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

13 HAROLD JONES, et al.,

14 Plaintiffs,

15 vs.

16 CERTIFIEDSAFETY, INC.

17 Defendants.

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 PRELIMINARY APPROVAL
 OF CLASS AND COLLECTIVE ACTION
 SETTLEMENT**

Date: January 2, 2020
 Time: 1:30 p.m.
 Courtroom: 5 (17th Floor)
 Judge: Honorable Edward M. Chen

Jones Complaint filed: April 21, 2017

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

2 1. I am an attorney at law duly licensed and in good standing to practice law in the
3 courts of California (No. 166977) and am admitted to practice law before this Court, the United
4 States District Court Northern District of California.

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

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

15 4. A true and correct copy of the fully-executed Stipulation of Class, Collective, and
16 Representative Action Settlement (the “Settlement Agreement” or the “Settlement”) is attached
17 hereto as **Exhibit 1**. The Notice of Class Action Settlement and Hearing Date for Court Approval
18 (“Class Notice”), the Notice of Collective Action Settlement (“Collective Notice”), and the Notice
19 of Class and Collective Action Settlement and Hearing Date for Court Approval (“Class/Collective
20 Notice”) (collectively, the “Notices of Settlement”) are attached to the Settlement as **Exhibits A-**
21 **C**, respectively.

22 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

23 5. SWCKW is regarded as one of the leading private plaintiff’s firms in wage and hour
24 class actions and employment class actions. In November 2012, the Recorder listed the firm as one
25 of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and
26 attorneys have litigated major wage and hour class actions, have won several prestigious awards,
27 and sit on important boards and committees in the legal community. SWCKW was founded by
28 Todd Schneider in 1993, and I have been a member of the firm since 1995.

1 6. SWCKW has acted or is acting as class counsel in numerous cases. A partial list of
2 cases which have been certified and/or settled as class actions includes: *Soto, et al. v. O.C.*
3 *Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct.
4 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law
5 Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy*
6 *Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of
7 a class action settlement for failure to pay for all hours worked, failure to pay minimum and
8 overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to
9 provide itemized wage statements, under California law); *Van Liew v. North Star Emergency*
10 *Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of
11 a class action settlement for failure to pay for all hours worked, failure to pay minimum and
12 overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business
13 expenditures, waiting time penalties, and failure to provide itemized wage statements, under
14 federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final
15 approval of a class and collective action settlement for failure to pay for all hours worked, failure
16 to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business
17 expenditures, failure to adhere to California record keeping requirements, waiting time penalties,
18 and failure to provide itemized wage statements, under federal and California law); *Harmon, et al.*
19 *v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final
20 approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime
21 and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due,
22 failure to adhere to California record keeping requirements, and failure to provide adequate
23 seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-
24 10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure
25 to provide meal and rest periods, failure to compensate for all hours worked, failure to pay
26 minimum and overtime wages, waiting time penalties, failure to provide itemized wage statements,
27 and failure to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras*
28 *Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final

1 approval of a class and collective action settlement for failure to compensate for all hours worked,
2 including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store,*
3 *LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class
4 action settlement for failure to provide meal and rest periods, failure to compensate for all hours
5 worked, failure to pay overtime wages, unpaid wages and waiting time penalties, and failure to
6 provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-
7 TEH) (Northern District of California) (final approval of class and collective action settlement for
8 failure to compensate for all hours worked, including overtime, under federal and California law,
9 failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms,
10 failure to pay full wages upon termination to, and failure to provide accurate itemized wage
11 statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822)
12 (Sacramento Superior Court) (final approval of a class action settlement for failure to provide meal
13 and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint*
14 *Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval
15 of a class and collective action settlement for failure to compensate for all hours worked, including
16 overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business
17 uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized
18 wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135)
19 (Kern County Superior Court) (final approval of a class action settlement for failure to provide
20 meal and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to pay full
21 wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al.*
22 *v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California)
23 (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees);
24 *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior
25 Court) (final approval of class action settlement for failure to provide meal and rest breaks to, off-
26 the-clock work by, failure to provide overtime compensation to, failure to reimburse business
27 expenditures to, failure to pay full wages upon termination to, and failure to provide accurate
28 itemized wage statements to retention specialists working for cable companies); *Glass Dimensions,*

1 *Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final
2 approval of class action settlement for claims of breach of fiduciary duty and self-dealing in
3 violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-052222) (Northern
4 District of California) (settlement of claims that rental car company misclassified non-exempt
5 employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and
6 rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County
7 Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work,
8 unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers);
9 *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity
10 Commission Baltimore Field Office) (final approval of class action settlement for the denial of
11 promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718)
12 (Marin County Superior Court) (final approval of class action settlement on behalf of a class of
13 individuals with mobility disabilities denied access to various facilities owned, operated, and/or
14 maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-
15 cv-01184) (District of Arizona) (final approval of class action settlement in action challenging
16 unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No.
17 CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for
18 failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail
19 employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366)
20 (Alameda County Superior Court) (final approval of class action settlement for failure to provide
21 meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream
22 manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and
23 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery
24 drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.*
25 (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement
26 for off-the-clock work by, and failure to provide overtime compensation to, production-line
27 employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504)
28 (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide

