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10 **Attorneys for Plaintiff JENNIFER MODICA, individually and on behalf of other similarly**
11 **situated current and former employees and as a proxy for the Labor & Workforce Development**
12 **Agency (“LWDA”)**

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 **JENNIFER MODICA, individually and on**
16 **behalf of other similarly situated current and**
17 **former employees and as proxy for the LWDA,**

18 **Plaintiff,**

19 **v.**

20 **IRON MOUNTAIN INFORMATION**
21 **MANAGEMENT SERVICES, INC., a Delaware**
22 **corporation; and DOES 1-100, inclusive,**

23 **Defendants.**

24 **Case No. 2:19-cv-00370-TLN-JDP**

25 **DECLARATION OF ROBERT J.**
26 **WASSERMAN IN SUPPORT OF**
27 **PLAINTIFF’S MOTION FOR**
28 **ATTORNEYS’ FEES, COSTS, AND**
SERVICE AWARD

Date: December 17, 2020
Time: 2:00 p.m.
Dept.: Courtroom 6, 14th Floor
Judge: Hon. Troy L. Nunley

I, Robert J. Wasserman, declare:

1. I am an attorney duly licensed to practice before all the courts of this state and am a shareholder of Mayall Hurley P.C., attorneys for Plaintiff Jennifer Modica (“Plaintiff”).
2. I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto under oath.

Investigation, Mediation, and Settlement Negotiations

3. In July 2019, the Parties began discussing the prospect of mediation and agreed to mediate with renowned wage and hour mediator David A. Rotman, Esq. The Parties scheduled mediation to occur on November 14, 2019.

1 4. Prior to mediation and after our office’s review of documents produced in discovery,
2 Defendant stipulated to the filing of Plaintiff’s First Amended Complaint (“FAC”) in order to
3 incorporate the additional violations believed to exist. The FAC was ultimately filed on January 15,
4 2020 and states class and representative causes of action for (1) Failure to Properly Calculate and Pay
5 Doubletime; (2) Failure to Properly Calculate and Pay Sick Pay; (3) Failure to Furnish Accurate
6 Itemized Wage Statements; (4) Failure to Pay All Wages Due Upon Cessation of Employment; (5)
7 Violation of Business and Professions Code Section 17200; and (6) violation of the California Private
8 Attorneys General Act (“PAGA”). Plaintiff also states individual causes of action for failure to provide
9 personnel and payroll records. (Dkt. No. 13).

10 5. Through independent inquiry, research, and formal and informal discovery, my office
11 thoroughly and diligently investigated and pursued the Class claims. This included, but was not limited
12 to, (1) obtaining and reviewing Plaintiff’s personnel file, payroll records, and time records; (2)
13 researching Defendant, its organization, and structure; (3) identifying, researching, and pleading the
14 appropriate claims, including amending the complaint to add additional claims discovered through the
15 review of information provided by Defendant; (4) exhausting administrative remedies; (5) identifying,
16 requesting, securing, and reviewing pertinent policies, practices, and procedures; (6) identifying,
17 requesting, and securing time and payroll data for all Doubletime and Sick Pay Subclass members; (7)
18 securing a sampling of wage statements for Class Members, (8) retaining an expert to analyze the data
19 and supervising its calculations; (9) reviewing the expert’s findings; (10) separately calculating the
20 damages of a sampling of class members to confirm the accuracy of the expert’s findings; (11) creating
21 a reliable damages model; and (12) developing and implementing a strategy for mediation and
22 settlement.

23 6. Between May 2019 and November 2019, as part of the Parties’ formal and informal
24 discovery and settlement negotiations, Defendant provided Class Counsel with thousands of pages of
25 documents. Specifically, Defendant produced all of Plaintiff’s time records and payroll records, and
26 her personnel file. Defendant also produced extensive pay period data for Class Members, and written
27 policies applicable to the claims in this action. Additionally, Defendant produced time and payroll data
28 for Class Members amounting to tens of thousands of lines of data. Counsel for the Parties have further

1 investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the
2 defenses thereto, and the damages and penalties potentially available to Plaintiff in the Class Action. In
3 conjunction with those same negotiations, the Parties have spoken at length about the strengths and
4 weaknesses of each sides' claims and defenses, the certifiability of the class, and the scope of
5 Defendant's potential liability. Both Plaintiff and Defendant retained experts to examine the data and
6 determine the extent of the Class's potential damages.

