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Attorneys for Plaintiff and the Putative Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LATOYA HONEY WALKER, individually
and on behalf of all others similarly situated;

Plaintiff,

vs.

NURSEFINDERS, LLC; AMN SERVICES,
LLC; and DOES 1–100, inclusive.

Defendants.

Case No. 3:22-CV-04084-AGT

Assigned to the Honorable Alex G. Tse

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

Date: March 8, 2024

Time: 10:00 a.m.

Courtroom: A, 15th Floor

Complaint Filed: July 12, 2022

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, Central 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 LaToya Honey Walker, on behalf of herself and all others similarly situated (“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 19, 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

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

of Oklahoma class and FLSA collective action settlement for deceptive trade practices, unlawful sale 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); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *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); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of

individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First Am. Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *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 allegedly misclassified as independent contractors); *Cortez, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-the-clock work by production-line

employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX Servs., Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class action on behalf of flight nurses); *Nat'l Fed'n of the Blind v. Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who have tried to access Target.com); *Bates v. United Parcel Serv., Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the Univ. of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the University of California); *Lopez v. San Francisco Unified School Dist.* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action against school district for widespread disability access violations); *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v. Regents of the Univ. of California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court) (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25 million settlement); *Taormina v. Siebel Sys., Inc.* (Case No. RG05219031) (Alameda County Superior Court) (final approval of class action settlement for misclassification of Siebel's inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior Court) (final approval of class action settlement

for failure to provide meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation pay upon end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class action settlement for failure to pay Sears drivers for all hours worked); among many others.

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

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

CASE SUMMARY

Discovery and Investigation

9. Following the Parties' agreement to participate in early mediation of this matter, the Parties engaged in informal discovery, through which Defendant produced nearly 12,000 pages of documents, including a 20% sampling of time and pay records, handbooks and written policies, Plaintiff's personnel file, and time punch correction forms. Documents produced by Defendant prior to mediation included time-punch records (*i.e.*, clock-in and clock-out times) and payroll information, as well as COVID-19 and meal and rest break policies applicable to hourly, non-exempt employees. Defendant further provided classwide figures, including the total number of putative Class Members,

1 separated putative Class members, as well as their associated workweeks and pay periods.

2 10. Plaintiff's Counsel also conducted in-depth interviews of putative Class Members,
3 which covered topics including dates and locations of work, hours of work, pre-shift and post-shift off
4 the clock work, potential timekeeping issues, and meal and rest breaks issues.

5 11. 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; and (c) the desirability of consummating the
10 Settlement according to its terms. Documents produced by Defendant prior to mediation included
11 time-punch records (*i.e.*, clock-in and clock-out times) and payroll information, as well as COVID-19
12 and meal and rest break policies applicable to hourly, non-exempt employees. Class Counsel used this
13 information to perform a detailed investigation of Defendants' timekeeping and payroll policies and
14 practices, which included a comprehensive damages analysis. Based on the information analyzed,
15 Plaintiff and Class Counsel have concluded that the terms of the Settlement are fair, reasonable and
16 adequate, and that the Settlement is in the best interests of Plaintiff, the Class Members, and the
17 Aggrieved Employees to resolve their claims against Defendant.

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

24 **Mediation and Settlement**

25 13. On September 8, 2023, the Parties participated in a mediation before Steve Pearl, a
26 highly skilled mediator with years of experience in wage-and-hour actions. With the assistance of Mr.
27 Pearl, counsel for the Parties engaged in serious arm's-length negotiations. Although the Parties did
28 not reach a deal the day of the mediation, the Parties continued negotiating afterwards and

subsequently agreed to the mediator's proposal, which included the substantive terms of the Settlement, on September 26, 2023.

14. The Parties then spent several months discussing settlement and negotiating the Settlement Agreement, with several rounds of edits related to the terms and details of the Settlement. The Parties negotiated the specific terms of the Settlement at arms' length and executed a long-form agreement (the Settlement), subject to the Court's approval, on January 19, 2024.

15. Throughout the mediation process, the Parties engaged in serious and arm's-length negotiations, culminating in the Settlement.

The Operative Complaint Filed Pursuant to the Parties' Settlement

16. For purposes of Settlement, the Parties agreed that Plaintiff will submit a PAGA notice, and that the Parties would stipulate to amend the Complaint in this Action to include the PAGA claims released in the Settlement.