1 overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v.*
2 *PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval
3 of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work
4 by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No.
5 ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock
6 work by, and failure to provide overtime compensation to, production-line employees of meat-
7 packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-
8 479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action
9 settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees
10 at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County
11 Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were
12 denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-
13 00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-
14 the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No.
15 BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for
16 missed meal and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez*
17 *v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval
18 of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX*
19 *Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class
20 action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No.
21 RG04155105) (Alameda County Superior Court) (certified class action on behalf of flight nurses);
22 *National Federation of the Blind v. Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified
23 class action on behalf of all legally blind individuals in the United States who have tried to access
24 Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified
25 national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case
26 No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination
27 within FedEx); *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D.
28 Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the

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

21 7. Nearly my entire legal career has been devoted to advocating for the rights of
 22 individuals who have been subjected to illegal pay policies, discrimination, harassment and
 23 retaliation and representing employees in wage and hour and discrimination class actions. I have
 24 litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I
 25 manage many of the firm's current cases in these areas. I am a member of the State Bar of
 26 California, and have had memberships with Public Justice, the National Employment Lawyers
 27 Association, the California Employment Lawyers Association, and the Consumer Attorneys of
 28 California. I served on the Board of Directors for the San Francisco Trial Lawyers Association

1 and co-chaired its Women’s Caucus. I was named one of the “Top Women Litigators for 2010” by
2 the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the
3 Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I
4 earned my Bachelor’s degree from the University of California, and I am a graduate of the
5 University of the Pacific, McGeorge School of Law.

6 **CASE SUMMARY AND PROCEDURAL HISTORY**

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

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

17 10. Plaintiffs allege that Class Members—who work long and difficult hours, including
18 shifts of 12 hours or more, up to seven days per week, often far away from their homes—
19 experience wage and hour violations in their work with CertifiedSafety, and with the refineries as
20 alleged joint employers.

21 11. In particular, Plaintiffs allege that the Class Members experience significant amounts
22 of pre- and post-shift off-the-clock work, including unpaid, on-duty time traveling to the actual
23 work location through the massive refinery complexes, donning and doffing protective gear,
24 undergoing security inspections, filling out paperwork, attending safety meetings, and retrieving
25 required equipment. Plaintiffs also allege that Class Members are required to undergo unpaid
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 training sessions in California in order to begin working for CertifiedSafety. Plaintiffs further
2 allege that the Class Members cannot take timely, full, off-duty meal and rest periods, due to a lack
3 of break relief and the need to traverse the refinery to get to designated break locations. Moreover,
4 Plaintiffs allege that the Class Members regularly travel to refineries around the country for multi-
5 week assignments, but are not adequately reimbursed for travel and lodging expenses, and are
6 required to pay out-of-pocket for equipment including fire-protective gear, gloves, and steel-toed
7 boots.

8 12. Plaintiffs allege that, as joint employers, CertifiedSafety and the refinery Defendants
9 are jointly liable for the violations at issue. Defendants have at all times denied, and continue to
10 deny, all of these allegations, including Plaintiffs' theory that CertifiedSafety and the refinery
11 Defendants are joint employers, and deny any and all liability for Plaintiffs' claims. Defendants
12 further deny that Plaintiffs' allegations are appropriate for class/collective and/or representative
13 treatment for any purpose other than for settlement purposes only.

14 13. Plaintiffs and SWCKW 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 agree that Plaintiffs will 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.

23 15. Additionally, 384 Safety Attendants have successfully opted in as FLSA Opt In
24 Plaintiffs in the *Jones* action. 87 Safety Attendants have filed opt-in forms in the *Ross* action; the
25 Safety Attendants whose opt-in forms were stricken in *Jones* constitute many of the Opt-In
26 Plaintiffs in *Ross*.

27 16. Plaintiffs in *Jones* and *Crummie* stipulated to appoint SWCKW as lead counsel on
28 behalf of the Plaintiffs and putative Class and Collective Members in *Jones* and *Crummie*.

Discovery

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2 17. The Parties have engaged in extensive discovery, including written discovery and
3 depositions.

4 18. On January 10, 2018, Plaintiffs deposed CertifiedSafety's Rule 30(b)(6) designee,
5 Vice President of Human Resources Steve Hines. The deposition addressed topics including
6 Defendant's corporate organization and decision-making responsibilities; its policies, practices,
7 procedures, and systems for wage and hour issues, compensation, timekeeping, and scheduling;
8 relevant investigations and reports; and the Class Members' job duties and responsibilities, the
9 tools, equipment and gear that they use, and any work that they perform outside of their scheduled
10 shifts. The deposition also covered topics relating to Plaintiffs' joint employer claims.

