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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

EDGAR SANTIAGO, individually, and on behalf of all others similarly situated, Plaintiffs, vs. MCKIMMEY ELECTRIC, INC., a Nevada corporation, J.M.B. ELECTRIC, INC., a California corporation, and DOES 1 through 50, inclusive, Defendants.	CASE NO. STK-CV-UOE-2024-0005859 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AND REQUEST FOR ATTORNEY'S FEES AND COSTS Date: July 23, 2026 Time: 9:00 a.m. Dept. 10D

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 Edgar Santiago. I make this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement. If called to testify as to the within facts, I would and could competently do so.

FACTUAL BACKGROUND AND PROCEDURAL POSTURE

2. Defendants both are electrical contracting firms that specialize in working on construction of multi-family dwellings. Defendant McKimmey is based in Reno, Nevada (although it is a licensed California contractor), while Defendant JMB is based in San Jose. Plaintiff Edgar Santiago worked for both Defendants as an hourly paid electrician for several years until his termination on or around March 15, 2024. During his tenure he worked interchangeably for both Defendants, oftentimes performing work for both in the same pay period.

3. On May 17, 2024, Plaintiff filed a class action complaint against Defendants for alleged violations of the Labor Code and Wage Orders. Plaintiff's complaint alleges (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Breaks; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Waiting Time Penalties; (7) Failure to Reimburse for All Necessary Business Expenses; and (8) Failure to Provide Access to Records.

4. In his complaint, Plaintiff contended McKimmey failed to properly pay all wages due by rounding off time punches such that employees lost compensable hours worked. Plaintiff also argued Defendants failed to pay for overtime hours at the required premium rate by having employees work under an invalid Alternative Work Schedule of four ten hour shifts per week, which resulted in a failure to pay daily overtime premiums. Plaintiff further contended Defendants failed to pay daily overtime premiums where appropriate. Next, Plaintiff alleged he and other employees did not receive all meal breaks as required under the Labor Code and IWC

Wage Orders, and that breaks regularly were non-compliant and in particular lasted less than 30 minutes. Similarly, Plaintiff alleges McKimmey failed to provide all required rest breaks, including third rest breaks on shifts lasting longer than 10 hours. Plaintiff also alleged he and other employees had to use both their personal phones and personal vehicles for work purposes without reimbursement. Lastly, Plaintiff alleged claims for failing to provide proper itemized wage statements and untimely payment of all wages due on separation of employment.

5. After notice to the Labor & Workforce Development Agency ("LWDA") and Defendants, and after exhausting administrative remedies, Plaintiff filed a first amended complaint on May 31, 2024 adding a cause of action under PAGA based on the same alleged Labor Code violations.

6. McKimmey has at all times denied Plaintiff's allegations and maintained its meal and rest break, payroll, and reimbursement policies and procedures comply with California law. McKimmey contends that it provided employees with compliant meal and rest breaks, properly tracked employee time, paid Plaintiff and all other employees all wages due and at the correct hourly rates, and reimbursed any necessary business expenses. McKimmey also strongly contends that the case cannot be maintained as any kind of class or representative action, arguing for example that to the extent class members missed meal breaks, that such breaks were non-compliant, or that employees worked "off the clock," it was intermittent and infrequent and evidence of such violations would be purely anecdotal, and therefore individualized issues predominate and class certification would be inappropriate.

7. Once the matter was at issue, Plaintiff served an initial round of written discovery. Thereafter, the Parties began meeting and conferring regarding discovery, potential law and motion, and other case management issues, and ultimately agreed to early mediation. The Parties further agreed to an informal exchange of information to facilitate meaningful settlement discussions. Through this informal discovery, Defendants provided Plaintiff with information including, inter alia, Plaintiff's personnel file, the number of potential class members and Aggrieved Employees, the number of aggregate work weeks and pay periods, payroll and time records for a sampling of the class members, and relevant policy documents regarding

Defendant's time keeping and reporting policies and meal and rest break policies.

8. In October 2025, the Parties participated in mediation with Steve Mehta, Esq., a respected wage and hour class action mediator. The mediation lasted a full day and with the mediator's assistance the Parties reached agreement on all major issues.