17. On November 6, 2023, Plaintiff submitted a PAGA notice to the LWDA, pursuant to the Parties' agreement. Plaintiff later filed a Second Amended Complaint adding the PAGA claims on November 9, 2023, which Plaintiff also submitted to the LWDA.

THE SETTLEMENT

Basic Terms and Value of the Settlement

18. Defendant has agreed to pay a non-reversionary Gross Settlement Amount of \$5,000,000.00 to settle all aspects of the case. Settlement, ¶ 2(q). 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 \$1,666,666.67) Class Counsel's costs (not to exceed \$20,000.00), administrative expenses to the Settlement Administrator (estimated not to exceed \$26,750.00), the LWDA PAGA Payment for its 75% share of the PAGA penalties (\$37,500.00), and the Net PAGA Amount distributed to the Aggrieved Employees (\$12,500.00). *See id.*, ¶¶ 2(t), (v), (w). 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 \$3,226,583.33.

19. I am informed by Defendant's counsel that there are approximately 2,919 Class

1 Members who worked approximately 78,247 workweeks.

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

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

15 **Certification**

16 21. The approximately 2,919 Class Members render the class so large as to make joinder
17 impracticable. The Class Members are readily identifiable from Defendant's payroll records.

18 22. Common questions of law and fact predominate here, satisfying Fed. R. Civ. P. Rules
19 23(a)(2) and (b)(3), as alleged in the Complaint. Defendant has uniform policies applicable to all Class
20 members. Specifically, Defendant's uniform policies apply to all non-exempt employees, including:
21 the requirement that all putative Class Members undergo COVID-19 screening checks, Defendant's
22 policy of requiring employees to use common time recording devices or handwritten time sheets,
23 Defendant's policies requiring employees to don and don PPE, and Defendant's policy of not providing
24 off-duty meal periods or rest periods. Plaintiff alleges that the wage and hour violations are in large
25 measure borne of Defendant's standardized policies, practices, and procedures, creating pervasive
26 issues of fact and law that are amenable to resolution on a class-wide basis. These issues include:
27 whether Defendant's practice of failing to pay putative Class Members time worked to undergo
28 COVID-19 checks and to don and doff PPE at the proper overtime rate, and of failing to pay premium

1 payments at the regular hourly rate for non-compliant meal and rest periods. Plaintiff's derivative
2 claims will rise or fall with the primary claims. Because these questions can all be resolved at the same
3 juncture, Plaintiff contends the commonality requirement is satisfied for the Class.

4 23. Interviews with putative Class members and review of timekeeping and payroll data
5 further confirm that Plaintiff and other putative Class members were subjected to the same alleged
6 illegal policies and practices to which Plaintiff was subjected.

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

12 25. Plaintiff contends the common questions raised in this action predominate over any
13 individualized questions concerning the Class. Resolution of Plaintiff's claims hinges on the uniform
14 policies and practices of Defendant, rather than the treatment the putative Class Members experienced
15 on an individual level. As a result, the resolution of these alleged class claims would be achieved
16 through the use of common forms of proof, such as Defendant's uniform policies, and would not
17 require inquiries specific to individual class members.

18 26. Plaintiff contends that the class-action mechanism is a superior method of adjudication
19 compared to a multitude of individual suits. issues raised by the present case are much better handled
20 collectively by way of a settlement. The Settlement presented by the Parties provides finality, ensures
21 that workers receive redress for their relatively modest claims, and avoids clogging the legal system
22 with numerous cases.

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

24 27. A review of the Settlement shows the fairness, reasonableness, and adequacy of its
25 terms. The Gross Settlement Amount of \$5,000,000 represents approximately 42% of the \$11,946,406
26 total that Plaintiff calculated for core claims for unpaid meal and rest premiums and unpaid wages and
27 business expenses. When adding the calculated derivative penalties, this settlement amount represents
28 approximately 30.6% of Defendant's total potential exposure of \$28,264,795. The PAGA Amount of

1 \$50,000.00 also represents 1% of the Gross Settlement Amount.

2 28. Plaintiff's counsel based their exposure analysis and settlement negotiations on the
3 discovery propounded, including payroll and timekeeping data, as well as outreach to Class Members
4 and other factual investigations. Based on this information, Plaintiff made reasonable assumptions
5 regarding the wage-and-hour violation rates, including that putative Class Members spent an average
6 of twelve minutes changing into isolation suits and waiting in line for temperature checks and were
7 subject to noncompliant meal periods 12% of time, and subject to noncompliant rest periods 40% of
8 the time. Plaintiff also calculated that the 2,919 Class Members worked approximately 78,247 work
9 weeks during the relevant time period, at an average hourly rate of \$48.40.