11 19. Defendant took the depositions of Plaintiff Jones and Plaintiff Knight on January 15,
12 2018, and Plaintiff Crummie on January 11, 2018.

13 20. Plaintiffs' counsel have additionally completed extensive outreach with Class
14 Members, including over 240 in-depth intakes. The intakes covered topics including dates and
15 locations of work, hours of work, pre-shift and post-shift off-the-clock work, meal and rest breaks,
16 and reimbursement of work-related expenses.

17 21. Through the outreach process, Plaintiffs garnered substantial factual background
18 regarding the alleged violations and the joint employer claims, which Plaintiffs' counsel utilized to
19 build their case and proffer detailed allegations in the operative complaints. Multiple Class
20 Members that completed intakes provided additional documents to Plaintiffs' counsel.

21 22. CertifiedSafety has additionally produced over 1,400 documents, including its
22 general policies as well as time records, payroll records, and job assignment documents applicable
23 to Plaintiffs Jones, Knight, and Crummie. CertifiedSafety also provided classwide figures,
24 including the total number of class members, number of shifts worked, average hourly rates, and
25 additional data points, ahead of each mediation, to enable Plaintiffs' counsel to evaluate damages
26 on a Class and Collective basis. This discovery was produced on an informal basis to facilitate
27 mediation, and updated ahead of each mediation.

28

1 and revision process for the Class, Collective, and Class/Collective Notices. Counsel for the Parties
2 advised the Court of the status of the drafting process, culminating in a stipulation that set finalized
3 deadlines for the completion of the Settlement Agreement and filing the instant motion.

4 29. The Settlement Agreement was fully-executed on November 21, 2019.

5 THE SETTLEMENT

6 Basic Terms and Value of the Settlement

7 30. CertifiedSafety has agreed to pay a non-reversionary Gross Settlement Amount of
8 \$6,000,000 to settle all aspects of the case. The Net Settlement Amount, which is the amount
9 available to pay settlement awards to the Class Members, is defined as the Gross Settlement
10 Amount less: the payment made to the California Labor & Workforce Development Agency
11 (“LWDA”) pursuant to PAGA (\$50,000); any enhancement payments awarded to the Class
12 Representatives (up to \$15,000 for Plaintiffs Jones, Knight, and Crummie; up to \$10,000 for
13 Plaintiffs Ross and East; and up to \$5,000 for Plaintiffs Azevedo and Turner); the Settlement
14 Administrator’s fees and costs (estimated at \$66,000.00); and any attorneys’ fees and costs
15 awarded to Plaintiffs’ counsel (fees of up to 35% of the Gross Settlement Amount, or \$2,100,000,
16 plus costs not to exceed \$70,000).

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

21 32. The Gross Settlement Amount is a negotiated amount that resulted from substantial
22 arms’ length negotiations and significant investigation and analysis by Plaintiffs’ counsel.
23 Plaintiffs’ counsel based their damages analysis and settlement negotiations on informal discovery,
24 including the payroll and timekeeping data, depositions, and approximately 240 interviews with
25 Class Members.

26 33. Plaintiffs’ counsel obtained average rates of pay for Safety Attendants in each
27 jurisdiction (California, Washington, Minnesota, Illinois, Ohio, and Alaska, along with the average
28 rate of pay for FLSA Opt-In Plaintiffs who did not work in any of those states), which were then

1 used in conjunction with amounts of unpaid time to determine estimated damages for off-the-clock
2 and overtime violations. Based on outreach analysis, Plaintiffs applied a high-end damage
3 assumption of 1.75 hours of off-the-clock time per day, along with each Safety Attendant missing
4 80% of their meal and rest periods.

5 34. Using these assumptions and further assuming that Plaintiffs and the Class Members
6 would certify all of their claims and prevail at trial, Plaintiffs' counsel calculated the total potential
7 exposure if Plaintiffs fully prevailed on all of their claims—inclusive of derivative claims,
8 penalties claims, and claims for liquidated damages from willful or bad faith conduct—at
9 approximately \$45.2 million.

10 35. Plaintiffs calculated that unpaid wages owed, based on the assumption of 1.75 hours
11 of off-the-clock work in each workday and inclusive of overtime, would total approximately \$11.3
12 million for all Class Members in all jurisdictions. The bulk of these unpaid wages (\$7.6 million)
13 are owed to the approximately 1,370 California Class Members, who worked well in excess of half
14 of the shifts of the Safety Attendants at issue in this lawsuit. Approximately \$1.5 million is owed
15 to the approximately 790 Washington Class Members.⁴ The \$11.3 total amount includes off-the-
16 clock damages for unpaid training time in California. Additionally, these amounts are subject to
17 liquidated damages in certain jurisdictions, assuming that willfulness could be demonstrated,
18 which would increase the potential unpaid wage damages to approximately \$14 million.

