

1 Carolyn H. Cottrell (SBN 166977)
 David C. Leimbach (SBN 265409)
 2 Michelle S. Lim (SBN 315691)
 Scott L. Gordon (SBN 319872)
 3 SCHNEIDER WALLACE
 COTTRELL KONECKY LLP
 4 2000 Powell Street, Suite 1400
 Emeryville, California 94608
 5 Telephone: (415) 421-7100
 Facsimile: (415) 421-7105
 6 ccottrell@schneiderwallace.com
 dleimbach@schneiderwallace.com
 7 mlim@schneiderwallace.com
 sgordon@schneiderwallace.com

8 *[Additional Counsel listed on next page]*

9 Attorneys for Plaintiffs and the Settlement
10 Classes and Collective

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

13 HAROLD JONES, et al.,

14 Plaintiffs,

15 vs.

16 CERTIFIEDSAFETY, INC.

17 Defendants.
18

Lead Case No. 3:17-cv-02229-EMC
 Consolidated with 3:17-cv-03892-EMC (*Crummie*)
 Related to: 3:18-cv-04379-EMC (*Ross*)
 3:19-cv-01338-EMC (*Jones II*)
 3:19-cv-01380-EMC (*Jones III*)
 3:19-cv-01381-EMC (*Jones IV*)
 3:19-cv-01427-EMC (*East*)
 3:19-cv-01428-EMC (*Jones V*)

**DECLARATION OF CAROLYN HUNT
 COTTRELL IN SUPPORT OF PLAINTIFFS’
 MOTION FOR FINAL APPROVAL OF CLASS
 AND COLLECTIVE ACTION SETTLEMENT**

Date: May 28, 2020
 Time: 1:30 p.m.
 Courtroom: 5 (17th Floor)
 Judge: Honorable Edward M. Chen

Jones Complaint filed: April 21, 2017

1 Edwin Aiwazian (SBN 232943)
2 Arby Aiwazian (SBN 269827)
3 Jill J. Parker (SBN 274230)
4 LAWYERS FOR JUSTICE, PC
5 410 West Arden Avenue, Suite 203
6 Glendale, California 91203
7 Telephone: (818) 265-1020
8 Facsimile: (818) 265-1021

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Plaintiffs and the Settlement Classes and Collective

1 I, Carolyn Hunt Cottrell, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California. I am a
3 member in good standing of the State Bar of California, I am admitted to the United States District
4 Courts for the Northern, Eastern, Central, and Southern Districts of California. I am admitted to
5 the Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States Supreme
6 Court.

7 2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP
8 (“SWCK”). SWCK specializes in class, collective, and PAGA litigation in state and federal court.

9 3. I am lead counsel of record for Harold Jones, Tierre Crummie, Genea Knight,
10 Marcellous Ross, Michael East, George Azevedo, Jr., and Sandra Turner, on behalf of themselves
11 and all others similarly situated (“Plaintiffs”), in the above-captioned cases. I submit this
12 declaration in support of Plaintiffs’ Motion for Final Approval of Class and Collective Action
13 Settlement. I am familiar with the file, the documents, and the history related to these cases. The
14 following statements are based on my personal knowledge and review of the files. If called to do
15 so, I could and would testify competently thereto.

16 4. The “Settlement” or Settlement Agreement” refers to the Stipulation of Class,
17 Collective, and Representative Action Settlement, as amended, filed at ECF 206-2 (Amendment
18 filed at ECF 215-2). The Notice of Class Action Settlement and Hearing Date for Court Approval
19 (“Class Notice”), the Notice of Collective Action Settlement (“Collective Notice”), and the Notice
20 of Class and Collective Action Settlement and Hearing Date for Court Approval (“Class/Collective
21 Notice”) (collectively, the “Notices of Settlement”) are attached to the Amendment as **Exhibits A-**
22 **C**, respectively.

23 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

24 5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour
25 class actions and employment class actions. In November 2012, the Recorder listed the firm as one
26 of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and
27 attorneys have litigated major wage and hour class actions, have won several prestigious awards,
28

1 and sit on important boards and committees in the legal community. SWCKW was founded by
2 Todd Schneider in 1993, and I have been a member of the firm since 1995.

3 6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of
4 cases which have been certified and/or settled as class actions includes: *El Pollo Loco Wage and*
5 *Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final
6 approval of a class action settlement for failure to pay for all hours worked, failure to provide meal
7 and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide
8 itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.*
9 (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a
10 hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint
11 employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case
12 No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement
13 for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to
14 provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage
15 statements, under California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case
16 No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement
17 for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to
18 provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting
19 time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel*
20 *Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and
21 collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure
22 to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to
23 adhere to California record keeping requirements, waiting time penalties, and failure to provide
24 itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless,*
25 *LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action
26 settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages,
27 failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to
28 California record keeping requirements, and failure to provide adequate seating, under California

1 law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County
2 Superior Court) (final approval of a class action settlement for failure to provide meal and rest
3 periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages,
4 waiting time penalties, failure to provide itemized wage statements, and failure to pay
5 undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No.
6 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final approval of a class and
7 collective action settlement for failure to compensate for all hours worked, including overtime,
8 under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No.
9 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for
10 failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay
11 overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage
12 statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District
13 of California) (final approval of class and collective action settlement for failure to compensate for
14 all hours worked, including overtime, under federal and California law, failure to provide meal and
15 rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon
16 termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress*
17 *Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval
18 of a class action settlement for failure to provide meal and rest breaks and failure to provide
19 accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-
20 cv-04357-VC) (Northern District of California) (final approval of a class and collective action
21 settlement for failure to compensate for all hours worked, including overtime, failure to provide
22 meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full
23 wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et*
24 *al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court)
25 (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid
26 wages, unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and
27 failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*,
28 (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs

1 and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et*
2 *al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class action
3 settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide
4 overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages
5 upon termination to, and failure to provide accurate itemized wage statements to retention
6 specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*,
7 (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for
8 claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The*
9 *Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims
10 that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay
11 premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*,
12 (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action
13 settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour
14 claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-
15 00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final
16 approval of class action settlement for the denial of promotions based on targeted disabilities);
17 *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final
18 approval of class action settlement on behalf of a class of individuals with mobility disabilities
19 denied access to various facilities owned, operated, and/or maintained by the County of Marin);
20 *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final
21 approval of class action settlement in action challenging unfair discrimination by title insurance
22 company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior
23 Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and
24 for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand*
25 *Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval
26 of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work
27 performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et*
28 *al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class

1 action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et*
 2 *al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final
 3 approval of class action settlement for off-the-clock work by, and failure to provide overtime
 4 compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods,*
 5 *Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by,
 6 and failure to provide overtime compensation to, production-line employees of meat-packing
 7 plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior
 8 Court) (final approval of class action settlement for failure to provide meal and rest breaks to and
 9 for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National*
 10 *Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action
 11 settlement for off-the-clock work by, and failure to provide overtime compensation to, production-
 12 line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et*
 13 *al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final
 14 approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-
 15 clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958)
 16 (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays
 17 and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-
 18 LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class
 19 action settlement for off-the-clock work by production-line employees of meat-packing plant);
 20 *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of
 21 class action settlement for missed meal and rest periods on behalf of hourly workers at Six Flags
 22 amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County
 23 Superior Court) (final approval of class action settlement for misclassification of hospital clerical
 24 workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior
 25 Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists);
 26 *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class
 27 action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-
 28 01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the

1 United States who have tried to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL
 2 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell*
 3 *v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging
 4 widespread discrimination within FedEx); *Siddiqi v. Regents of the University of California* (Case
 5 No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability
 6 access violations at the University of California); *Lopez v. San Francisco Unified School District*
 7 (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action
 8 against school district for widespread disability access violations); *Campos v. San Francisco State*
 9 *University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled
 10 plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of*
 11 *California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women
 12 alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI*
 13 *Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final
 14 approval of class action settlement for drive-time required of Coca-Cola account managers);
 15 *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court)
 16 (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25
 17 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County
 18 Superior Court) (final approval of class action settlement for misclassification of Siebel's inside
 19 sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County
 20 Superior Court) (final approval of class action settlement for failure to provide meal and rest
 21 periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH)
 22 (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation pay upon
 23 end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County
 24 Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB))
 25 (final approval of class action settlement for failure to pay Sears drivers for all hours worked);
 26 among many others.

27 7. Nearly my entire legal career has been devoted to advocating for the rights of
 28 individuals who have been subjected to illegal pay policies, discrimination, harassment and

1 retaliation and representing employees in wage and hour and discrimination class actions. I have
2 litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I
3 manage many of the firm’s current cases in these areas. I am a member of the State Bar of
4 California, and have had memberships with Public Justice, the National Employment Lawyers
5 Association, the California Employment Lawyers Association, and the Consumer Attorneys of
6 California. I served on the Board of Directors for the San Francisco Trial Lawyers Association
7 and co-chaired its Women’s Caucus. I was named one of the “Top Women Litigators for 2010” by
8 the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the
9 Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I
10 earned my Bachelor’s degree from the University of California, and I am a graduate of the
11 University of the Pacific, McGeorge School of Law.

12 **CASE SUMMARY AND PROCEDURAL HISTORY**

13 8. Defendant CertifiedSafety, Inc. (“Defendant” or “CertifiedSafety”) serves the oil
14 refinery industry, providing its clients with personnel who specialize in planning, implementing,
15 and executing safety protocols at refinery operations. Its clients are oil refinery operators in the
16 United States, including but not limited to Chevron, Andeavor/Tesoro, Phillips 66, Citgo, United
17 Refining, and Shell.¹

18 9. CertifiedSafety’s Safety Attendants and Safety Foremen, who are classified as non-
19 exempt employees, carry out these safety duties at refinery operations throughout the United
20 States, including in California, Washington, Minnesota, Illinois, Ohio, Alaska, and numerous other
21 states.² They provide support for the refinery companies’ operations and protocols, including
22 identifying, mitigating, and reporting potential safety hazards at their assigned worksites.

23 10. Plaintiffs allege that Class Members—who work long and difficult hours, often far
24 away from their homes—experience wage and hour violations in their work with CertifiedSafety,
25 and with the refineries as alleged joint employers.

26
27 ¹ Each of these refinery operators has been named as a Defendant on a joint employer basis in the
28 Actions. CertifiedSafety and these refinery operators are collectively referred to as “Defendants.”

² Plaintiffs and members of the proposed Classes and Collective are referred to hereafter as “Class
Members” or “Safety Attendants” for ease of reading.

1 11. In particular, Plaintiffs allege that the Class Members experience significant amounts
2 of pre- and post-shift off-the-clock work, that the Class Members cannot take timely, full, off-duty
3 meal and rest periods, and that they are not adequately reimbursed for travel, lodging, and other
4 expenses.

5 12. As a result of these alleged violations, Plaintiffs allege that Defendants
6 systematically violate the Fair Labor Standards Act, as well as California, Washington, Minnesota,
7 Illinois, Ohio, Alaska labor law, by: (1) not paying Class Members proper minimum and overtime
8 wages for work performed off-the-clock on a daily basis, as well as uncompensated training days;
9 (2) failing to provide Class Members with a reasonable opportunity to take meal and rest periods,
10 and failing to compensate Class Members when such meal and rest periods are not taken; (3)
11 failing to reimburse necessarily-incurred expenses; and (4) failing to issue accurate, itemized wage
12 statements. Plaintiffs allege that, as joint employers, CertifiedSafety and the refinery Defendants
13 are jointly liable for the violations at issue.