THE PROPOSED SETTLEMENT TERMS

9. Under the Settlement Agreement, Defendants will pay $275,000.00 into a common fund, the Gross Settlement Amount ("GSA"), in two equal payments. The first payment will be made 60 days after service of notice of entry of the Order granting Final Approval of the settlement, and the second payment will be made 90 days after the first payment. Reasonable attorney's fees of up to thirty-five percent of the GSA, or $96,250, actual litigation costs of up to $15,000 (only $13,716.46 is requested), a modest enhancement award of up to $10,000 for plaintiff, settlement administration costs of $6,000, and a payment of $15,000 for alleged civil penalties under PAGA (of which $11,250 will go to the LWDA for its share of the PAGA penalties, with the remaining $3,750 to the Aggrieved Employees), all will be paid from the GSA. The remainder of approximately $140,033 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 the Defendants.

10. As noted, the settlement obligates Defendants to pay $275,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $140,033 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their Individual Class Payment. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. One-third of each Individual Class Payment will be allocated to wages and the remaining two-thirds will be allocated to interest on unpaid wages and statutory penalties; one hundred percent of each Individual PAGA Payment will be allocated to penalties. McKimmey 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 the California State Controller's Unclaimed

Property Fund.

11. Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her number of weeks worked for Defendants during the Class Period. Thus, each Participating Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based the amount of time they worked for Defendants, and the number of instances they missed a break, were not provided compensation in lieu of such missed breaks, lost wages due to the alleged rounding, etc.

12. All Participating Class Members will release Defendants from all claims alleged in the operative First Amended Complaint, or that could have reasonably been brought based on the allegations in the FAC, including PAGA claims, that arose during the Class Period and PAGA Period. The release is limited to the claims that were actually pleaded or could have reasonably been pleaded based on the alleged facts in the FAC, and the PAGA notice for the PAGA claims. Only Plaintiff is entering int a full general release of all claims and waiver of Civil Code section 1542.

13. The Parties allocated $15,000 to payment of civil penalties under PAGA for such claims against Defendants, as addressed in more detail below, and Plaintiff submits that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), my office gave notice of the settlement and final approval hearing to the LWDA via its online portal. A true and correct copy of the LWDA's acknowledgement of receipt is attached hereto as Exhibit 1.

<u>The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation, And Other Meets the Dunk/Kullar Factors</u>

14. Prior to mediation, the parties engaged in substantial informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information

regarding Defendants' payroll practices, pay stubs and time records for a sample of the class members, meal and rest break policies, etc., and information from McKimmey regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class.

15. Using that data, Plaintiff ran various calculations and estimated Defendants' likely maximum exposure on the class claims at approximately $3,244,475, including about $48,000 on the unpaid wage/rounding claims; $313,000 on the underpaid daily overtime premium/AWS claims, $583,585 on the meal break claims, $1,263,170 on the rest break claims, $51,930 on the expense reimbursement claim, $258,550,000 on the wage statement claims, and $726,240 on the waiting time penalty claims.

16. On the unpaid wage/rounding claim, Plaintiff alleged that for most of the class period the time records produced suggest time punchers were was rounded off and employees were paid only in quarter-hour increments and generally appear to have been paid based on their scheduled hours instead of their actual hours worked. Plaintiff's review of the sample records suggested the class member's lost a net of about 1.52 minutes per shift on average due to the rounding, with a corresponding loss of wages. As held in recent cases such as <u>Camp v. Home Depot USA, Inc.</u> (2022) 84 Cal.App.5th 638 (2022), <u>rev granted</u> (Feb.1, 2023) S277518/H049033, where employers are able to precisely record employee hours worked rounding may be inappropriate.

17. Next, Plaintiff alleged that he and other class members worked under an Alternative Work Schedule ("AWS") where they worked a "4/10" schedule (4 shifts of 10 hours) rather than a standard "5/8" schedule. Under the applicable IWC Wage Order, employers may implement an AWS subject to strictly enforced prerequisites, and Plaintiff argued Defendants did not follow these mandatory administrative procedures for instituting an AWS and accordingly cannot rely on Wage Order 1-2001, § 3(B)(1) to avoid owing daily overtime premiums on shifts lasting over 8 hours. For this reason, Plaintiff alleged he and other employees who worked under

an AWS are entitled to daily overtime premiums for all shifts where they worked over 8 hours.