19 36. California and Washington Class Members are also able to recover for meal and rest
20 break violations. Based on the assumption that 80% of their meal and rest periods are missed or
21 otherwise non-compliant, California Class Members are owed approximately \$3.5 million under
22 the premium pay provisions of the California Labor Code, taking into account approximately 203
23 premium pay hours paid by CertifiedSafetyWashington Class Members are owed approximately
24 \$300,000 under Washington law, which requires that Class Members receive straight time pay for
25 the entire duration of any missed or non-compliant break.

26
27 ⁴ Plaintiffs separately analyzed off-the-clock work for the remaining jurisdictions; as these
28 jurisdictions have between approximately 70 and 270 Safety Attendants during the relevant time
periods, respectively, the damages amounts are much smaller than the California and Washington
damages.

1 37. California Class Members are also able to recover directly for unreimbursed business
2 expenses under California Labor Code § 2802, which Plaintiffs estimate at approximately
3 \$840,000.

4 38. Totaling the estimated damages for substantive (non-derivative) violations under
5 California, Washington, Minnesota, Illinois, Ohio, Alaska law and the FLSA, as applicable, for
6 unpaid off-the-clock work, meal and rest period violations, and unreimbursed business expenses,
7 Plaintiffs estimate that the total substantive damages are approximately \$18.6 million. This amount
8 includes liquidated damages where applicable, but does not include derivative claims (e.g., waiting
9 time penalties, wage statement claims) and penalty claims (e.g., PAGA claims and Washington
10 Consumer Protection Act treble damages).

11 39. For derivative and penalty claims, Plaintiffs estimate the waiting time penalty claim
12 for California Class Members under California Labor Code § 203 at approximately \$8.7 million⁵
13 and the wage statement penalty under California Labor Code § 226 at approximately \$1.1 million.

14 40. Plaintiffs estimate the PAGA penalties for applicable California Safety Attendants at
15 approximately \$6.8 million.

16 41. Plaintiffs estimate the treble damages component for Washington Safety Attendants
17 under the Washington Consumer Protection Act at approximately \$6.6 million.

18 42. Additionally, Plaintiffs estimate damages for unpaid wages upon termination for
19 Minnesota Class Members at approximately \$775,000, and damages for failure to keep accurate
20 payroll records for Minnesota Class Members at approximately \$982,000. Plaintiffs estimate
21 damages for unpaid wages upon termination for Illinois Class Members at approximately
22 \$183,000, and damages for unpaid wages upon termination for Alaska Class Members at
23 approximately \$1.4 million.⁶

24
25
26 ⁵ This amount, and other figures for unpaid wages upon termination, assume that each Class
27 Member was terminated once during their tenure with CertifiedSafety.

28 ⁶ Under Alaska's provision for unpaid wages at termination (AS 23.05.140), the penalty wages may
continue for a period of up to 90 days, which results in the relatively high damages for Alaska Class
Members.

1 43. Totaling the estimated damages for derivative and penalty claims violations,
2 Plaintiffs estimate that the total derivative and penalty damages are approximately \$26.6 million.

3 44. The negotiated non-reversionary Gross Settlement Amount of \$6,000,000 represents
4 more than 53% of the approximately \$11.3 million that Plaintiffs calculated for the core unpaid
5 wages claims. When adding meal and rest break, derivative claims, and potential penalties, the
6 \$6,000,000 million settlement amount represents approximately 13.3% of Defendants' total
7 potential exposure of \$45.2 million. Again, these figures are based on Plaintiffs' assessment of a
8 best-case-scenario. To have obtained such a result at trial, Plaintiffs would have had to prove that
9 all Class Members experienced the violations at the levels described above for every shift and
10 every assignment, and that Defendants acted knowingly or in bad faith.

11 45. Plaintiffs and their counsel considered the significant risks of continued litigation,
12 described hereinafter, when considering the proposed Settlement. These risks were front and
13 center, particularly given the nature of the off-the-clock work and that the Safety Attendants work
14 in numerous and varying refinery locations, which would invariably complicate certification
15 efforts and proving the claims on the merits.

16 46. In contrast, the Settlement will result in immediate and certain payment to Class
17 Members of meaningful amounts. The average recovery is \$1,199 per Class Member (this amount
18 divides the *net* recovery by total number of Class Members), or approximately \$119.50 per
19 Workweek.⁷ This amount provides significant compensation to the Class Members, and the
20 Settlement provides an excellent recovery in the face of expanding and uncertain litigation. In light
21 of all of the risks, the settlement amount is fair, reasonable, and adequate.

