MARALLE MESSRELIAN (SBN 316974)
maralle@mmlawapc.com
MM LAW, APC
500 N. Brand Blvd., Ste 2000
Glendale, CA 91203
Telephone (818) 810-7747
Facsimile (818) 230-9018

Attorneys for Plaintiff,
JOSE I. SORIANO RODRIGUEZ, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(UNLIMITED JURISDICTION)

JOSE I. SORIANO RODRIGUEZ, on behalf of himself and all others similarly situated, and the general public, and as an "Aggrieved Employee" on behalf of other "Aggrieved Employees" under the Private Attorneys General Act of 2004, *Plaintiff(s)*, *vs.* EVENTS MANAGEMENT, INC. DBA MCCALLS CATERING & EVENTS, a California corporation; and DOES 1 to 25, inclusive, *Defendant(s)*.	Case No.: CGC-24-615022 **DECLARATION OF MARALLE MESSRELIAN IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT** Action filed: 5/28/2024 Hearing Date: 08/22/2025 Hearing Time: 10:00 a.m. Hearing Dept: 304, Hon. Ethan P. Schulman

DECLARATION OF MARALLE MESSRELIAN

I, MARALLE MESSRELIAN, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Jose I. Soriano Rodriguez ("Plaintiff") in his lawsuit against Defendant Events Management, Inc. dba McCalls Catering & Events ("Defendant" or "McCalls"). Plaintiff and Defendant are collectively referred to as the "Parties".

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

3. The Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement") is attached hereto as **Exhibit 1**.

Factual and Procedural Background

4. Defendant first began to employ Plaintiff as a cook and kitchen prep in or around March 2023. During his employment tenure, Plaintiff worked at McCalls's facility located at 1798 Bryant Street, San Francisco, CA 94110, as well as one of McCalls's restaurants, Café 5, located inside the SF MOMA Museum located at 151 Third St. in San Francisco, CA 94103. Plaintiff's employment ended on or around March 1, 2024.

5. On March 14, 2024, Plaintiff notified Defendant and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq. ("PAGA"), of alleged Labor Code violations committed by Defendant. A true and correct copy of the letter to the LWDA dated March 14, 2024 is attached hereto as **Exhibit 2**.

6. On May 28, 2024, Plaintiff filed a Class Action Complaint in the San Francisco County Superior Court, Case No, CGC-24-615022 against Defendant on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis for (1)Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code§§ 221, 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code § 2802); (5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226); (6) Failure To Pay Wages Owed Every Pay Period (Lab. Code § 204); (7) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203); (8) Civil Penalties (Lab. Code §§ 2698, et seq.); and (9) Unfair Competition (Bus. & Prof. Code, § 17200 esq.). A true and

correct copy of the Complaint is attached hereto as **Exhibit 3**. On July 23, 2024, Defendant filed its Answer to Plaintiff's Complaint. A true and correct copy of Defendant's Answer is attached hereto as **Exhibit 4**.

7. The Parties met and conferred and agreed that it may be in their mutual interests to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private mediation.

8. On June 10, 2025, the Parties attended and participated in good faith, arms' length settlement discussions at a mediation session with Jason Marsili, Esq., an experienced professional mediator. At the conclusion of the mediation, the Parties agreed to the material terms of the Settlement.

9. In advance of the mediation, and before agreeing to the terms of the Settlement, the Parties engaged in informal discovery. Through informal discovery, Defendant produced its employee handbook, copies of Defendant's relevant company written policies, time-keeping records, and time and payroll data for a random sample of putative class members specifically selected by Plaintiff's counsel. Now that the Parties have finalized the long-form Settlement, Plaintiff submits it to this Court for preliminary approval.

10. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the lawsuit. It is the desire of the Parties to fully, finally, and forever compromise, and discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

Ascertainable and Numerous Class

11. A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

12. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are approximately 672 Class Members. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these

considerations, the Settlement Class' membership is sufficiently numerous.

Predominant Common Questions

13. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant's alleged uniform policy of failing to properly account for all time worked and failing to, among other things, properly pay minimum and overtime wages, provide off-duty meal and rest periods, indemnify Class Members for business expenses, timely pay wages during employment and upon separation of employment, and provide compliant wage statements, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the Class with all meal and rest periods in compliance with California law; (3) Whether Defendant failed to pay the Class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendant failed to indemnify the Class for all necessary business expenditures incurred during the discharge of their duties including, but not limited to, kitchen tools and personal mobile phones; (5) Whether Defendant knowingly and intentionally failed to provide the Class with accurate and complete itemized wage statements; (6) Whether Defendant willfully failed to provide the Class with timely final wages; and (7) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq*., with respect to the class. Therefore, common questions predominate.