18. In response to Plaintiff's various unpaid wage claims, Defendants argued their timekeeping and payroll policies accurately tracked and paid for all hours worked by its employees at the correct rates of pay, including all required piece rate pay and required overtime premiums. On the alleged rounding claims, Defendants further argued that rounding is permissible under the law because any rounding was neutral in its overall impact on employee hours, which McKimmey alleged is the case here. Defendants also noted that they changed their timekeeping procedures and accordingly there was no arguable rounding for a substantial part of the class period.

19. On the meal break claims, Plaintiff argued Defendants' meal and rest break policy was not fully compliant with California law and, regardless, that Plaintiff's review of the time and payroll records provided suggested numerous "de facto" violations, primarily for short meal breaks that lasted less than the required 30 minutes. Plaintiff's review of the time records produced suggested around 46% of shifts had a unique violation for a missed, late, or short meal period. Plaintiff similarly argued that Defendants failed to provide all required rest breaks, and in particular employees did not received required third rest breaks on shifts longer than 10 hours.

20. In response, McKimmey argued its break policies were fully compliant and that it met its obligation to provide employees with all required meal and rest periods. Per McKimmey, many class members waived meal periods when appropriate and also that, in light of Defendants' compliant policies, whether a class member missed a meal period, received a short meal period, or missed a rest break would have been an aberrational and against company policy. Thus, per Defendants, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant.

21. On the expense reimbursement claim, Plaintiff alleged he and the class members had to use their personal cell phone for work purposes, including downloading the ExakTime app to track their time as well as communicating with supervisors, navigating to job sites, and taking pictures of work to send to management. An employer must reimburse employees for use of personal cellular devices, and if the employee has an unlimited monthly plan then the employer

must reimburse an amount that equates to the employee's percentage of use for work.

22. In response, Defendants argued that each job site had several company-owned tablets available with the ExakTime app for employees to use in recording their hours and accordingly if an employee downloaded the app to their own phone it was purely for personal convenience rather than business necessity. Defendants further contended their policies restricted use of personal devices while working, especially given the hazardous nature of the work, and otherwise there would be no reason for employees to use their own phones while on the job. Thus, per Defendants, no reimbursement was necessary under Labor Code § 2802.

23. The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to account for "good faith" and other defenses available to Defendants. Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses.

24. As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled about $1.17 million in civil penalties should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue for every single pay period. As with the class claims, Plaintiff discounted the potential PAGA penalties based on McKimmey's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Accordingly, the Parties allocated $15,000 to PAGA penalties, and Plaintiff submits this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary.

25. The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation would be lengthy and expensive as the Parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would substantially delay

any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist regarding each one of them and Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition.

26. Plaintiff and I discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. We concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $275,000 recovery represents a significant percentage of Defendant's potential exposure and, given the various procedural and merits risks addressed above, a total recovery for the class of $275,000, which will result in average award of some $1,111 per class member, plus additional amounts under PAGA, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay.

SETTLEMENT ADMINISTRATION COSTS

27. The settlement provides for a payment to Apex for its services as the Settlement Administrator. As set forth in the Declaration of Stacey Shim, Apex performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $6,000 in fees and expenses. Plaintiff accordingly requests the Court approve payment of $6,000 to Apex from the GSA.

PLAINTIFF'S ENHANCEMENT AWARD

28. Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of $10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members, and by contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even

through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration filed with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement.

THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

29. Per the terms of the settlement, up to 35% of the initial gross amount is allocated to payment of reasonable attorney's fees, or $96,250. Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case for the reasons addressed herein.

