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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CHRISTOPHER CHACON, an individual, on
behalf of himself and on behalf of all persons
similarly situated and the State of California

Plaintiff,

v.

PANDA MOTORS, INC., a California
corporation; EDGAR CASTELLANOS, an
individual; and DOES 2-50, inclusive,

Defendants.

Case No. CIVDS202220

**DECLARATION OF MICHAEL C.
ROBINSON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing Date: April 20, 2023
Hearing Time: 1:30 p.m.

Department: S17
Judge: Hon. Joseph Ortiz

DECLARATION OF MICHAEL C. ROBINSON

I, Michael C. Robinson, declare:

1. I am an attorney admitted to practice before all courts of the State of California. I am a founding shareholder and the president at Robinson Di Lando, A Professional Law Corporation, counsel for plaintiff Nicholas Cordero, Vynz Punongbayan, and Luis Vegao (collectively “Plaintiffs”). I make this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA settlement. I have personal knowledge of the facts set forth in this Declaration based on my involvement in the case since its inception as one of four primary handling attorneys. If called as a witness, I could and would testify competently under oath regarding the facts set forth herein.

Background of Case

2. On or around April 20, 2022, Plaintiffs filed a class action complaint against defendants Panda Motors, Inc., OC Auto Exchange, California Motors Direct, LA Auto Exchange, Edgar Castellanos, Mase Aslanpoor, and David Aleman (collectively “Defendants”) alleging class claims for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or compensation in lieu thereof, failure to provide rest periods or compensation in lieu thereof, failure to pay due wages at termination, failure to furnish accurate wage statements, violation of Labor Code § 226(c), violation of Labor Code § 1198.5, violation of Labor Code § 2802, conversion, unfair competition, retaliation in violation of Labor Code section 1102.5, and Civil Penalties under Labor Code section 2699, et seq. (PAGA) (“Class Action Complaint”)

3. Prior to the filing of the Class Action Complaint, on or around February 9, 2022, Plaintiffs filed with the Labor and Workforce Development Agency (“LWDA”) and served on all Defendants a Labor Code Private Attorneys’ General Act (“PAGA”) Notice alleging substantially similar violations as those set out in the Class Action Complaint.

4. After the filing of the Class Action Complaint, Plaintiffs’ counsel became aware that another action alleging similar claims had been filed against defendants by former employee Christopher Chacon (Case No.: CIVDS2022220) (“Chacon Class Action”). Counsel for the

1 Class Action Complaint and counsel for the Chacon Class Action entered into a joint prosecution
2 agreement against Defendants. After various discussions among counsel regarding the
3 parameters of a potential second mediation session (the Chacon Class Action was mediated prior
4 to the filing of the Class Action Complaint), Plaintiffs in both actions and Defendants
5 (collectively, the “Parties”) agreed to attend a second mediation session with a mutually
6 acceptable mediator after conducting discovery in connection therewith.

7 5. Prior to mediation, the Parties engaged in written discovery which included an
8 extensive sampling of time and payroll records for non-exempt, hourly employees of Defendants
9 and pertinent written policies in place during the class period. After reviewing the records in
10 detail and conducting an analysis of the wage claims (including the use of an expert consultant),
11 the Parties attended a second mediation session before well-respected complex labor and
12 employment mediator Hon. Carl J. West (Ret.) on October 13, 2022. With the aid of the
13 mediator’s evaluation, the Parties reached the a settlement to resolve the Class Action Complaint
14 and the Chacon Class Action , the allegations of which the Parties have since consolidated for
15 settlement approval by way of a First Amended Complaint filed in the Chacon Class Action in
16 the interest of judicial efficiency.

17 6. Both Parties at mediation had strong positions regarding the certifiability of
18 Plaintiffs’ claims, the merits thereof, the manageability of a trial, and the likelihood in recovering
19 civil penalties for Plaintiffs and aggrieved employees. Nevertheless, I am informed and believe
20 that the Parties concluded, after considering the sharply disputed factual and legal issues
21 involved in both Actions, the risks associated with further prosecution, and the substantial
22 benefits to be received pursuant to the compromise and settlement of the litigation as set forth in
23 the subject settlement agreement, that settlement on the terms set forth herein is in the best
24 interest of Plaintiffs, class members, and Defendants, and is fair, reasonable and adequate.

25 **The Proposed Settlement**

26 7. Subject to the Court’s approval pursuant to Code of Civil Procedure section 382
27 and California Rules of Court, rule 3.679, *et seq.*, the Parties have agreed to settle the class action
28 cases by agreement upon the terms and conditions and for the consideration set forth in the

1 Settlement Agreement, a copy of which is attached to the Motion for Preliminary Approval of
2 Class Action and PAGA Settlement.