14 13. Plaintiffs and SWCK have filed a series of related actions, in addition to the lead
15 consolidated *Jones* action, to bring the wage and hour claims, including those under Illinois and
16 Minnesota law, against CertifiedSafety and refineries on a joint employer basis.

- 17 • Plaintiff Ross filed *Ross* on July 18, 2018, against CertifiedSafety and Chevron.³ Plaintiff
18 Ross alleges similar wage and hour claims against these Defendants, on behalf of a putative
19 FLSA collective and a putative California class.
- 20 • Plaintiff Jones filed *Jones II* (Case No. No. 3:19-cv-01338-EMC) on March 12, 2019, which
21 alleges similar wage and hour claims under the FLSA, California, Washington, and Minnesota
22 law against CertifiedSafety and Andeavor/Tesoro on behalf a putative FLSA collective and
23 putative California, Washington, and Minnesota classes.
- 24 • Plaintiff Jones filed *Jones III* (Case No. 3:19-cv-01380-EMC) on March 14, 2019, which
25 alleges similar wage and hour claims under the FLSA, California, and Washington law against
26 CertifiedSafety and Phillips 66 on behalf a putative FLSA collective and putative California,
27

28 ³ Valero entities were also named as Defendants, but the Parties agreed to voluntarily dismiss them.

1 and Washington classes.

- 2 • Plaintiff Jones filed *Jones IV* (Case No. 3:19-cv-01381-EMC) on March 14, 2019, which
3 alleges similar wage and hour claims under the FLSA, California, and Illinois law against
4 CertifiedSafety and Citgo on behalf a putative FLSA collective and putative California and
5 Washington classes.
- 6 • Plaintiff Michael East filed *East* (Case No. 3:19-cv-01427-EMC) on March 18, 2019, which
7 alleges similar wage and hour claims under the FLSA and California law against
8 CertifiedSafety and United Refining on behalf a putative FLSA collective and a putative
9 California class.
- 10 • Plaintiff Jones filed *Jones V* (Case No. 3:19-cv-01428-EMC) on March 18, 2019, which
11 alleges similar wage and hour claims under the FLSA, California, and Washington law against
12 CertifiedSafety and Shell on behalf a putative FLSA collective and putative California, and
13 Washington classes

14 14. At the time of mediation, Plaintiffs and Class Counsel intended to file additional
15 actions to bring wage and hour claims under Ohio and Alaska law on behalf of putative Ohio and
16 Alaska classes. As a result of the Settlement, the Parties agreed that Plaintiffs would amend the
17 operative complaint in *Jones* to add (1) Sandra Turner and George Azevedo, Jr. as Named
18 Plaintiffs and Class Representatives, and (2) Ohio and Alaska law wage and hour claims, brought
19 by Turner and Azevedo, respectively, individually and on behalf of putative Rule 23 Ohio and
20 Alaska classes. *See* Settlement Agreement, ¶¶ 3.20, 5.1.1. The Ohio and Alaska Classes
21 incorporate class periods that extend back three years from the April 23, 2019 mediation. *See*
22 Settlement Agreement, ¶¶ 2.46. The resulting Fourth Amended Complaint was filed on January 24,
23 2020.

24 15. Additionally, Safety Attendants have successfully opted in as FLSA Opt In Plaintiffs
25 in the *Jones* action. Safety Attendants have also filed opt-in forms in the *Ross* action; the Safety
26 Attendants whose opt-in forms were stricken in *Jones* constitute many of the Opt-In Plaintiffs in
27 *Ross*. In the final tally, 429 Individuals, including the Named Plaintiffs, opted in to *Jones*, *Ross*, or
28 both.

1 on a Class and Collective basis. This discovery was produced on an informal basis to facilitate
2 mediation, and updated ahead of each mediation.

3 **Mediation**

4 23. Plaintiffs and CertifiedSafety first mediated this dispute on January 23, 2018 before
5 Jeff Ross, a respected and experienced wage and hour mediator. This initial mediation was
6 unsuccessful, and litigation continued in the ordinary course, including the filing of the later
7 actions and service of formal discovery requests.

8 24. On April 23, 2019, the Plaintiffs and CertifiedSafety participated in a second
9 mediation session with Paul Grossman, another highly respected and experienced wage and hour
10 mediator. The session lasted some 10 hours; at the end of the night, Mr. Grossman issued a
11 mediator's proposal, which contained the essential terms of the instant Settlement. All Parties
12 accepted the proposal on that date.

13 25. Throughout the mediation process, the Parties engaged in serious and arm's-length
14 negotiations, culminating in the mediator's proposal. After the mediation, counsel for the Parties
15 worked to finalize the proposed long-form Settlement and corresponding notice documents, subject
16 to the Court's approval. As the Settlement is complex, involving hybrid Rule 23 and FLSA claims,
17 numerous Defendants, and the resolution of eight separate actions as well as two additional
18 potential actions, the drafting process was lengthy.

19 26. After an initial draft was completed, six sets of subsequent edits were required to
20 arrive at an agreement that was acceptable to all Parties and counsel, along with a separate drafting
21 and revision process for the Class, Collective, and Class/Collective Notices. Counsel for the Parties
22 advised the Court of the status of the drafting process, culminating in a stipulation that set finalized
23 deadlines for the completion of the Settlement Agreement and filing the instant motion.

24 27. The Settlement Agreement was fully executed on November 21, 2019.

25 **Preliminary Approval**

26 28. Plaintiffs filed their preliminary approval motion on November 22, 2019. Parties also
27 filed a stipulation on that date for leave to file the proposed Fourth Amended Consolidated Class
28 and Collective Action Complaint, which added the Ohio and Alaska law claims brought by

1 Plaintiffs Turner and Azevedo, respectively, individually and on behalf of putative Ohio and
2 Alaska classes. Plaintiffs filed supplemental briefing and evidence on December 19, 2019,
3 including revised Notices of Settlement that incorporated the Court’s recommended changes.