Typicality

14. Plaintiff contends that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff, like absent Class Members was subject to the same relevant policies and procedures governing his compensation, hours of work, and meal and rest periods. Because Plaintiff contends that he was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *prima facie* liability to all the Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class

Members. Accordingly, Plaintiff's claims are typical of the Class.

Adequacy

15. The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class.

16. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that he is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, and exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as Settlement Class Representative.

Background of Class Counsel

17. In 2003, I earned a Bachelor of the Science degree with a major in Accounting from Cal State University, Northridge. In 2017, I earned a Juris Doctor degree from Southwestern University School of Law.

18. In December of 2017, the Supreme Court for the State of California admitted me as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this State.

19. I am experienced in handling employment law matters and specifically wage and hour cases. I have been practicing law since 2017. My experience has been almost exclusively in the area of employment law representing employees with claims of wrongful termination, harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical leave violations. I am a member of the California Employment Lawyers Association (CELA).

20. In my representation of employees, I have prosecuted several lawsuits on behalf of employees with claims of rest and meal period and overtime violations or other wage claims.

21. I have been involved in the prosecution of numerous wage and hour class and representative actions at various stages of litigation. A small sampling of the wage and hour class and representative action cases in which I have been counsel of record is as follows:

a) *Joshua Silva v. Payo Laboratories, Inc*., *et al*., San Luis Obispo County Superior Court, Case No. 19CV-0689 (appointed Class Counsel and granted final approval of class action settlement by the court).

b) *Mervin Perkins v. CC Venice, LLC, et al.,* Los Angeles Superior Court, Case No. BC703660 (appointed Class Counsel and granted final approval of class action settlement by the court).

c) *Jashar Bryant v. Pinnacle Cabling & Construction, Inc., et al*., Orange County Superior Court, Case No. 30-2020-01123094-CU-OE-CXC (appointed Class Counsel and granted final approval of class action settlement by the court).

d) *Collins v. Spa Products Import & Distribution Co., LLC*, et al., Los Angeles County Superior Court, Case No. 19STCV10586 (granted final approval of class action settlement by the court)

e) *Sabrina Slater v. Avalon Care Center – Sonora, L.L.C., et al*., Tuolumne County Superior Court, Case No. CV62006 (granted final approval of class action settlement by the court)

f) *Violet Avalos v. Smithcare Incorporated, et al*., Tulare County Superior Court, Case No. VCU272975 (granted final approval of class action settlement by the court)

g) *David Contreras v. HTX Services LLC, et al*., Los Angeles County Superior Court, Case No. 19STCV43405 (granted final approval of class action settlement by the court)

h) *Devin Cherry v. LA Corral Three, Inc., et al.,* Kern County Superior Court, Case No., BCV-18-101817-DRL (granted final approval of class action settlement by the court)

i) *Vikki Curl and Anthony J. Gratton v. Reel Security Corp., et al.,* Los Angeles

County Superior Court, Case No. 18STCV09302 (granted final approval of class action settlement by the court)

j) *Corrine Lashbrook and Joshua Sweat v. Andy's BP, Inc., et al.,* San Mateo County Superior Court, Case No. 19CIV02344 (granted final approval of class action settlement by the court)

k) *Stephen Aguirre and Christopher Walls v. Anlin Industries*, Fresno County Superior Court, Case No. 17CECG04326 (order and judgment approving PAGA settlement by the court)

l) *Rebecca Mallory v. Odyssey Healthcare Operating A, L.P*., Kern County Superior Court, Case No. BCV-19-102735 (order and judgment approving PAGA settlement by the court)

m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al*., Fresno County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA settlement by the court)

n) *Kevin Littleton v. Lincoln Military Property Management LP*., San Diego County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment approving PAGA settlement by the court)

o) *Krystal Thomas v. Choice Physicians Network, Inc., et al*., San Bernardino County Superior Court, Case No. CIVDS2013964 (order and judgment approving PAGA settlement by the court)