3 8. Defendants will stipulate, for purpose of this settlement only, as follows:

- 4 a. Certification of class defined as all non-exempt employees who are or previously
5 were employed by Defendants and performed work in California during the
6 period of October 14, 2016 to December 13, 2022 (“class members”).
- 7 b. Defendants will collectively pay \$950,000 (“Gross Settlement Amount”).
- 8 c. Defendants will pay the employer’s share of taxes separate and apart from the
9 Gross Settlement Amount.
- 10 d. Class members will be paid their proportionate share based on the total number of
11 workweeks worked during the class period.
- 12 e. The settlement administration costs will be paid out of the Gross Settlement
13 Amount.
- 14 f. Class counsel will apply for, and Defendants will not oppose, attorney’s fees of
15 \$316,666, which represents one-third of the Gross Settlement Amount, and costs
16 not to exceed thirty thousand dollars (\$30,000.00).
- 17 g. Defendants have agreed to pay \$50,000.00 as PAGA penalties, seventy-five
18 percent (75%) or \$37,500.00 of which will be paid to the LWDA out of the Gross
19 Settlement Amount, and 25% or \$12,500.00 of which will be distributed to
20 participating class members (class members who do not elect to opt out of the
21 settlement).
- 22 h. Any checks from this distribution that are not cashed by participating class
23 members within one-hundred-eighty (180) calendar days from the date of the
24 mailing of the checks shall be transmitted to the Controller of the State of
25 California to be held pursuant to the Unclaimed Property Law, California Civil
26 Code § 1500 *et seq.*, in the names and corresponding amounts associated with
27 each class member and/or aggrieved employee whose check(s) are cancelled.
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- i. Defendants represent that there are approximately 34,000 workweeks during the class period. If the workweek number increased by more than 10% of the estimate stated herein, the Settlement Amount will increase proportionally for the number of workweeks over 10% of 34,000 (37,400).

The Settlement Was Negotiated at Arms-Length and Not Collusive

9. I am informed and believe that the settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the Parties and their counsel. The settlement was reached after extensive factual and legal investigation and research; record review and analysis; extensive correspondence and communication between counsel; interviews with multiple employees of Defendants; a review of pleadings, evidence and rulings in similar litigated cases elsewhere in the state; a review of similar cases in the same industry and case results; preparation for and attendance at a mediation (after an initial mediation was conducted in the Chacon Class Action); followed by weeks of negotiations after mediation finalizing the terms and conditions of the general settlement parameters agreed to by the Parties at mediation. The settlement amount is, of course, a compromise figure. It considered the risks related to certifiability, liability, manageability, and collectability.

10. Plaintiffs' counsel asserts that the wage and hour claims and the claims for resulting penalties would be certified. On the other hand, I am informed and believe that Defendants argued that Plaintiffs could not meet the requirements of class certification because any wage discrepancies are not the product of an overarching policy that was uniformly applied; that class members were paid overtime for all the overtime hours worked at the proper rate of pay; that class members were paid for all hours under Defendants' control, or otherwise suffered or permitted to work by Defendants; that meal periods were provided and rest periods were permitted; that Defendants' meal and rest period policies were compliant; that Defendants did not deter class members from taking meal and rest periods and any untimely or missed meal periods were elections by class members and not caused by Defendants or class members were paid the required premiums; and that Defendants thus provided all pay owed to class members by separation of employment and issued accurate wage statements to class members. I am

1 informed and believe that Defendants further contend that class certification would not be
2 warranted because individual liability issues predominate over any class-wide allegations.

3 11. While class counsel believes in their chance of success of certifying the claims,
4 class counsel also recognize the potential risk, expense, and complexity posed by further
5 litigation. Moreover, I am informed and believe that litigating Plaintiffs' claims in this litigation
6 – claims that involve numerous class members during the class period – would require
7 substantial preparation and discovery and ultimately would involve the deposition and
8 presentation of numerous more witnesses (including class members and expert witnesses), as
9 well as the consideration, preparation, and analysis of expert reports. Therefore, should litigation
10 have progressed any further, I am informed and believe there would have been significant
11 expense incurred by each side – in addition to the expense already incurred.

12 12. In light of the heavily contested legal and factual issues, the risks of continued
13 litigation, and substantial benefits to class members under the settlement, I am informed and
14 believe that the terms and conditions of this class settlement are fair and reasonable to all sides.

15 **The Proposed Enhancement Award to Plaintiffs as Class Representatives is Reasonable**

16 13. I believe that Plaintiffs should be awarded an enhanced award for their service as
17 class representatives, for answering extensive questions by Class Counsel, for being available
18 and answering questions during mediation, for the risk of being the named plaintiff, and for
19 providing Defendants with a more expansive release of claims, including a waiver based upon
20 California Civil Code section 1542, in exchange for the enhancement award.

21 14. Plaintiffs' counsel is informed and believes that Defendants do not oppose the
22 requested enhancement to Plaintiffs.