30. Over the two plus years this matter has been pending, my firm's efforts have included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendants; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents, and drafting the amended complaint; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) drafting initial written discovery; (6) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (7) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (8) drafting a mediation brief and accompanying damages model after review and analysis of Defendants' informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the settlement agreement and

related documents; (11) drafting motion for preliminary approval, and attending the hearing; (13) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (12) final approval and attorney's fees, and attending the final approval hearing; and (13) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. Attached hereto as Exhibit 2 is a true and correct summary of my firm's work performed and time expended on this matter. Additionally, we will incur additional time following final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

31. I am a 1989 graduate of the College of William and Mary, and a 1995 graduate *cum laude* of the University of San Diego School of Law, where I was selected to the Order of the Coif and the Order of Barristers. Prior to 2003, I was a litigation associate with Ross Dixon & Bell, LLP (now Troutman Pepper Locke LLP), in Orange County, California, where my practice focused on complex business, employment, and insurance coverage disputes. In 2003, I became associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs' wage and hour class action firms in California. In 2008, I founded the Law Offices of J. Kirk Donnelly. Since 2003, my practice has focused on representing plaintiffs in wage and hour and consumer law matters, including both class actions and individual matters.

32. I have served as class and/or PAGA counsel in a number of wage and hour class and representative actions, including: Rivera v Reel Produce, Inc., Case No. 24-CGC-620797 (San Francisco County Superior Court); Carranza v Brisbane Recycling Co., Inc., Case No. 24-CIV-01496 (San Mateo County Superior Court); Peralta v Maverick Painting, Inc., Case No. 23CV417330 (Santa Clara County Superior Court); Arizaga v. Rackley Company, Inc. Case No. 23CV003138 (Sacramento County Superior Court); Martinez v. 'T' McGee Electric, Inc., Case No. CIVSB2114427 (San Bernardino County Superior Court); Herrera v. Stone Etc., Inc., et al., Case No. 21STCV43188 (Los Angeles Superior Court); Acosta v. Turlock Walnut Company, Case No. 22-CV-001051 (Stanislaus County Superior Court); Trujillo v. Ford Spraying, Inc., Case No. VCU298017 (Tulare County Superior Court); Velasquez v. Water Damage Rescue, Inc.

Case No. 21STCV46033 (Los Angeles County Superior Court); Rico v. FMA Landscape Services, Inc., Case No. 23CV409762 (Santa Clara County Superior Court); Galindo v. Berro Management Company, Inc., Case No. 22STCV25853 (Los Angeles Superior Court); Quintero, et al. Greg Markarian Ag Enterprises, Inc., Case No. 23CV-00106 (Merced County Superior Court); George v. Retail Merchandising Solutions, Inc., Case No. RG16828194 (Alameda County Superior Court); Castaneda v. Artistic Geometry, Inc., Case No. 24-CGC-615195 (San Francisco County Superior Court); Bolanos v Lyneer Staffing Solutions LLC, Case No. 23STCV21860 (Los Angeles County Superior Court); Buford v. Medical Solutions, LLC, Case No. 18-CV-04104 YGR (N.D. Cal.); Bautista v. Western Care Construction, Case No. S-CV-0049217 (Placer County Superior Court); Delgado v Vander Woude Farms, Case No. 23CV-04131 (Merced County Superior Court); Herrera v. TVI, Inc., et al., Case No. CIVDS1722863 (San Bernardino County Superior Court); Rios v AMI Foods, Inc. Case No. 22CV005381 (Alameda County Superior Court); Freeman v. Bank of America, N.A., Case No. CGC18471710 (San Francisco County Superior Court); Gutierrez v. Fraiche Catering, Inc., Case No. CGC-23-605255 (San Francisco Superior Court); Gomez v. Giulietta 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 County Superior Court).