22 **Class and Collective Definitions**

23 47. An individual is eligible to share in the proposed Settlement if he or she belongs to
24 any of the following:

- 25 ■ The "**California Rule 23 Class**" means all current or former Safety Attendants and Safety
26 Foremen employed by CertifiedSafety, or who attended pre-employment training conducted by
27

28 ⁷ The net recovery per workweek does not incorporate the workweek weightings that reflect the increased value of state law claims and differing average rates of pay by state.

1 CertifiedSafety, in the State of California at any time from April 21, 2013 to the date of
2 Preliminary Approval.

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

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

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

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

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

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

21 **Allocations and Awards**

22 48. The Net Settlement Amount to be paid to Class Members is approximately
23 \$3,651,500.

24 49. Class Members will each receive a settlement award check without the need to
25 submit a claim form.⁸

26
27 ⁸ Class Members are not required to submit an Opt-In Form to receive payment under the
28 Settlement for their work in California, Washington, Minnesota, Illinois, Ohio, and Alaska during
the relevant time periods. However, only Opt In Plaintiffs will be credited for work in other states,

1 50. 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 51. 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
27 as the damages for work in those states are attributable to FLSA claims only. Class Members may
28 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 Washington, Alaska, Minnesota, Illinois, and Ohio will be equal to one settlement share.⁹
2 Settlement Agreement, ¶ 4.13.2.2. In the event that a Rule 23 Class Member, who is also an Opt
3 In Plaintiff, opts out of the Rule 23 component of the Settlement, he or she will receive credit
4 under the Settlement for all of his or her Workweeks nationwide from the three years preceding the
5 date that Plaintiffs' counsel filed his or her Opt-In Form to the date of Preliminary Approval. In
6 this circumstance, none of the Workweeks will be subject to any weighting (i.e., all Workweeks
7 will be equal to one settlement share on an FLSA basis), even for work in California, Washington,
8 Alaska, Minnesota, Illinois, and Ohio. Settlement Agreement, ¶ 4.13.2.3

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

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

21 54. Settlement Awards will be paid to Class Members by the Settlement Administrator
22 within 30 days after the occurrence of the "Effective Date." Settlement Agreement, ¶ 4.16.
23 Settlement Award checks will remain valid for 180 days from the date of their issuance. Settlement
24 Agreement, ¶ 4.17. Any funds from checks that are returned as undeliverable or are not negotiated
25 within 180 calendar days after issuance shall be tendered to the State Controller's Office
26
27

28 ⁹ Plaintiffs performed an in-depth analysis of Workweek weightings and the underlying state law provisions to develop the weightings.

1 Unclaimed Property Division (or similar/equivalent state agency) for the state where the
2 Participating Individual most recently worked for CertifiedSafety. Settlement Agreement, ¶ 4.17.

3 55. 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.

6 **Scope of Release**

7 56. 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 57. 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 58. The releases are effective upon final approval of the Settlement. Settlement
22 Agreement, ¶ 4.19.1. The release timing extends through the date of preliminary approval, and the
23 Released Parties are Defendants and their related persons and entities. Settlement Agreement, ¶¶
24 4.19.8, 2.37. By its express terms, the release only encompasses claims arising from the refinery's
25 alleged joint employment of a Participating Individual with CertifiedSafety, and does not extend to
26 any claims that may arise from the Participating Individual's direct employment with a refinery
27 Defendant. Settlement Agreement, ¶ 2.37.

28

Certification

1
2 64. The approximately 1,371 members of the California Class, 792 members of the
3 Washington Class, 248 members of the Minnesota Class, 115 members of the Illinois class, 264
4 members of the Ohio class, and 70 members of the Alaska class render each class so large as to
5 make joinder impracticable. The Class Members may be readily identified from CertifiedSafety’s
6 payroll records.

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

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

20 67. Because Defendants maintain various common policies and practices as to what
21 work they compensate and what work they do not compensate, and apply these policies and
22 practices to the Safety Attendants, Plaintiffs contend that there are no individual defenses available
23 to Defendants.

24 68. Plaintiffs contend that their claims are typical of those of all other Class Members.

25 69. They were subject to the alleged illegal policies and practices that form the basis of
26 the claims asserted in this case. Interviews with Class Members and review of timekeeping and
27 payroll data confirm that the employees throughout the United States were subjected to the same
28

1 alleged illegal policies and practices to which Plaintiffs were subjected. Thus, Plaintiffs contend
2 that the typicality requirement is also satisfied.

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

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

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

16 73. Further, Plaintiffs contend the class action mechanism is a superior method of
17 adjudication compared to a multitude of individual suits.

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

27 75. The issues raised by the present case are much better handled collectively by way of
28 a settlement.

1 76. The Settlement presented by the Parties provides finality, ensures that workers
2 receive redress for their relatively modest claims, and avoids clogging the legal system with
3 numerous cases. Accordingly, class treatment is efficient and warranted, and the Court should
4 conditionally certify the California, Washington, Minnesota, Illinois, Ohio, and Alaska Classes for
5 settlement purposes.