4 29. At the preliminary approval hearing on January 8, 2020, the Court discussed the
5 Settlement with Class Counsel and Defendant’s Counsel, with emphasis on the damages analysis,
6 the manner in which notice would be disseminated to Class Members, and the treatment of
7 uncashed check funds. The Parties agreed to incorporate notice via text message, in addition to
8 notice via U.S. Mail and email, and to modify the handling of uncashed check funds so that any
9 such monies would be redistributed to those Class Members who cashed their checks. The Court
10 issued an order conditionally granting preliminary approval, provided that the Parties made these
11 changes to the Settlement, on January 13, 2020.

12 30. The Parties executed the Amendment to the Settlement on January 20, 2020, and
13 filed it with the Court on that date. The Court issued its Order as Modified Granting Plaintiffs’
14 Motion for Preliminary Approval of Class and Collective Action Settlement on January 22, 2020.

15 **Notice of Settlement and Response of Class Members**

16 31. Heffler Claims Group (“Heffler”) is responsible for distributing the Notices of
17 Settlement, calculating individual settlement payments, calculating all applicable payroll taxes,
18 withholdings and deductions, preparing and issuing all disbursements to be paid to Class Members,
19 the Class Representatives, Class Counsel, the LWDA, any applicable local, state, and federal tax
20 authorities, and handling inquiries and/or disputes from Class Members. Heffler is also responsible
21 for the timely preparation and filing of all tax returns, and making the timely and accurate payment
22 of all necessary taxes and withholdings.

23 32. Heffler established a case website, <http://www.certifiedsafetysettlement.com/>, which
24 provides Settlement documents and information and allows for the submission of electronic
25 inquiries. Heffler also established a toll-free call center to field questions, address updates, and
26 other inquiries from Class Members.

27 33. Following the Court’s order, Heffler received the Class List from CertifiedSafety on
28 February 5, 2020. The data contained the names, last known mailing addresses, last known

1 personal email addresses, Workweeks in each of the various jurisdictions, and other personal
2 information for 2,481 Safety Attendants. Heffler sent the Notices of Settlement to these workers on
3 February 19, 2020 via U.S. Mail, and via email and text message to all email addresses and
4 telephone numbers available for the Safety Attendants. As emails were sent to over 2,515 email
5 addresses and text messages were sent to 3,890 phone numbers, robust electronic notice was
6 disseminated in addition to hard copy notice. CertifiedSafety had multiple email addresses and
7 multiple phone numbers for certain Safety Attendants.

8 34. In order to include such information on the Notices, Heffler first calculated the
9 Individual Settlement Shares for every Safety Attendant using the Workweek data provided by
10 CertifiedSafety. The Notices informed the Class Members of: the Settlement terms; their expected
11 share; the April 20, 2020 deadline to submit objections, requests for exclusions, or disputes; the
12 May 28, 2020 final approval hearing; and that Plaintiffs would seek attorneys' fees, costs, and
13 service awards and the corresponding amounts. Heffler included the URL for the case website, the
14 toll-free call center number, and the names and contact information for Class Counsel in the
15 Notices of Settlement.

16 35. As of April 17, 2020, 287 hard-copy Notices have been returned to Heffler as
17 undeliverable. Heffler performed skip-tracing and other techniques to identify current addresses,
18 and 206 Notices were successfully re-mailed. Out of 2,515 email Notices sent, 166 were
19 undeliverable, and out of 3,890 text message Notices sent, 580 were undeliverable. 81 hard-copy
20 notices remain undelivered after re-mailing. The deadline for Class Members to opt-out, object, and
21 dispute their reported Workweeks expired April 20, 2020.

22 36. Three days prior to the end of the notice period, on April 17, 2020, Defendant's
23 counsel informed Class Counsel of an error in the Class List data that it provided to Heffler.
24 Specifically, the Class List incorrectly stated the number of Workweeks for FLSA Opt In Plaintiffs
25 who were also Rule 23 Class Members. For these persons, the Class List stated that all of their
26 Workweeks were FLSA-Only Workweeks. As a result, the Class Members' estimated recoveries
27 have been modified, with some Class Members receiving more than initially stated, and others
28 receiving less. In no event will a Class Member's recovery decrease by more than 11.9% from the

1 estimated recovery provided in the Notice of Settlement. Importantly, the Notices of Settlement
2 state that the reported Individual Settlement Payment amount “is an estimated amount, and your
3 final Settlement payment is expected to differ from this amount (i.e., it could be higher or lower)
4 and will be calculated as set forth above.”

5 37. To date, with the notice period complete, not a single objection has been filed and
6 not a single Class Member has opted out of the Settlement. Moreover, only four Class Members
7 have disputed the workweek figures reported in their notices. None of the disputes allege that the
8 Workweeks were improperly credited to the respective Rule 23 states.

9 38. The disputes have been resolved following the gathering of additional data and
10 information by Defendant for each dispute and meet and confer. All of the disputes have been
11 rejected. Notably, two disputes were rejected because the union Safety Attendant position, which is
12 subject to a collective bargaining agreement, is not within the purview of the Settlement.

13 39. Following final approval of the Settlement, Heffler will issue checks to the Class
14 Members.

15 **THE SETTLEMENT**

16 **Basic Terms and Value of the Settlement**

17 40. CertifiedSafety has agreed to pay a non-reversionary Gross Settlement Amount of
18 \$6,000,000 to settle all aspects of the case. The Net Settlement Amount, which is the amount
19 available to pay settlement awards to the Class Members, is defined as the Gross Settlement
20 Amount less: the payment made to the California Labor & Workforce Development Agency
21 (“LWDA”) pursuant to PAGA (\$50,000); any enhancement payments awarded to the Class
22 Representatives (up to \$15,000 for Plaintiffs Jones, Knight, and Crummie; up to \$10,000 for
23 Plaintiffs Ross and East; and up to \$5,000 for Plaintiffs Azevedo and Turner); the Settlement
24 Administrator’s fees and costs (\$70,000)⁴; and any attorneys’ fees and costs awarded to Plaintiffs’
25
26

27 ⁴ Heffler’s finalized costs are \$70,000 for this complex and intricate settlement administration
28 project. This increased slightly from the \$66,000 estimate provided in Plaintiff’s preliminary
approval motion.