33. 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 and hour laws. I played an integral role in litigating these matters, which included some of the largest and most complex wage and hour class actions ever brought in California. For instance, while I was with DCC, the firm was co-lead counsel in Bahramipour v. Citigroup Global Markets, Inc., Case No. 04-0440-CW (N.D. Cal.), a class action on behalf of stockbrokers employed by Citigroup (as well as several predecessor entities) for unpaid overtime, reimbursement of business expenses, and improper deductions from wages. Although the matter initially was filed on behalf of a class of California-only employees, it eventually evolved into a nationwide class action on behalf of over 17,000 class members, and ultimately settled for approximately $106 million. Likewise, I played a prominent role in litigating Takacs v. A.G. Edwards & Sons, Inc., Case No. 04-CV-1852 JAH (S.D. Cal.), one of the first class actions brought in California on behalf of stock brokers seeking recovery of overtime wages and reimbursement for business expenses and improper wage deductions, and one of the most extensively litigated such cases. The matter resulted in a comprehensive opinion denying

defendant's motion for summary judgment, found at 444 F.Supp.2d 1100, which opinion decided several issues present in all of the stock broker overtime cases in the plaintiffs' favor.

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

35. Based upon the qualifications and experience set forth above, I believe an hourly rate of $950 is reasonable for my time, and a rate of $200/hour is reasonable for my paralegal Adriana Barba.

36. I request the Court apply the above hourly billing rates in this case, as it reasonable in the California legal market for attorneys handling wage and hour class and PAGA actions. I have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour class action firms in the Bay Area, Los Angeles and San Diego markets, for partner-level attorneys with experience comparable to mine. These rates have range from $650 to $850 per hour for calendar years 2017-2023. Some examples include attorney Matthew Matern of Matern Law Group in Los Angeles, with approximately 26 years of experience $850/hour (2018); Craig Ackermann of Ackermann & Tilajef, PC with approximately 25 years of experience $850/hour (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and 45 years of experience respectively, both $825/hour (2018), Zachary Crosner of Crosner Legal PC, 14 years of experience $800/hour (2023), and James Kawahito of Kawahito Law Group in Los Angeles, with approximately 16 years of experience $750/hour (2020).

37. The requested rates also comport with the adjusted Laffey Matrix, which provides that reasonable hourly rates for attorneys with 20+ years of experience, such as myself, is over $1200. The adjusted Laffey Matrix may be found at http://www.laffeymatrix.com/see.html.

Similarly, the Westlaw Court Express Legal Billing Report Volume 17, Number 3, for the California region suggests billing rates for partner-level attorneys with experience comparable to mine ranged from $810-1,220/hour as of 2015. A true and correct copy of the Billing Report is attached hereto as Exhibit 3.

38. After the analysis above, my firm's lodestar is $93,715, based on 106.7 attorney and paralegal hours spent litigating this case through the filing of this motion. Further, we will almost certainly spend additional time addressing settlement administration matters, responding to class member questions, submitting the compliance report, etc. On a lodestar basis, the requested fees represent the lodestar with a modest 1.03 upward modifier, which I submit is entirely in line with California law and appropriate in this matter.

39. As noted, my firm has represented Plaintiffs for approximately two and a half years with respect to this matter and has expended a significant amount of time and resources in that representation. My firm agreed to litigate this case on a purely contingent basis and in so doing assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with these cases in general. Under all relevant factors (as outlined herein and in the accompanying memorandum), Plaintiffs respectfully request the Court award their counsel the requested fees of $96,250.00 based on the common fund theory with a corresponding lodestar cross-check and a reasonable 1.03 upward modifier.

40. 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 Plaintiffs and the Class.

41. My firm assumes a great deal of contingent risk in every wage and hour class action it undertakes. I 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. In a matter against a large flood remediation company on behalf of its non-exempt employees, the Parties likewise mediated and settled the matter, secured preliminary and final approval, and the Defendant also went out of business before funding the settlement. In another matter against a large regional bank seeking expense reimbursement of 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 my firm received nothing despite the investment of hundreds of hours of attorney time and thousands of dollars in out-of-pocket costs.

42. Reimbursement for litigation costs and expenses is capped at $15,000 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
Court Filing Fees/ Service of Process/Attorney Service/Chamber's Copies	$3,347.75
Mediation Fees	$10,250.00
Postage/Overnight/Fax	$43.71
PAGA Filing Fee	$75.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	**$13,716.46.84**

43. 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 $13,716.46 in litigation costs and expenses to my firm consistent with the cap provided for in the Settlement

Agreement.

44. 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 25th day of June 2026, at Carlsbad, California.

J. Kirk Donnelly

Declarant