23 15. Plaintiffs' counsel can attest that Plaintiffs devoted a great deal of time assisting
24 Plaintiffs' counsel in this case, communicated with counsel very frequently, and were very
25 valuable participants in the strategy for and success of the mediation. Plaintiffs risked intrusive
26 discovery and the payment of employer costs. In the experience of class counsel, the typical
27 enhancement award in wage and hour class actions ranges from approximately \$10,000 to
28 \$25,000, although some awards are higher. Plaintiffs' counsel is seeking an enhancement of

1 \$10,000 each to Plaintiffs for their service, and which Plaintiffs' counsel is informed and
2 believes is commensurate to the time and effort they have put forth in the prosecution of this
3 matter.

4 **The Proposed Attorneys' Fees and Costs are Reasonable**

5 16. Plaintiffs' counsel seeks an attorneys' fees award of \$316,666, which is
6 approximately one-third of the gross settlement amount, to be divided between Class Counsel as
7 follows (19.5% to Blumenthal Nordrehaug Bhowmik De Blouw, LLP, 45.5% to Zakay Law
8 Group, APLC, and 35% to Robinson Di Lando, APLC). I am informed and believe that the
9 requested fee falls well within the historical range of attorney's fee awards under the common
10 fund theory, which is generally from 25% to 50%.

11 17. I am informed and believe that the requested fee is fair compensation for
12 undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis.

13 18. Extensive investigation was done before and after litigation began with the help of
14 Plaintiffs, class members and consultants that included detailed review of time and payroll
15 records; discussion with other class members, months of negotiation between opposing counsel,
16 discussion of diametrically opposed viewpoints regarding the merits of the claims and
17 certifiability of the class, and the manageability of the claims at a class action or representative
18 action trial. Moreover, significant expense was expended, including filing fees, time spent with
19 Plaintiffs, investigation, and attending mediation in an attempt to resolve the cases, among other
20 things.

21 19. Plaintiffs' counsel have borne, and continue to bear, the entire risk and cost of
22 litigation associated with this class action and representative action on a purely contingency
23 basis.

24 20. I am informed and believe that the factual and legal issues posed in this case were
25 evolving and difficult. Plaintiffs' counsel has easily already expended over 300 hours on this
26 matter, including:
27
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- Investigation of this claims, initial interviews with Plaintiffs, reviewing employment records, time and pay records, and exploring Defendants' corporate structure;
- Filing and serving pleadings in the Class Action Complaint;
- Compliance with prerequisites in connection with Plaintiffs' PAGA Action;
- Preparing notices, meeting and conferring with counsel for Defendants to prepare joint reports, discussions with Plaintiffs' counsel, and court appearances;
- Discussing the potential merits of mediation and negotiating the parameters thereof;
- Multiple interviews with Plaintiffs and other former and current employees of Defendants regarding the claims, records produced, and gathering of evidence in support of Plaintiffs' claims;
- Preparing for and attending mediation;
- Negotiating and fully executing a Memorandum of Understanding;
- Negotiating, finalizing and fully executing the Settlement Agreement;
- Communicating with Plaintiffs who request updates and other information regarding this matter;
- Working on the instant motion for preliminary approval.

21. I am informed and believe that further efforts will be necessary for preliminary and final approval.

22. Based on my past experience in wage and hour class action litigation, I believe that my office is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help class members understand the terms of the proposed settlement, and to assist class members in preparation and documentation of their claims.

23. I am also informed and believe it to be likely that, even after final approval of the settlement has been granted, my office will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes related to class members' claims under

1 the terms of the proposed settlement, as to the amounts of individual claims and perhaps other
2 individual issues.

3 24. I am informed and believe that my office will have to work with the Settlement
4 Administrator to submit a report to this Court regarding the distribution plan pursuant to Code of
5 Civil Procedure section 384 along with the proposed judgment, which will require further time
6 and cost to be expended.

7 25. I am informed and believe the fees and costs requested are justified by the results
8 achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by
9 Plaintiffs' counsel.

10 26. I am informed and believe that the requested attorneys' fees and costs will not be
11 opposed by Defendants.

12 **Attorney Background**

13 27. I am the lead attorney for Plaintiffs in this case. I have been practicing law for
14 over thirty years, and I am one of the founding shareholders of Robinson Di Lando (firm
15 inception 1992). My practice areas of expertise include insurance law, professional errors and
16 omissions, employment litigation and class claims. I have substantial trial experience that
17 includes trials involving employment claims.

18 28. Orion S. Robinson is one of the primary attorneys for Plaintiff in this case and
19 worked on this matter since the case started. Mr. Robinson has been practicing law since 2013,
20 and he is a principal at Robinson Di Lando. Mr. Robinson's practice areas of expertise include
21 insurance law, employment litigation and class claims.

22 29. Various Robinson Di Lando associate attorneys also worked on tasks in this case.

23 30. My firm has the experience, resources, and means necessary to allow us to
24 provide adequate representation as class counsel to all class members in this litigation. Myself
25 and Orion Robinson, have handled over twenty-five (25) wage and hour class action and PAGA
26 lawsuits both as plaintiffs' counsel and defense counsel. Currently, my firm is acting as counsel
27 in over five (5) wage and hour class actions and representative PAGA actions.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on March 20, 2023 at Los Angeles, California.

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Michael C. Robinson