1 counsel (fees of one-third of the Gross Settlement Amount, or \$2,000,000, plus costs in the amount
2 of \$60,397.73)⁵.

3 41. The Parties agree to allocate \$50,000.00 of the Gross Settlement Amount to the
4 settlement of the PAGA claims, which the Parties believe in good faith is a fair and reasonable
5 apportionment. *Id.* The Settlement Administrator shall pay 75%, or \$37,500.00, of this amount to
6 the LWDA, and 25%, or \$12,500.00, shall remain as part of the Net Settlement Amount.

7 42. The negotiated non-reversionary Gross Settlement Amount of \$6,000,000 represents
8 more than 53% of the approximately \$11.3 million that Plaintiffs calculated for the core unpaid
9 wages claims. When adding meal and rest break, derivative claims, and potential penalties, the
10 \$6,000,000 million settlement amount represents approximately 13.3% of Defendants' total
11 potential exposure of \$45.2 million.

12 43. The cash-in-hand recoveries that Class Members will receive compare favorably to
13 these theoretical maximums. The average recovery is \$1,514.35 per each of the 2,481 Class
14 Members (this amount divides the *net* recovery by total number of Class Members). *Id.* 68 Class
15 Members will receive in excess of \$10,000, six Class Members will receive over \$20,000, and the
16 largest recovery is an impressive \$26,205.20. Class Members are paid \$40.97 for each FLSA-Only
17 Workweek under the Settlement; with the weighting factors, Class Members are paid, *inter alia*,
18 twice that (\$81.94) for each Washington Workweek, and three times that (\$122.91) for each
19 California Workweek.

20 **Class and Collective Definitions**

21 44. An individual is eligible to share in the proposed Settlement if he or she belongs to
22 any of the following:

23 ■ The "**California Rule 23 Class**" means all current or former Safety Attendants and Safety
24 Foremen employed by CertifiedSafety, or who attended pre-employment training conducted by
25 CertifiedSafety, in the State of California at any time from April 21, 2013 to the date of
26 Preliminary Approval.

27
28 ⁵ The finalized attorneys' costs are \$60,397.73, a decrease from the \$70,000 estimate provided in Plaintiff's preliminary approval motion.

1 ■ The “**Washington Rule 23 Class**” means all current or former Safety Attendants and Safety
2 Foremen employed by CertifiedSafety in the State of Washington at any time from April 21, 2014
3 to the date of Preliminary Approval.

4 ■ The “**Minnesota Rule 23 Class**” means all current or former Safety Attendants and Safety
5 Foremen employed by CertifiedSafety in the State of Minnesota at any time from March 12, 2016
6 to the date of Preliminary Approval.

7 ■ The “**Illinois Rule 23 Class**” means all current or former Safety Attendants and Safety Foremen
8 employed by CertifiedSafety in the State of Illinois at any time from March 14, 2016 to the date of
9 Preliminary Approval.

10 ■ The “**Ohio Rule 23 Class**” means all current or former Safety Attendants and Safety Foremen
11 employed by CertifiedSafety in the State of Ohio at any time from April 23, 2016 to the date of
12 Preliminary Approval.

13 ■ The “**Alaska Rule 23 Class**” means all current or former Safety Attendants and Safety Foremen
14 employed by CertifiedSafety in the State of Alaska at any time from April 23, 2016 to the date of
15 Preliminary Approval.

16 ■ **Opt-In Plaintiffs** are all Safety Attendants and Safety Foremen on whose behalf Plaintiffs’
17 counsel has filed a consent to join the FLSA collective in any of the Actions, before the date of
18 Preliminary Approval.

19 **Allocations and Awards**

20 45. The Net Settlement Amount to be paid to Class Members is approximately
21 \$3,757,102.27.

22 46. Class Members will each receive a settlement award check without the need to
23 submit a claim form.⁶

24
25
26 ⁶ Class Members are not required to submit an Opt-In Form to receive payment under the
27 Settlement for their work in California, Washington, Minnesota, Illinois, Ohio, and Alaska during
28 the relevant time periods. However, only Opt In Plaintiffs will be credited for work in other states,
as the damages for work in those states are attributable to FLSA claims only. Class Members may
opt out of the Rule 23 component of the Settlement, but those who are Opt-In Plaintiffs may not opt
out of the FLSA component of the Settlement. Settlement Agreement, ¶ 4.9.2.

1 47. Each Class Member's settlement share will be determined based on the total number
2 of weeks that the respective Class Member worked for Defendants during the applicable
3 limitations period(s). Specifically, each Class Member will be credited for the number of weeks
4 that he or she worked for CertifiedSafety at any time (1) from April 21, 2013 to the date of
5 Preliminary Approval for California Class Members; (2) from April 21, 2014 to the date of
6 Preliminary Approval for Washington Class Members; (3) from March 12, 2016 to the date of
7 Preliminary Approval for Minnesota Class Members; (4) from March 14, 2016 to the date of
8 Preliminary Approval for Illinois Class Members; (5) from April 23, 2016 (i.e., the mediation date)
9 to the date of Preliminary Approval for Ohio Class Members; (6) from April 23, 2016 (i.e., the
10 mediation date) to the date of Preliminary Approval for Alaska Class Members; and (7) if the
11 Participating Individual is an Opt In Plaintiff, in all states other than California, Washington,
12 Minnesota, Illinois, Alaska, and Ohio, from the three years preceding the date that Plaintiffs'
13 counsel filed a Consent to Join form on behalf of the Opt In Plaintiff to the date of Preliminary
14 Approval. Settlement Agreement, ¶ 4.13.2.1.