7 7. On November 14, 2019, the Parties participated in good faith in arms' length settlement
8 discussions at a mediation with David A. Rotman, Esq. in San Francisco. At the close of the mediation,
9 the Parties agreed to a Memorandum Of Understanding ("MOU") from which Defendant had one week
10 to withdraw.

11 8. On November 20, 2019, Defendant confirmed its agreement to the MOU. After several
12 weeks of further negotiations, on January 22, 2020, the Parties executed the Joint Stipulation of Class
13 and Representative Action Settlement Agreement and Release of claims ("Settlement Agreement"), a
14 true and correct copy of which is attached as **Exhibit A** to the Declaration of Jenny D. Baysinger filed
15 in support of Plaintiff's Motion for Attorneys' Fees, Costs, and Service Award.

16 9. There was no fraud or collusion at the mediation with Mediator Rotman or in the
17 subsequent settlement negotiations, all of which were adversarial and conducted at arms' length.

18 **The Benefits of the Settlement to the Class and Class Counsel's Damages Analysis**

19 10. The Settlement Agreement represents a compromise of highly disputed claims.
20 Defendant vigorously denies Plaintiff's allegations in their entirety, denies that certification is
21 appropriate (except for settlement purposes), contends that it has complied with the law, and asserted
22 numerous affirmative defenses.

23 11. The Class Action and Settlement Agreement have and will result in substantial benefits
24 to all Class Members and Participating Class Members. First and foremost, and irrespective of the
25 Settlement Agreement or any individual Class Member's decision to be bound thereby, as a result of
26 the Class Action and efforts of Plaintiff and Class Counsel, Defendant (a) revised it wage statements on
27 November 29, 2019, and (b) revised its policies, practices, and procedures associated with the
28 calculation and payment of its employees' doubletime and sick pay. Settlement Agreement ("SA") ¶

1 10. Accordingly, and regardless of any individual Class Member’s decision to participate in or exclude
2 themselves from the Settlement, Defendant’s employees will receive tens of thousands of dollars in
3 additional compensation over the next few years as a result of the Class Action and the efforts of
4 Plaintiff and Class Counsel. As set forth in greater detail below, this amounted to more than \$21,317 in
5 unpaid wages and interest since October 1, 2017.

6 12. With the help of an expert, and after performing individual calculations and spot checks
7 to ensure the accuracy of the results, and accounting for various litigation risks and the defenses and
8 arguments of Defendant, we were able to develop a damages model illustrating both Defendant’s
9 maximum exposure and the realistic potential recovery for the alleged violations.

10 13. Class Counsel estimated Defendant’s maximum and realistic total liability to be between
11 \$9,396,010.20 and \$2,710,946.10. The maximum and realistic liability for Class claims (i.e. not
12 including PAGA civil penalties) is between \$2,823,310.20 and \$2,053,676.10. The \$1,500,000
13 Maximum Settlement Amount (“MSA”), which consists of \$1,490,000 to compensate for non-PAGA
14 claims, represents 15.96% of the *total* maximum exposure and 55.33% of the *total* realistic exposure.
15 The portion of the MSA allocated to non-PAGA claims (\$1,490,000.00) represents recovery of an
16 impressive 52.77% of the maximum exposure for non-PAGA claims, and 72.55 percent of the realistic
17 non-PAGA exposure.

18 14. If interest and civil penalties (totaling \$6,574,800.00) are excluded, the Maximum
19 Settlement Amount represents 53.16% of the \$2,823,310.20 in damages and statutory penalties
20 recoverable by the Class.¹

21 15. The expected Net Settlement Amount, which is now believed to be \$947,499.95
22 (because Class Counsel’s costs are less than the \$25,000 preliminarily approved) itself represents
23
24

25
26 ¹ Courts regularly evaluate the fairness of a class action settlement utilizing the defendant’s exposure exclusive of potential
27 penalties and interest. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000) (“It is our impression that
28 courts generally determine fairness of an antitrust class action settlement based on how it compensates the class for past
injuries, without giving much, if any, consideration to treble damages.”); *see also Miller v. CEVA Logistics USA*, 2015 WL
729638, at *7 (E.D. Cal, Feb. 19, 2015) (evaluating fairness of wage and hour class action by comparison to potential
exposure exclusive of interest and penalties); *Richardson v. Interstate Hotels & Resorts, Inc.* 2019 WL 803746 at *3 (N.D.
Cal. Feb 21, 2019) (same).