p) *Otina Sengvong v. Probuild Company, LLC, et al*., United States District Court, Southern District of California, Case No. 3:19-cv-02231-MMA (JLB) (granted final approval of class action settlement by the court)

q) *Orland Perez Avalos v. Milagros Restaurant LLC, et al*., San Mateo County Superior Court, Case No. 22-CIV-01222 (order and judgment approving PAGA settlement by the court)

r) *David Xiqui Vasquez v. The Province LLC, et al*., Santa Clara County Superior Court, Case No. 22CV397541 (order and judgment approving PAGA settlement by the court)

s) *Manuel Melendrez v. Clean Auto Inc., et al*., San Mateo County Superior Court, Case No. 22CIV01967 (order and judgment approving PAGA settlement by the court)

t) *Arturo Vera Lopez v. Green Valley Landscape, et al*., Monterey County Superior Court, Case No, 22CV003751 (order and judgment approving PAGA settlement by the court)

u) *Erasmo Gomez v. A-1 Jay's Machining, Inc., et al*., Santa Clara County Superior Court, Case No. 22CV394795 (order and judgment approving PAGA settlement by the court)

v) *Iris Rodriguez v. Facility Masters, Inc*., Santa Clara County Superior Court, Case No. 23CV423999 (order and judgment approving PAGA settlement by the court)

w) *Mariana Ruelas v. Vista La Mesa Senior Living, Inc., et al*., San Diego Superior Court, Case No. 37-2023-00050755-CU-OE-CTL (order and judgment approving PAGA settlement by the court).

x) *Jose Angel Lopez v. Moreno & Associates, Inc., et al*., Santa Clara Superior Court, Case No. 23CV422622 (order and judgment approving PAGA settlement by the court).

y) *Irma Tapia v. Posada Associates, et al*., Santa Cruz Superior Court, Case No. 23CV00355 (order and judgment approving PAGA settlement by the court).

z) *Andres Ibarra v. Stadco*, et al. Los Angeles Superior Court, Case No. 23STCV26591 (order and judgment approving PAGA settlement by the court).

aa) *Alfredo Betancourt v. L3 Technologies, Inc*., San Mateo County Superior Court, Case no. 23-CIV-05704 (appointed Class Counsel and granted final approval of class action settlement by the court).

Class Action Treatment Is Superior

22. A class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only.

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The Settlement is Presumptively Fair

23. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendant's estimated exposure. Both defense counsel and I are particularly experienced in employment law and wage and hour class actions. We are experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and hour class settlements, including many involving the same issues presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

Exposure & Risk Analysis

24. The Parties reached the Settlement through arm's-length bargaining with the aid of a respected mediator. The Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. I considered various sources of information in the lead-up to and during the mediation of June 10, 2025 that enabled Plaintiff to achieve the Settlement at issue.

- Defendant produced and I reviewed Plaintiff's timekeeping and payroll records.
- My office requested that Defendant produce any and all policies regarding overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, compensation plans, and complaints about working conditions in effect during the relevant time period beginning in May of 2020. Defendant produced its pertinent wage and hour policies, including those contained within its employee handbook.
- My office requested that Defendant provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendant provided the answers to each of these questions.
- My office requested sample time and payroll records for the relevant time period. Defendant produced time and pay records for all of its employees for 135 employees who worked throughout the Class Period that I randomly selected from a list provided by the defense.
- My office then retained a professional data analyst, James Toney, to examine the

records and determine if there was any pay discrepancy in timesheet hours versus paid hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.

- I analyzed the state of caselaw on meal and rest break claims, claims for off-the-clock work, and claims for unreimbursed expenses.

25. Defendant disclosed that there were approximately 40,824 workweeks at the time of mediation on June 10, 2025.[1] Based on this information and with the aid of the data analyst, I prepared "damages" estimates to determine Defendant's maximum exposure in connection with the settlement negotiations. The sampling did not reveal any rounding as hours were paid to the second decimal point. As it relates to any overtime issues, the data showed that when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. I calculated the maximum potential damages for meal period violations to be $3,489,170.78, rest period violations to be $3,708,180.01, unreimbursed expenses violations to be $102,060, and minimum wage violations to be $1,157,091.26 (exclusive of penalties and interest); maximum damages for derivative claims of $555,650 for wage statement penalties and $1,671,528 for waiting time penalties; and $6,927,600 in potential civil penalties under the PAGA. The estimates are in essence "home run" projections that <u>do not</u> factor in any of the risks involved in litigating this Action and are not in line with reality, especially when considering Defendant's policies and its position on the issues. A detailed explanation of Plaintiff's valuation is set forth below.