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

7 77. The proposed settlement is fair, reasonable, and adequate under both Rule 23 and the
8 FLSA approval standards.

9 78. A review of the Settlement Agreement reveals the fairness, reasonableness, and
10 adequacy of its terms. The Gross Settlement Amount of \$6,000,000, which represents more than
11 53% of the approximate \$11.3 million that Plaintiffs calculated in unpaid wages that would have
12 been owed to all Class Members if each had been able to prove that he or she worked 1.75 hours
13 off-the-clock in every workday during the relevant time period. When adding other substantive
14 claims and potential penalties, the \$6,000,000 settlement amount represents approximately 13.3%
15 of Defendants' total potential exposure of \$45.2 million.

16 79. Again, these figures are based on Plaintiffs' assessment of a best-case-scenario. To
17 have obtained such a result at trial(s), Plaintiffs would have had to prove that each Class Member
18 worked off-the-clock for 1.75 hours in each workday and that Defendants acted knowingly or in
19 bad faith. These figures would of course be disputed and hotly contested. The result is well within
20 the reasonable standard when considering the difficulty and risks presented by pursuing further
21 litigation.

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

25 81. In an effort to ensure fairness, the Parties have agreed to allocate the settlement
26 proceeds amongst Class Members in a manner that recognizes that amount of time that the
27 particular Class Member worked for Defendants in the applicable limitations period. The
28 allocation method, which is based on the number of Workweeks, will ensure that longer-tenured

1 workers receive a greater recovery. Moreover, the allocation tracks the differences in substantive
2 law and penalty claims by weighting the Workweek shares more heavily for work performed in
3 California and Washington. The allocation was made based on Class Counsel’s assessment to
4 ensure that employees are compensated accordingly and in the most equitable manner.

5 82. To the extent that any Class Member is *both* a FLSA Opt In Plaintiff and a member
6 of a Rule 23 Class, these workers will only receive a recovery based on their workweeks as a Rule
7 23 Class Member for their work in California, Washington, Minnesota, Illinois, Ohio, and Alaska.
8 Such workers will not receive a “double recovery.”

9 83. The Parties engaged in extensive informal discovery, depositions, and class outreach
10 that have enabled both sides to assess the claims and potential defenses in this action. The Parties
11 were able to accurately assess the legal and factual issues that would arise if the cases proceeded to
12 trial(s).

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

15 85. Plaintiffs’ counsel’s liability and damages evaluation was premised on a careful and
16 extensive analysis of the effects of Defendants’ compensation policies and practices on Class
17 Members’ pay.

18 86. Ultimately, facilitated by mediator Paul Grossman, the Parties used this information
19 and discovery to fairly resolve the litigation.

20 87. The monetary value of the proposed Settlement represents a fair compromise given
21 the risks and uncertainties posed by continued litigation.

22 88. If the Actions were to go to trial(s) as class and collective actions (which Defendants
23 would vigorously oppose if this Settlement Agreement were not approved), Class Counsel
24 estimates that fees and costs would exceed \$5,000,000. Litigating the class and collective action
25 claims would require substantial additional preparation and discovery. It would require depositions
26 of experts, the presentation of percipient and expert witnesses at trial, as well as the consideration,
27 preparation, and presentation of voluminous documentary evidence and the preparation and
28 analysis of expert reports.

1 89. Recovery of the damages and penalties previously referenced would also require
2 complete success and certification of all of Plaintiffs' claims, a questionable feat in light of
3 developments in wage and hour and class and collective action law as well as the legal and factual
4 grounds that Defendants have asserted to defend this action.

5 90. Off-the-clock claims are difficult to certify for class treatment, given that the nature,
6 cause, and amount of the off-the-clock work may vary based on the individualized circumstances
7 of the worker. While Plaintiffs are confident that they would establish that common policies and
8 practices give rise to the off-the-clock work for Safety Attendants, Plaintiffs acknowledged that the
9 work was performed at dozens of different locations around the country, which were operated by
10 numerous different oil companies. With refinery policies and practices, the physical layout, and the
11 nature of the work varying by location, Plaintiffs recognized that obtaining class certification
12 would present a significant obstacle, with the risk that the Safety Attendants could only pursue
13 individual actions in the event that certification was denied. Certification of off-the-clock work
14 claims is complicated by the lack of documentary evidence and reliance on employee testimony,
15 and Plaintiffs would likely face motions for decertification as the case progressed. Given that the
16 substantive damages are largely driven by the alleged off-the-clock work, and that the derivative
17 and penalty claims are tethered to off-the-clock claims, Plaintiffs' counsel was required to
18 significantly discount the hypothetical value of the claims when assessing the mediator's proposal
19 for Settlement.