1 33.55% of the Class' maximum recovery and 46.13% of the Class' realistic total recovery, not
2 considering civil penalties and interest.²

3 16. Critically, Class Counsel estimated the maximum exposure for doubletime and sick pay
4 owed based upon Defendant's alleged failure to properly calculate its employees' regular rate of pay
5 not to exceed \$20,000.00 (\$19,217.00 was the actual number calculated based on the data that was
6 provided through November 1, 2019).

7 17. The expected updated *average* payment to each Participating DoubleTime Subclass
8 Member, Participating Sick Pay Subclass Member, and Participating Wage Statement Subclass
9 Member will exceed \$800.³ Each Participating Former Employee Subclass Member will receive an
10 additional payment of \$500.00.

11 18. I strongly believe that the proposed Settlement Agreement is a fair, adequate, and
12 reasonable resolution of the Class Action and is preferable to continued litigation.

13 19. While I am confident that certification and success on the merits could have been
14 attained, continued litigation was guaranteed to be costly, time consuming, and uncertain in outcome.
15 Appellate proceedings would only further delay and jeopardize recovery by Class Members. Shifting
16 sentiment regarding PAGA claims add yet another layer of concern to continued litigation. By
17 contrast, the proposed Settlement ensures timely relief and substantial recovery for the Class and is
18 superior to other recently approved settlements.⁴

19 20. The Released Claims, defined in Paragraph 71 of the Settlement, and Released PAGA
20 Claims, defined in Paragraph 72 of the Settlement, were narrowly tailored to track the claims advanced
21 on behalf of each subclass and do not include a Civil Code section 1542 waiver.

23 ² District courts in California have found similar percentage recoveries to be reasonable in other cases under similar
24 circumstances. See, e.g., *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261 SBA (EMC), 2012 WL 5878390, at 6 (N.D.
25 Cal. Nov. 21, 2012) (settlement of approximately 15% preliminarily fair); *Glass v. UBS Fin. Services, Inc.*, No. C-06-4068,
2007 WL 221860, at *4 (N.D. Cal. Jan. 26, 2017) (settlement of approximately 25-35% was reasonable).

26 ³ Based on the data provided by Defendant, each Sick Pay Subclass Member suffered an average of \$52.66 in total
27 damages and interest, and each DoubleTime Subclass Member suffered an average of \$14.02 in total damages and
28 interest. A net recovery that provides those individuals with \$17.56 more than their counterparts in the Wage Statement
Subclass who did not suffer any actual wage underpayments is fair and appropriate. This is particularly true since the
wage claims carry the most palatable risks.

⁴ Tellingly, this Settlement provides the same monetary recovery as that in *Cardenas*, although it involves substantially
fewer claims (i.e. no meal and rest period, minimum wage, or off-the-clock claims are involved here), affords a much
more narrow release of claims, and resulted in non-monetary benefits as well.

Experience of Class Counsel

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2 21. In June 2005, I received a B.A. from the University of California San Diego. In
3 December 2007, I received a J.D. from Thomas Jefferson School of Law. In 2008, I became a
4 member of the State Bar of California. In 2013, I became a member of the State Bar of Illinois.

5 22. I have been an attorney with Mayall Hurley P.C. since 2008. I became a Shareholder in
6 2014. In July 2015, I became a managing shareholder. I served as the firm's Director of Human
7 Resources from July 2015 through July 2020. Since that time, I have served as the Firm's Director of
8 Marketing. I have practiced almost exclusively plaintiffs' employment litigation for nearly 10 years.

9 23. I have been selected as a "Rising Star" by Super Lawyers Magazine, recognizing the
10 top 2.5 percent of California attorneys, every year since 2016.

11 24. My law firm, Mayall Hurley P.C., has no conflicts of interest in the representation of the
12 Class or Class Representative in this matter

13 25. Mayall Hurley, P.C., primarily through attorneys Jenny D. Baysinger and myself, has
14 pursued this action aggressively, and many other similar class and representative actions.