A. <u>Meal Break Violations</u>

Plaintiff alleges that Defendant failed to provide Plaintiff and Settlement Class Members lawful meal breaks. Expert analysis of the sample time and payroll records revealed a 68% meal period violation rate for short, late, or no meal periods for shifts greater than five hours in the sample. Accordingly, Plaintiff calculates the maximum potential damages for meal break violations as follows:

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[1] Defendant's counsel has notified Plaintiff's counsel that the escalator clause has not been triggered.

199,655 (Class Shift Count = 216,077 x 92.4% (Shifts > 5 hours in sample)

x 68% (unique violate rate in sample)

x $25.70 (average hourly rate in sample)

$3,489,170.78

B. Rest Break Violations

Plaintiff also contends that Defendant failed to authorize and permit lawful rest breaks. Plaintiff calculates the maximum potential damages for rest break violations as follows:

212,187 (Class Shift Count = 216,077 x 98.2% (Shifts > 3.5 hours in sample)

x 68% (using the meal period violation rate)

x $25.70 (average hourly rate in sample)

$3,708,180.01

There are risks to Plaintiff's rest period claim. Plaintiff used a 100% violation rate based on Plaintiff never taking rest breaks, which might not be the case for the other employees. Employers are not required to record rest periods and such periods are paid. Thus, unlike unpaid meal periods where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective.

C. Off-the-Clock Work

Plaintiff contends that Defendant violated minimum and overtime wages by requiring employees to work off-the-clock. Plaintiff calculates the maximum potential damages due to off-the-clock work as follows:

216,077 total shifts; reasonable estimate of 10 minutes of off-the-clock work per shift = 2,160,770 total off the clock minutes= 36,012.80 off-the-clock hours

36,012.80 off-the-clock hours

x 32.13 (average overtime rate in sample)

$1,157,091.26

C. Failure to Reimburse Business Expenses

Plaintiff alleges that Defendant required him and the others to use their personal cell phones and bring their own kitchen tools in the course of performing their duties. Plaintiff calculates the maximum potential damages for unreimbursed expenses for personal mobile phones as follows:

Based on a $50 estimated monthly phone bill and an estimate of 20% estimate of phone use for work per week:

	$ 2.50 work phone use per week
x	40,824 total class workweeks
	$102,060

D. Failure to Timely Pay Wages Upon Termination

Plaintiff alleges that Defendant failed to pay employees premium wages for meal and rest period violations and failed to pay all wages owed. As a result, discharged and quitting employees were not paid in full as required by the Labor Code. Plaintiff calculates the maximum value of this claim as follows:

	271 (total number of former employees)
x	$25.70 (average hourly rate)
x	8.00 (average hours per day)
x	30 days
	$1,671,528

E. Failure to Furnish Accurate Itemized Wage Statements

Plaintiff alleges that because Defendant required employees to work off the clock, Class Members' hours worked and wages earned were not accurately listed on the wage statements. Plaintiff calculates the maximum value of this claim as follows:

	5,640 (total number of paychecks issued during 226 period)
x	$100 (statutory penalty/paycheck)
-	8,350 ($50/1st paycheck/167 class members during 226 period)
	$555,650

F. Civil Penalties Under PAGA

Under Labor Code § 2699, Defendant is subject to a civil penalty in the amount of $100 for each aggrieved employee per pay period for the initial violation, and $200 for each subsequent violation for each aggrieved employee for each pay period. Defendant represented that there were approximately 13,800 total pay periods for all of the Aggrieved Employees during the PAGA Period. Applying the same violation rates to the total pay periods, Plaintiff calculates the maximum value of the PAGA claim as follows:

Violation	Lab.Code secs.	Civil Penalty	Paychecks	Totals
Minimum wage violations civil penalties	1194/1197/1197.1	$ 100.00	13,800	$ 1,380,000
Meal period violations civil penalties	512/558	$ 50.00	9,384	$ 469,200
Rest period violations civil penalties	1198/2699	$ 100.00	9,384	$ 938,400
Faulty wage statement violations civil penalties	226/1198/2699	$ 100.00	13,800	$ 1,380,000
Untimely wages violations civil penalties	201-204/210	$ 100.00	13,800	$ 1,380,000
Unreimbursed expense violations civil penalties	1198/2802/2699	$ 100.00	13,800	$ 1,380,000
Total Civil Penalties				**$ 6,927,600**

As mentioned above, this estimate does not reflect the realities of this case and did not take into account any of the risks discussed above and assumed a violation for every single pay period. As such, the Parties discounted potential civil penalties for multiple reasons. For one, Plaintiff's PAGA claims are predicated on the wage underpayment, meal, rest, business expense reimbursement, and wage statement violations described above, and thus subject to the same disputes and defenses. Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. I am not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award).