10 29. Using these assumptions and other datapoints derived from the timekeeping and payroll
11 information, and further assuming that Plaintiff and the Class Members would certify all of their claims
12 and prevail at trial, Class Counsel calculated the total substantive potential exposure if Plaintiff
13 prevailed on all of her claims of approximately \$11,946,406 and the total exposure of \$33,507,344.
14 This total exposure is further broken down as follows: approximately \$1,693,088 for unpaid meal
15 break premiums; approximately \$6,757,713 for unpaid rest break premiums; approximately
16 \$2,899,215 for unpaid off-the-clock work at the overtime rate; approximately \$596,391 for unpaid
17 business expenses; approximately \$3,276,238 for failure to provide accurate wage statements;
18 approximately \$10,460,000 for waiting time penalties; and approximately \$2,582,151 for PAGA
19 penalties.² These derivative and PAGA claims – totaling approximately \$16,318,389 – are premised
20 on, and rise and fall with, the substantive violations.

21 30. These figures are based on Plaintiff's assessment of a best-case-scenario. To obtain
22 such a result at trial, Plaintiff would have to, at the minimum: (1) certify all claims and withstand any
23 decertification motions; (2) prove that each Class Member worked off-the-clock during COVID-19
24 protocols and during meal and rest breaks; (3) prevail on the merits on all claims; (4) prove that
25 Defendant acted knowingly or in bad faith; and (5) prove that all putative Class members experienced
26 the violations at the levels described above for every shift.

27 ² These calculations are based on a \$100 per pay period penalty. Additionally, the PAGA Amount of
28 \$50,000 to be distributed to the Aggrieved Employees represents approximately 1.9% of the total
amount Aggrieved Employees could have obtained through a best-case scenario, *i.e.*, \$2,582,151.

1 31. The Gross Settlement Amount is a negotiated amount that resulted only after over
 2 months of substantial arm's-length negotiations following a full-day mediation session with a well-
 3 respected mediator, and significant investigation and analysis by Plaintiff's counsel. Plaintiff and her
 4 counsel considered the significant risks of continued litigation when considering the proposed
 5 Settlement. These risks were front and center, particularly given the nature of the off-the-clock work,
 6 that the putative Class members work in hundreds of different facilities throughout California, which
 7 could invariably complicate certification efforts and proving the claims on the merits. In contrast, the
 8 Settlement will result in immediate and certain payment to Settlement Class members of meaningful
 9 amounts.

10 32. The average recovery is approximately \$1,105 per Class Member.³ This amount
 11 provides significant compensation to the Class Members, and the Settlement provides an excellent
 12 recovery in the face of expanding and uncertain litigation. The final settlement amount considers the
 13 substantial risks inherent in any class-action wage-and-hour case, as well as the procedural posture of
 14 the Action and the specific defenses asserted by Defendant, many of which are unique to this case. In
 15 light of all of the risks, I believe the settlement amount is fair, reasonable, and adequate.

16 33. The Parties here engaged in extensive discovery that has enabled both sides to assess
 17 the claims and potential defenses in this action, including discovery, interviews with putative Class
 18 Members, mediation, and arm's-length negotiations. This allowed the Parties to accurately assess the
 19 legal and factual issues that would arise if the case proceeded to trial. In addition, in reaching this
 20 Settlement, Plaintiff's Counsel relied on their substantial litigation experience in similar wage-and-
 21 hour class actions. Plaintiff's Counsel's liability and damages evaluation was premised on a careful
 22 and extensive analysis of the effects of Defendant's policies and practices on Class Members' pay.
 23 Ultimately, facilitated by mediator Steve Pearl, the Parties used this information and discovery to fairly
 24 resolve the litigation.

25 34. The monetary value of the proposed Settlement represents a fair compromise given the
 26 risks and uncertainties posed by continued litigation. If the Action were to go to trial as a class action,

27 ³ This amount divides the Net Settlement Amount of approximately \$3,226,583 by total number of
 28 2,919 putative Class Members. The averages provided here assume all Class Members participate in
 the Settlement and worked identical lengths of employment.