20 91. Plaintiffs would encounter difficulties in moving for certification and proving their
21 claims on the merits in part due to the fact that key Class Member timekeeping documents were
22 kept in paper format. For example, Class Member timesheets that tracked the services performed
23 were largely written by hand. Plaintiffs would face fundamental logistical difficulties in reviewing
24 and analyzing the massive amounts of hard copy records.

25 92. Moreover, Plaintiffs considered the risk that the Court would, in the end, decline to
26 find the refinery Defendants liable as a joint employer. Though CertifiedSafety would still be
27 liable in the event of a favorable outcome for Plaintiffs, a finding that the refinery Defendants are
28 joint employers would ensure that the Class Members would be able to obtain full recovery,

1 particularly in the event of a large award. Though Plaintiffs have filed pleadings alleging claims of
2 liability against refinery Defendants on a joint employer basis, the issue would be heavily
3 contested at summary judgment and/or trial(s). If refinery Defendants are found not to be a joint
4 employer, the value of the case would be lessened, and Plaintiffs had to consider this risk.

5 93. In contrast to litigating this suit, resolving this case by means of the Settlement will
6 yield a prompt, certain, and very substantial recovery for the Class Members. Such a result will
7 benefit the Parties and the court system. It will bring finality to over two years of arduous litigation
8 and eight separate Actions, and will foreclose the possibility of expanding litigation.

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

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

16 96. Plaintiffs are represented by experienced and respected litigators of representative
17 wage and hour actions, and these attorneys feel strongly that the proposed Settlement achieves an
18 excellent result for the Class Members.

19 **SERVICE AWARDS**

20 97. The enhancement payments of up to \$15,000 for Plaintiff Jones, Knight, and
21 Crummie, up to \$10,000 for Plaintiffs Ross and East, and up to \$5,000 for Plaintiffs Azevedo and
22 Turner are intended to compensate Plaintiffs for the critical role they played in this case, and the
23 time, effort, and risks undertaken in helping secure the result obtained on behalf of the Class
24 members.

25 98. Moreover, Plaintiffs have agreed to a general release, unlike other Class Members.
26 *See* Settlement Agreement, ¶ 4.21.

27 99. In agreeing to serve as Class and Collective representatives, Plaintiffs formally
28 agreed to accept the responsibilities of representing the interests of all Class Members.

1 100. Defendants do not oppose the requested payments to the Plaintiffs as reasonable
2 service awards.

3 **ATTORNEYS' FEES AND COSTS**

4 101. In their fee motion to be submitted with the final approval papers, Plaintiffs' counsel
5 will request up to 35% of the Gross Settlement Amount, or \$2,100,000, plus reimbursement of
6 costs up \$70,000. Plaintiffs' counsel will provide the lodestar information for Schneider Wallace
7 Cottrell Konecky Wotkyns LLP and Lawyers for Justice, PC with their fee motion, and anticipate
8 that the aggregate lodestar will be approximately on par with the requested fee award. On this
9 basis, the requested attorneys' fees award is reasonable.

10 102. In this case, given the excellent results achieved, the effort expended litigating the
11 Actions, including the filing of numerous later actions to assert additional Rule 23 claims and joint
12 employer claims against the refinery Defendants, and the difficulties attendant to litigating this
13 case, an upward adjustment from the 25% benchmark is warranted. There was no guarantee of
14 compensation or reimbursement. Rather, counsel undertook all the risks of this litigation on a
15 completely contingent fee basis. These risks were front and center. Defendants' vigorous and
16 skillful defense further confronted Plaintiffs' counsel with the prospect of recovering nothing or
17 close to nothing for their commitment to and investment in the case.

18 103. Nevertheless, Plaintiffs and their counsel committed themselves to developing and
19 pressing Plaintiffs' legal claims to enforce the employees' rights and maximize the class and
20 collective recovery. During the litigation, counsel had to turn away other less risky cases to remain
21 sufficiently resourced for this one. The challenges that Class Counsel had to confront and the risks
22 they had to fully absorb on behalf of the class and collective here are precisely the reasons for
23 multipliers in contingency fee cases.

24 104. Attorneys who litigate on a wholly or partially contingent basis expect to receive
25 significantly higher effective hourly rates in cases where compensation is contingent on success,
26 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not
27 result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant
28 financial risk on behalf of a client rightfully expects that his or her compensation will be

1 significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis),
2 and that the greater the risk, the greater the “enhancement.” Adjusting court-awarded fees upward
3 in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds
4 of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so
5 doing, helps to ensure that meritorious cases will be brought to enforce important public interest
6 policies and that clients who have meritorious claims will be better able to obtain qualified
7 counsel.

8 105. For these reasons, Plaintiffs’ counsel respectfully submits that a 35% recovery for
9 fees is appropriate. Plaintiffs’ counsel also requests reimbursement for their litigation costs.
10 Plaintiffs’ counsel’s efforts resulted in an excellent settlement, and the fee and costs award should
11 be preliminarily approved as fair and reasonable.