26. The Settlement obviates the significant risk that this Court may deny certification of some or all of Plaintiff's claims. Even if Plaintiff obtained certification of some or all of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class Members. While

Plaintiff is confident in the merits of his case, a legitimate controversy exists as to each cause of action. To illustrate this consideration, below is brief summary of some of Defendant's arguments, all of which Plaintiff disputes, but nevertheless acknowledges as potential threats to the Settlement Class's claims.

- Defendant contends that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id*. at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. Id. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Defendant contends that individualized proof will be needed to establish liability on Plaintiffs' meal period claims. Defendant argues that Settlement Class Members will testify that they were plainly advised by their supervisors, and fully understood, that they were authorized to take meal periods within each five-hour period worked and, in fact, took such breaks. Moreover, McCalls's timekeeping data shows daily meal period start and end times. Furthermore, McCall's started paying automatic meal period premiums.
- Defendant contends that there is no common proof for Plaintiff's claim that he was required to work off-the-clock ("OTC") and that some of that OTC work, if properly accounted for, would have resulted in work to be compensated at overtime rates. In fact, Defendant argues, time records do not provide common proof because, by definition, they do not show such time. Defendant argues that one would have to examine, and cross-examine for credibility, each individual's separate claims of supposed OTC work. Further, Defendant argues, each Class Member would need to overcome this credibility hurdle in the face of his/her own time records, which show no OTC work and further would have to prove that his/her individual manager knowingly suffered or permitted the work.
- Defendant did not engage in any "willful" conduct as would be required for Plaintiffs

to recover waiting time penalties. Under the Labor Code, if an employer willfully fails to pay an employee all wages due and owing at the time of separation, the employee is owed up to 30 days' wages as a penalty. Labor Code. §§ 201-203. A violation is deemed willful if the employer intentionally fails to pay wages when they are due. Notably, the failure to pay, by itself, cannot constitute willfulness where there is good faith belief of compliance with the law at the time. *Barnhill v. Robert Saunders & Co*., 125 Cal.App.3d 1, 8-9.

- Defendant contends that it is not liable for wage statement penalties based on the "good faith" defense as set forth by the California Supreme Court in *Naranjo v. Spectrum Sec. Servs., Inc*. (2022) 13 Cal. 5th 93 (holding that an employer's objectively reasonable, good faith belief that it was providing compliant wage statements can preclude the imposition of penalties under Labor Code section 226(e) for inaccurate wage statements).
- There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses to be individual in nature and unfit for class wide resolution.

27. As noted above, Defendant contests liability, as well as the propriety of certification, and is prepared to vigorously oppose certification and to defend against Plaintiff's claims if the Action is not settled. Given the potential damages, as well as the substantial risks to recovery discussed herein, including the uncertainties in achieving class certification, Plaintiff's counsel had to dramatically discount the value of the claims during settlement negotiations. Plaintiff's counsel estimates a 50 percent likelihood of obtaining and maintaining certification of all of Plaintiff's claims, which reduces the value of these claims from approximately $17,611,280.05 to approximately $8,805,640.03. Defendant, however, asserts that there are significantly lower prospects of certification. Plaintiff's counsel further estimates that there is a 50 percent chance that Plaintiff will prevail at trial on his claims, further reducing the value of the claims to approximately $4,402,820.01. Defendant contends that Plaintiff's prospects of success at trial are much lower. If this case advanced to trial and Class Counsel succeeded on all of Plaintiff's claims, attorney's fees and costs may have significantly reduced the recovery awarded to the Class. Furthermore, there is always a risk that a trial of this magnitude can become unmanageable. A settlement of $850,000(

approximately 5% of the maximum exposure and 19% of the potential recovery) is a great result and a proportion sanctioned by existing case law. *See In re Cendant Corp., Derivative Action Litig*., 232 F. Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a 2% recovery based on the estimated liability exposure).