15 48. Each Workweek will be equal to one settlement share, but to reflect the increased
16 value of state law claims and differing average rates of pay by state, Workweeks during which
17 work was performed in California, Washington, Minnesota, Illinois, Ohio, and Alaska will be
18 weighted more heavily. Specifically, Workweeks during which work was performed in California
19 (including Workweeks in which a Participating Individual attended pre-employment training
20 conducted by CertifiedSafety in California) will be equal to three settlement shares; Workweeks
21 during which work was performed in Washington or Alaska will be equal to two settlement shares;
22 Workweeks during which work was performed in Minnesota will be equal to 1.7 settlement shares;
23 Workweeks during which work was performed in Illinois will be equal to 1.3 settlement shares;
24 Workweeks during which work was performed in Ohio will be equal to 1.1 settlement shares; and
25 Workweeks during which an Opt In Plaintiff performed work in any state other than California,
26 Washington, Alaska, Minnesota, Illinois, and Ohio will be equal to one settlement share.⁷

27
28 ⁷ Plaintiffs performed an in-depth analysis of Workweek weightings and the underlying state law provisions to develop the weightings.

1 Settlement Agreement, ¶ 4.13.2.2. In the event that a Rule 23 Class Member, who is also an Opt
2 In Plaintiff, opts out of the Rule 23 component of the Settlement, he or she will receive credit
3 under the Settlement for all of his or her Workweeks nationwide from the three years preceding the
4 date that Plaintiffs’ counsel filed his or her Opt-In Form to the date of Preliminary Approval. In
5 this circumstance, none of the Workweeks will be subject to any weighting (i.e., all Workweeks
6 will be equal to one settlement share on an FLSA basis), even for work in California, Washington,
7 Alaska, Minnesota, Illinois, and Ohio. Settlement Agreement, ¶ 4.13.2.3

8 49. The total number of settlement shares (as weighted) for all Participating Individuals
9 will be added together and the Net Settlement Amount will be divided by that total to reach a per
10 share dollar figure. Settlement Agreement, ¶ 4.13.2.4. The resulting per share dollar figure will
11 then be multiplied by each Participating Individual’s number of settlement shares (as weighted) to
12 determine his or her Individual Settlement Payment.

13 50. The Class, Collective, and Class/Collective Notices provided the estimated
14 Individual Settlement Payment and number of Workweeks for each Class Member, assuming full
15 participation in the Settlement. Settlement Agreement, Exhs. A-C. Settlement Award and
16 eligibility determinations are based on employee workweek information that CertifiedSafety will
17 provide to the Settlement Administrator; however Class Members are able to dispute their
18 workweeks by submitting evidence that they worked more workweeks than shown by
19 CertifiedSafety’s records. Settlement Agreement, ¶ 4.11

20 51. Settlement Awards will be paid to Class Members by the Settlement Administrator
21 within 30 days after the occurrence of the “Effective Date.” Settlement Agreement, ¶ 4.16.
22 Settlement Award checks will remain valid for 180 days from the date of their issuance. Settlement
23 Agreement, ¶ 4.17, as amended. Any funds from checks that are not cashed by the deadline will be
24 redistributed on a *pro rata* basis to Class Members who cash their Individual Settlement Payment
25 checks. In the event of a redistribution of uncashed check funds, the additional settlement
26 administration costs related to the redistribution will be deducted from the total amount of
27 uncashed checks prior to the redistribution. If the average net recovery from the redistribution is
28

1 less than \$10 per Participating Individual, or if there are uncashed check funds remaining after the
2 redistribution, then the amount will revert to Legal Aid at Work as the cy pres recipient.

3 52. Upon completion of administration of the Settlement, the Settlement Administrator
4 will provide a Post-Distribution Accounting in accordance with the Northern District's Procedural
5 Guidance. Settlement Agreement, ¶ 4.18, as amended.

6 **Scope of Release and Final Judgment**

7 53. The releases contemplated by the proposed Settlement are dependent upon whether
8 the Participating Individual is an Opt In Plaintiff and/or a Rule 23 Class Member, and are tethered
9 to the factual allegations.

10 54. Opt In Plaintiffs will release any and all claims under the FLSA based on or arising
11 out of the same factual predicates of the Actions. Settlement Agreement, ¶ 4.19.1. Rule 23 Class
12 Members will release any and all claims under the applicable state law, based on or arising out of
13 the same factual predicates of the Actions, the Complaints, and/or the allegations in the
14 Complaints, including all claims that were or could have been raised in the Actions and any other
15 wage and hour claims for damages, premiums, penalties, interest, attorneys' fees, and equitable
16 relief. Settlement Agreement, ¶¶ 4.19.2-4.19.7. As to Rule 23 Class Members who are not Opt In
17 Plaintiffs, those who negotiate their Rule 23 Settlement Checks will also release any and all claims
18 under the FLSA arising from or related to their work for CertifiedSafety in the applicable Rule 23
19 state(s), based on these same factual predicates. If such a Rule 23 Class Member does not deposit
20 his or her check, he or she will not release any claims under the FLSA.

21 55. The releases are effective upon final approval of the Settlement and issuance of all
22 payments as provided for under the Settlement. Settlement Agreement, ¶ 4.19. The release timing
23 extends through the date of preliminary approval, and the Released Parties are Defendants and
24 their related persons and entities. Settlement Agreement, ¶¶ 4.19.8, 2.37. By its express terms, the
25 release only encompasses claims arising from the refinery's alleged joint employment of a
26 Participating Individual with CertifiedSafety, and does not extend to any claims that may arise
27 from the Participating Individual's direct employment with a refinery Defendant. Settlement
28 Agreement, ¶ 2.37.

1 56. The Class Representatives also agree to a general release. Settlement Agreement, ¶
2 4.21.