12 **THE NOTICES OF SETTLEMENT AND RELATED ADMINISTRATION**

13 106. The Notices of Settlement, attached as **Exhibit A-C** to the Settlement Agreement,
14 and manner of distribution negotiated and agreed upon by the Parties are “the best notice
15 practicable.”

16 107. All Class Members have been identified and the Notices of Settlement will be mailed
17 directly to each Class Member, and emailed to those for whom CertifiedSafety has an email
18 address. The proposed Notices re clear and straightforward, and provide information on the nature
19 of the action and the proposed Classes and Collective, the terms and provisions of the Settlement
20 Agreement, and the monetary awards that the Settlement will provide Class Members.

21 108. In addition, the Parties will provide a settlement website that provides a generic form
22 of the Notice, the Settlement Agreement, and other case related documents and contact
23 information.

24 109. The proposed Notices fulfill the requirement of neutrality in class notices. They
25 summarize the proceedings necessary to provide context for the Settlement Agreement and
26 summarize the terms and conditions of the Settlement, including an explanation of how the
27 settlement amount will be allocated between the Named Plaintiffs, Plaintiffs’ counsel, the
28 Settlement Administrator, and the Class Members, in an informative, coherent and easy-to-

1 understand manner, all in compliance with the Manual for Complex Litigation's recommendation
2 that "the notice contain a clear, accurate description of the terms of the settlement."

3 110. The Class and Class/Collective Notices clearly explain the procedures and deadlines
4 for requesting exclusion from the Settlement, objecting to the Settlement, the consequences of
5 taking or foregoing the various options available to Class Members, and the date, time and place of
6 the Final Approval Hearing. Pursuant to Rule 23(h), the proposed Notices of Settlement also sets
7 forth the amount of attorneys' fees and costs sought by Plaintiffs, as well as an explanation of the
8 procedure by which Class Counsel will apply for them. The Notices of Settlement clearly state that
9 the Settlement does not constitute an admission of liability by Defendants.

10 111. The Notices makes clear that the final settlement approval decision has yet to be
11 made.

12 112. Accordingly, the Notices of Settlement comply with the standards of fairness,
13 completeness, and neutrality required of a settlement class notice disseminated under authority of
14 the Court.

15 113. Furthermore, reasonable steps will be taken to ensure that all Class Members receive
16 the Notice. Before mailing, CertifiedSafety will provide to the Settlement Administrator a database
17 that contains the names, last known addresses, last known email addresses (if any), and social
18 security numbers of each Class Member, along with the applicable number(s) of Workweeks for
19 calculating the respective settlement shares. The Notices of Settlement will be sent by United
20 States Mail, and also via email to the maximum extent possible. The Settlement Administrator will
21 make reasonable efforts to update the contact information in the database using public and private
22 skip tracing methods. Within 14 days of receipt of the Class List from CertifiedSafety, the
23 Settlement Administrator will mail the Notices of Settlement to each Class Member.

24 114. With respect to Class Notices returned as undeliverable, the Settlement
25 Administrator will re-mail any Notices returned to the Settlement Administrator with a forwarding
26 address following receipt of the returned mail. If any Notice is returned to the Settlement
27 Administrator without a forwarding address, the Settlement Administrator will undertake
28 reasonable efforts to search for the correct address, including skip tracing, and will promptly re-

1 mail the Notice of Settlement to any newly found address.

2 115. Rule 23 Class Members will have 60 days from the mailing of the Notices of
3 Settlement to opt-out or object to the Settlement. Any Rule 23 Class Member who does not submit
4 a timely request to exclude themselves from the Settlement will be deemed a Participating
5 Individual whose rights and claims are determined by any order the Court enters granting final
6 approval, and any judgment the Court ultimately enters in the case.¹⁰

7 116. Administration of the Settlement will follow upon the occurrence of the Effective
8 Date of the Settlement.

9 117. The Settlement Administrator will provide Class Counsel and Defendants' Counsel
10 with a report of all Settlement payments within 10 business days after the opt out/objection
11 deadline.

12 118. Because the proposed Notices of Settlement clearly and concisely describe the terms
13 of the Settlement and the awards and obligations for Class Members who participate, and because
14 the Notices will be disseminated in a way calculated to provide notice to as many Class Members
15 as possible, the Notices of Settlement should be preliminarily approved.

16
17 I declare under penalty of perjury under the laws of the United States that the foregoing is
18 true and correct. Executed on this 22nd day of November, 2019, in Emeryville, California.

19
20 /s/ Carolyn Hunt Cottrell
21 Carolyn Hunt Cottrell

22
23
24
25
26
27 ¹⁰ However, Rule 23 Class Members who are not Named Plaintiffs or Opt-In Plaintiffs will only
28 release FLSA claims (related to their work in the applicable Rule 23 states) if they endorse or cash
their Individual Settlement Payment checks.