including a \$9.75 million
10 wage and hour class action/PAGA settlement in Freeman v. Bank of America, N.A., a \$1.4
11 million dollar wage and hour class action settlement in Mendoza v. Bear Stearns Residential
12 Mortgage Corporation, a \$1.2 million dollar class action settlement in In re: First Franklin
13 Employment Cases, and a \$1.2 million dollar wage and hour class action/PAGA settlement in
14 George v. Retail Merchandising Solutions, Inc.

15 31. Based upon the qualifications and experience set forth above, I believe an hourly
16 rate of \$850 is reasonable for my time, and for my paralegal Adriana Barba I believe an hourly
17 rate of \$200 is reasonable.

18 32. I request the Court apply the above hourly billing rates in this case, as it reasonable
19 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
20 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
21 class action firms in the Bay Area, Los Angeles and San Diego markets, for partner-level
22 attorneys with experience comparable to mine. These rates have range from \$650 to \$850 per
23 hour for calendar years 2017-2023. Some examples include attorney Matthew Matern of Matern
24 Law Group in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig
25 Ackermann of Ackermann & Tilajef, PC with approximately 25 years of experience \$850/hour
26 (2021), Michael Malk of Malk APC in Los Angeles, with approximately 16 years of experience
27 \$650/hour (2018), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego,
28 35 years and 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of

1 Crosner Legal PC, 14 years of experience \$800/hour (2023), and James Kawahito of Kawahito
2 Law Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

3 33. The requested rates also comport with the adjusted Laffey Matrix, which provides
4 that reasonable hourly rates for attorneys with 20+ years of experience, such as myself, is over
5 \$1000. The adjusted Laffey Matrix may be found at <http://www.laffeymatrix.com/see.html>.
6 Similarly, the Westlaw Court Express Legal Billing Report Volume 17, Number 3, for the
7 California region suggests billing rates for partner-level attorneys with experience comparable to
8 mine ranged from \$810-1,220/hour as of 2015. A true and correct copy of the Billing Report is
9 attached hereto as Exhibit 3.

10 34. After the analysis above, my firm's lodestar is \$48,330.00, based on 68.5 attorney
11 and paralegal hours spent litigating this case through the filing of this motion. Further, we will
12 almost certainly spend additional time addressing settlement administration matters, responding
13 to class member questions, submitting the compliance report and amended judgment, etc. On a
14 lodestar basis, the fee request of \$43,333.33 is slightly lower than the base lodestar and
15 accordingly there is no request to apply a lodestar enhancement.

16 32. As noted, my firm has represented Plaintiff for over a two years with respect to
17 this matter and has expended a significant amount of time and resources in that representation.
18 My firm agreed to litigate this case on a purely contingent basis and in so doing assumed
19 considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with
20 these cases in general. Under all relevant factors (as outlined herein and in the accompanying
21 memorandum), Plaintiff respectfully requests the Court award his counsel the requested fees of
22 \$43,333.33 based on the common fund theory with a corresponding lodestar cross-check and no
23 lodestar modifier.

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

28 34. My firm assumes a great deal of contingent risk in every wage and hour class

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

15 35. Reimbursement for litigation costs and expenses is capped at \$9,000 under the
16 terms of Settlement Agreement. A true and correct itemization of the costs and expenses incurred
17 by my firm is set forth below:

18

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$653.75
Mediation Fees	\$7,500.00
PAGA Filing Fees	\$75.00
Courtcall Charges	\$144.00
Postage/Delivery	\$12.17
Copy Charges for Plaintiff's Employment Records	\$28.60
Legal/Financial Research	(waived)
Photocopies	(waived)
Total Costs and Expenses	\$8,413.52

24

25 36. These costs and expenses are reasonable in amount and were necessary to the
26 successful resolution of the case. I respectfully request the Court approve payment of \$8,413.52
27 in litigation costs and expenses to my firm consistent with the cap provided for in the Settlement
28

1 Agreement.

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

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed this 13TH day of January 2025, at Carlsbad, California.

6
7 
8 Declarant