15 26. For instance, Mayall Hurley P.C. has recently been approved as class counsel in
16 *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior Court Case No. 37-2018-
17 00004296-CU-OE-CTL; *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern
18 District of California Case No. 3:18-CV-01696-JAH-WVG; *Wise v. ULTA Salon, Cosmetics &*
19 *Fragrance, Inc.*, United States District Court, Eastern District, Case No. 1:17-cv-00853-DAD-EPG;
20 *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court, Case No. RG18906875;
21 *Alderson v. Alameda County Agricultural Fair Association*, Alameda County Superior Court, Case No.
22 RG18912654; *Terry v. Mare Island Dry Dock, LLC*, Solano County Superior Court, Case No.
23 FCS051650; *Mettler, Bender, and Rojas v. Les Schwab Tire Centers of California, Inc.*, San Joaquin
24 County Superior Court, Case No. STK-CV-UOE-2018-476; *Escalera v. La Tapatia Mexican Market,*
25 *Inc.*, San Joaquin County Superior Court, Case No., ST-CV-UOE-2017-5296; *Garcia, et al. v. HMS*
26 *Host USA, Inc.*, United States District Court, Northern District of California, Case No. 17-cv-03069-
27 RS; *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento County Superior Court, Case No. 34-
28 2017-00217486; *Grady, et al. v. People 2.0 dba The Hire Source, et al.*, San Joaquin County Case No.

1 STK-CV-UOE-2017-13867; *Kumar v. Forty Niners Stadium Management Company*, Santa Clara
2 County Superior Court, Case No. 17CV3121427; *Gast v. Flooring Liquidators, Inc.*, Stanislaus County
3 Superior Court, Case No. 2026223; *Russell v. KeHe Distributors, Inc.*, United States District Court,
4 Eastern District of California, Case No. 2:17-at-00592; *Smith v. Wal-Mart Stores, Inc. et al.*, United
5 States District Court, Northern District of California, Case No. 3:16-cv-02832-JD; *Titus v. The Martin-*
6 *Brower, LLC*, United States District Court, Eastern District of California, Case No. 2:17-cv-00558-
7 JAM-GGH; *Hugues v. The Morning Star Trucking Company, LLC, et al.*, Yolo County Superior Court
8 Case No. CV16-1215; *Ahmed v. Beverly Health and Rehabilitation Services, Inc., et al.*, United States
9 District Court, Eastern District of California, Case No. 2:16-cv-01747-WBS-KJN; *Guzman-Padilla, et*
10 *al. v. Gerard Van De Pol, et al.*, United States District Court, Eastern District of California, Case No.
11 2:17-cv-00196-JAM-KJN; *Jaime v. Walt Disney Parks and Resorts U.S., Inc.*, United States District
12 Court, Central District of California, Case No. SACV 15-01618-CJC(DFMx); ; *Stevens v. Suncrest*
13 *Solar, Inc.*, Fresno County Superior Court, Case No. 16CECG03355; *Cardoza v. Blazona Concrete*
14 *Construction, Inc.*, Alameda County Superior Court Case No. RG17866256; *Maasrani v. Waterton*
15 *Hospitality Management*, San Mateo County Superior Court, Case No. 17CIV05470; *Huynh v. Parker-*
16 *Hannifin Corporation*, Stanislaus County Superior Court, Case No. 2022325; *Moser v. O'Connor*
17 *Woods Housing Corporation*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2014-
18 0009861; *Bastami v. Semiconductor Components Industries, LLC*, Santa Clara County Superior Court,
19 Case No. 16cv297447; *Davis v. Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior
20 Court, Case No. BC592580; *Van Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District
21 Court, Eastern District of California, Case No. 1-16-cv-00066-SKO; *Clark v. Arrow Sign Co.*, San
22 Joaquin County Superior Court, Case No. STK-CV-UOE-2016-6457, *Moreno v. B.R. Funsten & Co.*,
23 Solano County Superior Court Case No. FCS046149, *Taylor v. Meadowbrook Meat Company, Inc.*,
24 United States District Court, Norther District of California, Case No. 3:15-cv-00132-LB, and *Perez et*
25 *al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin County Superior Court, Case No.
26 39-2012-00288653-CU-OE-STK, all wage-and-hour class actions with claims similar to the instant
27 matter. Not including this matter, we have several other wage-and-hour class actions currently pending
28 final approval in which we have been preliminarily approved as class counsel. My law firm and I have