3 **Settlement Administration**

4 57. The Parties have agreed to use Heffler Claims Group to administer the Settlement,
5 for total fees and costs currently estimated at \$66,000. The Settlement Administrator will distribute
6 the Notice of Settlement via mail and email, calculate individual settlement payments, calculate all
7 applicable payroll taxes, withholdings and deductions, and prepare and issue all disbursements to
8 Class Members, the LWDA, the Class Representatives, Plaintiffs' counsel, and applicable state,
9 and federal tax authorities. Settlement Agreement, ¶¶ 4.8, 4.13, 4.15.

10 58. The Settlement Administrator is also responsible for the timely preparation and filing
11 of all tax returns and reporting, and will make timely and accurate payment of any and all
12 necessary taxes and withholdings. Settlement Agreement, ¶ 4.15.1. The Settlement Administrator
13 will establish a settlement website that will allow Class Members to view the Class, Collective,
14 and Class/Collective Notices (in generic form), the Settlement Agreement, and all papers filed by
15 Class Counsel to obtain preliminary and final approval of the Settlement. Settlement Agreement, ¶
16 4.8.2. The Settlement Administrator will also establish a toll-free call center for telephone inquiries
17 from Class Members. *Id.*

18 **FINAL APPROVAL OF THE SETTLEMENT**

19 59. This class action settlement satisfies the requirements of Rule 23(a) and (b), and it is
20 fair, reasonable, and adequate in accordance with Rule 23(e)(2). Accordingly, the Court should
21 finally approve the settlement as to the Classes.

22 **The Proposed Settlement Is Fair, Reasonable, and Adequate**

23 60. A review of the Settlement Agreement reveals the fairness, reasonableness, and
24 adequacy of its terms. The Gross Settlement Amount of \$6,000,000, resulting in a Net Settlement
25 Amount of approximately \$3,757,102.27, will result in fair and just relief to the Class Members.

26 61. The Gross Settlement Amount represents more than 53% of the approximately \$11.3
27 million that Class Counsel have calculated for the core unpaid wage claims. Moreover, the
28

1 \$6,000,000 settlement amount represents approximately 13.3% of Defendants’ total potential
2 exposure of \$45.2 million.

3 62. The Settlement provides for an impressive average recovery of \$1,514.35 per each of
4 the 2,481 Class Members (this amount divides the *net* recovery by total number of Class
5 Members), reflecting an *unweighted* share of \$40.97 for Workweek under the Settlement. 68 Class
6 Members will receive in excess of \$10,000.00, six Class Members will receive over \$20,000, and
7 the largest recovery is \$26,205.20. These results are well within the reasonable standard when
8 considering the difficulty and risks presented by pursuing further litigation.

9 63. The final settlement amount takes into account the substantial risks inherent in any
10 class action wage-and hour case, as well as the procedural posture of the Actions and the specific
11 defenses asserted by Defendants, many of which are unique to this case.

12 64. In an effort to ensure fairness, the Parties have agreed to allocate the settlement
13 proceeds amongst Class Members in a manner that recognizes that amount of time that the
14 particular Class Member worked for Defendants in the applicable limitations period. The
15 allocation method, which is based on the number of Workweeks, will ensure that longer-tenured
16 workers receive a greater recovery. Moreover, the allocation tracks the differences in substantive
17 law and penalty claims by weighting the Workweek shares more heavily for work performed in
18 California, Washington, Minnesota, Illinois, Ohio, and Alaska.. The allocation was made based on
19 Class Counsel’s assessment to ensure that employees are compensated accordingly and in the most
20 equitable manner.

21 65. To the extent that any Class Member is *both* a FLSA Opt In Plaintiff and a member
22 of a Rule 23 Class, these workers will only receive a recovery based on their workweeks as a Rule
23 Class Member for their work in California, Washington, Minnesota, Illinois, Ohio, and Alaska.
24 Such workers will not receive a “double recovery.”

25 66. The Parties engaged in extensive informal discovery, depositions, and hundreds of
26 class outreach interviews that have enabled both sides to assess the claims and potential defenses
27 in this action. The Parties were able to accurately assess the legal and factual issues that would
28 arise if the cases proceeded to trial(s).

1 67. In addition, in reaching this Settlement, Plaintiffs’ counsel relied on their substantial
2 litigation experience in similar wage and hour class and collective actions.

3 68. Plaintiffs’ counsel’s liability and damages evaluation was premised on a careful and
4 extensive analysis of the effects of Defendants’ compensation policies and practices on Class
5 Members’ pay.

6 69. Ultimately, facilitated by mediator Paul Grossman, the Parties used this information
7 and discovery to fairly resolve the litigation.

8 70. The monetary value of the proposed Settlement represents a fair compromise given
9 the risks and uncertainties posed by continued litigation.

10 71. If the Actions were to go to trial(s) as class and collective actions (which Defendants
11 would vigorously oppose if this Settlement Agreement were not approved), Class Counsel
12 estimates that fees and costs would exceed \$5,000,000. Litigating the class and collective action
13 claims would require substantial additional preparation and discovery. It would require depositions
14 of experts, the presentation of percipient and expert witnesses at trial, as well as the consideration,
15 preparation, and presentation of voluminous documentary evidence and the preparation and
16 analysis of expert reports.

17 72. Recovery of the damages and penalties previously referenced would also require
18 complete success and certification of all of Plaintiffs’ claims, a questionable feat in light of
19 developments in wage and hour and class and collective action law as well as the legal and factual
20 grounds that Defendants have asserted to defend this action.

21 73. While Plaintiffs are confident in their ability to certify and successfully litigate the
22 alleged claims on the merits, Plaintiffs assert no less than six putative Rule 23 Classes, along with
23 a FLSA Collective.

24 74. Off-the-clock claims are difficult to certify for class treatment, given that the nature,
25 cause, and amount of the off-the-clock work may vary based on the individualized circumstances
26 of the worker.