1 Plaintiff's Counsel estimates that fees and costs would well exceed \$3,000,000.00. Litigating the class
2 action claims would require substantial additional preparation and discovery. Plaintiff would need to
3 complete fact and expert discovery. This would include: (1) written discovery to and depositions of
4 putative Class members; (2) depositions of Defendant's 30(b)(6) witnesses, managers, and executives;
5 (3) third party discovery to Defendant's timekeeping and payroll custodians of records; and (4) expert
6 discovery. Finally, Plaintiff would need to prepare for trial, which would require the presentation of
7 percipient and expert witnesses, as well as the consideration, preparation, and presentation of
8 voluminous documentary evidence and the preparation and analysis of expert reports.

9 35. 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 putative Class Members carried various
16 job titles and worked at hundreds of facilities throughout California, and were often required to
17 complete their time punches via handwritten timesheets. Plaintiff would face fundamental logistical
18 difficulties in reviewing and analyzing the massive amounts of hard copy records to provide evidence
19 that Defendant, indeed, failed to pay putative Class members wages for all worked hours during that
20 time period.

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

26 37. As to Plaintiff's PAGA claims, Plaintiff would first need to overcome similar
27 procedural hurdles, including completing substantial amounts of written discovery and depositions.
28 Unique to PAGA as a result of developing case law, however, Defendant would also likely move to

1 strike Plaintiff's PAGA claims for lack of due process.

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

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

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

14 **SERVICE AWARD**

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

19 42. Plaintiff's proposed enhancement payment represents only 0.2% of the Gross
20 Settlement Amount.

21 43. Plaintiff agreed to a general release, unlike other Class Members.

22 44. Defendant indicated they do not oppose the requested payment to the Plaintiff as a
23 reasonable service award.

24 **ATTORNEYS' FEES AND COSTS**

25 45. In their fee motion to be submitted with the final approval papers, Class Counsel will
26 request a percentage of the common fund, up to 33 1/3% of the Gross Settlement Amount, or
27 \$1,666,666.67, plus reimbursement of costs up to \$20,000.00. Such requested fees and costs will also
28 be based on the fees and costs incurred by co-counsel Lawyers for Justice, PC.

1 46. With their fee motion, Class Counsel will provide detailed lodestar information to show
2 the requested fee is reasonable under both the percentage method and a lodestar “cross-check.”

3 47. In this case, given the excellent results achieved and the effort expended to achieve it,
4 33 1/3% is warranted. There was no guarantee of compensation or reimbursement. Rather, counsel
5 undertook all the risks of this litigation on a completely contingent fee basis. These risks were front
6 and center. Plaintiff’s counsel incurred the risk of non-recovery after a substantial investment of time,
7 money, and resources, and have done so since the inception of the case without any payment or
8 compensation. Defendant’s defenses further confronted Class Counsel with the prospect of recovering
9 nothing or close to nothing for their commitment to and investment in the case. This is no easy burden
10 for any firm. Plaintiff and Class counsel committed themselves to developing and pressing Plaintiff’s
11 claims to enforce the employees’ rights and maximize the class recovery.

12 48. Attorneys who litigate on a wholly or partially contingent basis expect to receive
13 significantly higher effective hourly rates in cases where compensation is contingent on success,
14 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. In the legal
15 marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects
16 that his or her compensation will be significantly greater than if no risk was involved (*i.e.*, if the client
17 paid the bill monthly), and that the greater the risk, the greater the “enhancement.” Adjusting court-
18 awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation
19 whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal
20 marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce
21 important public interest policies and that clients who have meritorious claims will be better able to
22 obtain qualified counsel.

23 49. The amount of fees and costs requested are clearly set forth in the Settlement Notice,
24 and Plaintiff’s fee motion will be uploaded onto the corresponding website – which is also provided
25 on the Settlement Notice – prior to the close of the notice deadline. Accordingly, Plaintiff respectfully
26 requests that the Court preliminarily approve the terms of the Settlement, including the request for
27 fees and costs.

28 50. Plaintiff’s Counsel’s lodestar amount will increase with preparation of the final

1 approval papers, preparation and attendance at remaining hearings, correspondence and
2 communications with Class Members, and settlement administration and oversight.

3 51. Plaintiff's Counsel also requests reimbursement for their litigation costs.
4

5 I declare under penalty of perjury under the laws of the United States that the foregoing is true
6 and correct.

7 Executed this 26th day of January 2024 in Auburn, California.
8

9 /s/ Carolyn H. Cottrell

10 Carolyn Hunt Cottrell
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