28. While Plaintiff believes the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued litigation presents significant risks that support a downward departure from Defendant's estimated liability exposure. In view of the risks, the Settlement reflects Class Counsel's estimate of the total amount of damages, monetary penalties or other relief that the class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

Allocation of the PAGA Payment

29. The settlement of PAGA penalties in the sum of $50,000, of which 75% ($37,500) will be paid to the LWDA and 25% ($12,500) will be distributed to the Class, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Settlement Class. Where, as here, the parties reach a substantial settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA's underlying policy objectives are satisfied. Accordingly, there exists a substantial likelihood that the Court would exercise its discretion and reduce the amount awarded for PAGA penalties even if Plaintiff proved successful at trial. Additionally, PAGA's shorter statute of limitations justifies a limited allocation when compared to the amount allocated for Labor Code violations. Here, the $50,000 PAGA Penalties amount is well within the range approved by California courts and therefore should be approved. *See Nordstrom Comm. Cases* (2010) 186 Cal.App.4th 576, 589 (finding no abuse of discretion in the trial court's approval of a release that included PAGA claims, but allocated $0 to PAGA penalties).

Attorneys' Fees and Costs

30. I intend to request Class Counsel Attorneys' Fees of $283,333.33 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I

currently estimate to be approximately $11,955.92 and will be no more than $12,500.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions.

31. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also met and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant, researched applicable law, prepared estimates of "damages" for purposes of settlement discussions, and engaged in a full day of mediation, among other tasks.

32. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

Class Representative Enhancement Payment

33. The Settlement provides that Plaintiff may seek a Class Representative Enhancement Payment of $10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay

Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Enhancement Payment is fair, adequate, and reasonable, and thus warrant preliminary approval.

Individual Settlement Payments

34. The Individual Settlement Payments will be paid to each Class Member based on the number of Workweeks a Class Member worked during the Class Period and the number of PAGA Pay Periods a PAGA Member worked during the PAGA Period, respectively. Settlement, ¶ 46. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

35. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 50. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Class Notice (attached as Exhibit 1 to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Each Class Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of Workweeks and PAGA Pay Periods each respective Class Member and PAGA Member worked for Defendant during the Class Period and PAGA Period; (e) each Class Member's and PAGA Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection; (h) the deadlines by which the Class Member must postmark or email Request for Exclusions, or postmark Notices of Objection to the Settlement; and (i) the claims to be released. Settlement, ¶ 52. Accordingly, the Class Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As

such, the Parties' proposed Class Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

Settlement Administration Duties

36. The duties of the Settlement Administrator are spelled out in paragraph of the Settlement and in the bid provided by ILYM Group, Inc., a true and correct copy of which is attached hereto as **Exhibit 5**. See also Declaration of Lisa Mullins, Exhibit.

Settlement Administration Costs

37. With regard to the settlement administration costs provision (Settlement ¶¶ 35, 41), it is reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-party administrators:

A. ILYM Group, Inc. = $9,950;
B. CPT Group, Inc. = $13,000; and
C. Phoenix Class Action Administration Solutions = $10,000.

A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 5**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 6**. A true and correct copy of the bid from Phoenix Class Action Administration Solutions is attached hereto as **Exhibit 7**. The bid provided by ILY Group, Inc. was the lowest. The Declaration of Lisa Mullins with attached exhibits, filed under separate cover, sets forth ILYM Group, Inc.'s qualifications and costs to administer the settlement. *See generally*, Declaration of Lisa Mullins. Thus, settlement administration costs provision should be given preliminary approval.

Uncashed Checks

38. Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Individual Settlement Payment checks. The Participating Class Members shall mean all Class Members who do not submit timely and valid Requests for Exclusion. After the expiration of the 180-day period, the Settlement Administrator will transfer any proceeds represented by Individual Settlement Payment checks remaining un-cashed to the California State Controller Unclaimed Property Fund in the name of the Class Member. Settlement, ¶ 64.

Notice of Settlement to the LWDA

39. Pursuant to Labor Code § 2699(l)(2), Plaintiff submitted a copy of the

Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's Motion is being filed with the Court. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 8**.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on Tuesday, July 29, 2025 at Los Angeles, California.

Maralle Messrelian

MARALLE MESSRELIAN,
Declarant