27 75. Moreover, Plaintiffs considered the risk that the Court would, in the end, decline to
28 find the refinery Defendants liable as a joint employer. Though CertifiedSafety would still be

1 liable in the event of a favorable outcome for Plaintiffs, a finding that the refinery Defendants are
2 joint employers would ensure that the Class Members would be able to obtain full recovery,
3 particularly in the event of a large award. Though Plaintiffs have filed pleadings alleging claims of
4 liability against refinery Defendants on a joint employer basis, the issue would be heavily
5 contested at summary judgment and/or trial(s). If refinery Defendants are found not to be a joint
6 employer, the value of the case would be lessened, and Plaintiffs had to consider this risk.

7 76. 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
9 benefit the Parties and the court system. It will bring finality to over three years of arduous
10 litigation and eight separate Actions, and will foreclose the possibility of expanding litigation.

11 77. The settlement was a product of non-collusive, arm's-length negotiations. The
12 Parties participated in two mediations. The second mediation before Paul Grossman, who is a
13 skilled mediator with many years of experience mediating employment matters, was a lengthy
14 session that lasted well into the night.

15 78. The Parties then spent several months negotiating the long form settlement
16 agreement, with several rounds of meet and confer and correspondence related to the terms and
17 details of the Settlement.

18 79. Plaintiffs are represented by experienced and respected litigators of representative
19 wage and hour actions, and these attorneys feel strongly that the proposed Settlement achieves an
20 exceptional result for the Class Members.

21 80. To date, no Class Members have objected to the Settlement, and no Class Members
22 have opted out of the Settlement. In addition, all seven Class Representatives support the terms of
23 the Settlement. This shows widespread support for the Settlement among Class Members, and
24 gives rise to a presumption of fairness.

25 **Class Certification**

26 81. The approximately 1,896 members of the California Class, 706 members of the
27 Washington Class, 257 members of the Minnesota Class, 96 members of the Illinois class, 220
28 members of the Ohio class, and 58 members of the Alaska class render each class so large as to

1 make joinder impracticable. The Class Members may be readily identified from CertifiedSafety’s
2 payroll records.

3 82. Plaintiffs contend that common questions of law and fact predominate here,
4 satisfying paragraphs (a)(2) and (b)(3) of Rule 23, as alleged in the operative complaints.

5 83. Defendants have uniform policies applicable to all Safety Attendants. Specifically,
6 Plaintiffs allege that Safety Attendants all perform essentially the same job duties—performing
7 safety duties pursuant to Defendants’ standards and requirements. Plaintiffs allege that the wage
8 and hour violations are in large measure borne of CertifiedSafety’s relationship with the refineries
9 and the standardized policies, practices, and procedures that the refineries impose, creating
10 pervasive issues of fact and law that are amenable to resolution on a class-wide basis. In particular,
11 Safety Attendants are subject to the same: hiring and training process; timekeeping, payroll, and
12 compensation policies; meal and rest period policies and practices; and reimbursement policies.
13 Plaintiffs’ other derivative claims will rise or fall with the primary claims. Because these questions
14 can be resolved at the same juncture, Plaintiffs contend the commonality requirement is satisfied
15 for the Classes.

16 84. Because Defendants maintain various common policies and practices as to what
17 work they compensate and what work they do not compensate, and apply these policies and
18 practices to the Safety Attendants, Plaintiffs contend that there are no individual defenses available
19 to Defendants.

20 85. Plaintiffs contend that their claims are typical of those of all other Class Members.
21 They were subject to the alleged illegal policies and practices that form the basis of the claims
22 asserted in this case.

23 86. Interviews with Class Members and review of timekeeping and payroll data confirm
24 that the employees throughout the United States were subjected to the same alleged illegal policies
25 and practices to which Plaintiffs were subjected. Thus, Plaintiffs contend that the typicality
26 requirement is also satisfied.

27
28

1 87. Plaintiffs' claims are in line with the claims of the Classes, and Plaintiffs' claims are
2 not antagonistic to the claims of Class Members. Plaintiffs have prosecuted this case with the
3 interests of the Class Members in mind.

4 88. Moreover, Plaintiffs' counsel has extensive experience in class action and
5 employment litigation, including wage and hour class actions, and do not have any conflict with
6 the Classes.

7 89. Plaintiffs contend the common questions raised in this action predominate over any
8 individualized questions concerning the Classes. The Classes are entirely cohesive because
9 resolution of Plaintiffs' claims hinge on the uniform policies and practices of Defendants, rather
10 than the treatment the Class Members experienced on an individual level. As a result, Plaintiffs
11 contend that the resolution of these alleged class claims would be achieved through the use of
12 common forms of proof, such as Defendants' uniform policies, and would not require inquiries
13 specific to individual Class Members.

14 90. Further, Plaintiffs contend the class action mechanism is a superior method of
15 adjudication compared to a multitude of individual suits.

16 91. Here, the Class Members do not have a strong interest in controlling their individual
17 claims. The action involves thousands of workers with very similar, but relatively small, claims for
18 monetary injury. If the Class Members proceeded on their claims as individuals, their many
19 individual suits would require duplicative discovery and duplicative litigation, and each Class
20 Member would have to personally participate in the litigation effort to an extent that would never
21 be required in a class proceeding. Thus, Plaintiffs contend that the class action mechanism would
22 efficiently resolve numerous substantially identical claims at the same time while avoiding a waste
23 of judicial resources and eliminating the possibility of conflicting decisions from repetitious
24 litigation and arbitrations.

25 92. The issues raised by the present case are much better handled collectively by way of
26 a settlement.

27 93. The Settlement presented by the Parties provides finality, ensures that workers
28 receive redress for their relatively modest claims, and avoids clogging the legal system with

1 numerous cases. Accordingly, class treatment is efficient and warranted, and the Court should
2 conditionally certify the California, Washington, Minnesota, Illinois, Ohio, and Alaska Classes for
3 settlement purposes.

4
5 I declare under penalty of perjury under the laws of the United States that the foregoing is
6 true and correct. Executed on this 23rd day of April, 2020, in Emeryville, California.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell