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Attorneys for Plaintiff, the Class, and Aggrieved Employees
(Additional Counsel on Following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

DIEN TRUONG, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DS SERVICES OF AMERICA, INC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: FCS054399

[Assigned to the Hon. E. Bradley Nelson, Dept. 4]

**DECLARATION OF DENNIS S. HYUN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 29, 2021

Time: 9:00 a.m.

Dept.: 4

ADDITIONAL ATTORNEYS

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Attorneys for Plaintiff, the Class, and Aggrieved Employees

1 I, Dennis S. Hyun, hereby declare and state as follows:

2 1. I am an attorney at law duly admitted to practice before all courts in the State of
3 California and am a member of the law firm of the Hyun Legal, APC, one of the attorneys of
4 record for Plaintiff Dien Truong (“Plaintiff”), in the above-entitled action.

5 2. I have personal knowledge of the matters set forth herein, and if called upon as a
6 witness to testify thereto, I could and would competently do so.

7 3. I am one of the primary attorneys on this matter. My qualifications are as
8 follows: I received my JD from Loyola Law School in 2002. I was named to the Dean’s Honor
9 List from 2000-2002. During law school, I was a Senior Research Editor for Loyola
10 International & Comparative Law Review. I was also a research assistant for Professor
11 Levenson, an extern at the U.S. District Court for the Honorable Audrey B. Collins, and a clerk
12 at the U.S. Attorney’s Office, Criminal Division. I also served as a summer law clerk at the
13 white-collar criminal defense firm, Lightfoot, Vandeveld, *et al.*, which became part of Crowell
14 & Moring LLP. Upon graduation from law school, I served as a research attorney in the Los
15 Angeles County Superior Court for the Hon. J. Stephen Czuleger, the Hon. Owen Lee Kwong,
16 the Hon. Laurie D. Zelon, and the Hon. Joanne B. O’Donnell. After my clerkship ended, I
17 practiced as a labor and employment associate for the next 8 years, including most recently as a
18 senior associate at Seyfarth Shaw LLP, one of the most prestigious labor and employment law
19 firms in the country, as well as DLA Piper LLP (US), the largest law firm in the world, and
20 Morgan, Lewis & Bockius LLP. I am currently a shareholder in the law firm Hyun Legal, APC.

21 4. My primary practice has been employment law throughout my entire private
22 career. I have handled a number of wage and hour matters including class actions and individual
23 actions, on behalf of plaintiffs and defendants. I have a practice that encompasses cases in the
24 Orange County Superior Courts, the Los Angeles County Superior Courts, the San Diego County
25 Superior Courts, the United States District Courts for the Southern, Central, Northern and
26 Eastern Districts of California, the California Court of Appeal, and the Ninth Circuit.

27 5. I have served as Class Defense Counsel in a number of wage and hour class
28 actions, including but not limited to: *Bradley v. Networkers Int’l, LLC*, 211 Cal. App. 4th

1 1129 (2012); *Chiu v. Citrix Systems, Inc.*, C.D. Cal. Case No. SACV11-01121 DOC (RNBx);
2 *Hodge v. Aon Insurance*, Los Angeles Sup. Ct. Case No. BC 265725; *Hoyng v. Aon Insurance*,
3 Los Angeles Sup. Ct. Case No. BC 377184; *Jimenez v. Allstate Ins. Co.*, C.D. Cal. Case No.
4 CV10-08486 JAK (FFMx); *Marino v. BP West Coast Products*, Los Angeles Sup. Ct. Case No.
5 BC 357987; *McEntee v. Ryland Homes*, Los Angeles Sup. Ct. Case No. BC 390868; *McKinstry*
6 *v. Accenture*, C.D. Cal. Case No. SACV11-1335 DOC (ANx); *Munoz v. Decron Properties*, Los
7 Angeles Sup. Ct. Case No. BC387644; and *Rodriguez v. BP West Coast Products*, Los Angeles
8 Sup. Ct. Case No. BC 350736. As defense counsel, I have taken over 50 class member and
9 individual/representative plaintiff depositions. I have drafted class certification and
10 decertification papers, including in *Bradley*, which was initially affirmed by the Court of Appeal,
11 but reversed pursuant to *Brinker v. Superior Court*, 53 Cal. 4th 1003 (2012).

12 6. Currently, I am and/or was lead plaintiff's counsel in the following wage and hour
13 class or representative actions: *Asad v. Chevron Stations, Inc.*, Los Angeles Sup. Ct. Case No.
14 BC470198; *Barrera v. Home Depot (USA), Inc.*, N.D. Cal. Case No.: C 12 5199 LHK (HRL);
15 *Bararsani v. Coldwell Banker*, Los Angeles Sup. Ct. Case No. BC495767; *Barreras v. Michaels*
16 *Stores, Inc.*, N.D. Cal. Case No. C12-04474 PJH; *Brown v. CVS Pharmacy, Inc.*, C.D. Cal. Case
17 No. 2:15-cv-07631-PSG-PJW; *Chatman v. RMI Int'l, Inc.*, Los Angeles Sup. Ct. Case No. BC
18 495755; *Chavez v. Converse, Inc.*, N.D. Cal. Case No. 15-cv-03746-NC; *Dynabursky v.*
19 *AlliedBarton, LLC, et al.*, C.D. Cal. Case No. 8:12-cv-02210-JLS-RNB; *Gonzales v. Wells Fargo*
20 *Bank, N.A.*, Los Angeles Sup. Ct. Case No. BC502826; *Lao v. H&M Hennes & Mauritz*, N.D. Cal.
21 Case No. 5:16-cv-333 EJD; *Lee v. The Pep Boys Manny Moe & Jack of California*, Los Angeles
22 Sup. Ct. Case No. BC 496075; *Magadia v. Wal-Mart Assocs.*, N.D. Cal. Case No. 5:17-cv-00062-
23 LHK; *Naranjo v. Bank of America, N.A.*, N.D. Cal. Case No. C 14-02748 LHK; *Ortegon-Ramirez*
24 *v. Cedar Fair*, Santa Clara Sup. Ct. Case No. 1-13-CV-254098; *Pace v. PetSmart, Inc.*, C.D. Cal.
25 Case No. SACV13-500 DOC; *Rodriguez v. NIKE Retail Services, Inc.*, N.D. Cal. Case No. 5:14-
26 CV-1508 BLF; *Stafford v. Brink's, Incorporated*, Case No. CV 14-01352 MWF (PLAx) and *Vass*
27 *v. Gardner Trucking*, San Joaquin Sup. Ct. Case No. 39-2013-294819-CU-OE-STK. Additionally,
28 in *Chavez*, Case No. 15-cv-03746-NC, *Dynabursky* Case No. 8:12-cv-02210-JLS-RNB, *Pace*,

1 Case No. SACV13-500 DOC, *Rodriguez*, Case No. 5:14-CV-1508 BLF, *Stafford*, Case No. 14-
2 01352 MWF (PLAx), *Gonzales*, Los Angeles Sup. Ct. Case No. BC502826, and *Magadia*, Case
3 No. 5:17-cv-00062-LHK, I was certified as class counsel pursuant to the plaintiff's motion for
4 class certification. Further, in *Stafford* and *Magadia*, we tried these certified class claims via
5 bench trial and prevailed. In *Magadia*, we obtained a \$102 million judgment for the class against
6 Walmart. Moreover, I have been approved as class counsel in connection with numerous class
7 settlements.

8 7. Each side has apprised the other of their respective factual contentions, legal
9 theories and defenses, resulting in extensive arms' length negotiations taking place among the
10 Parties. Based on their own independent investigation and evaluation, the Parties and their
11 respective counsel are of the opinion that the Settlement for the consideration and on the terms
12 set forth in the Class Action Settlement Agreement are fair, reasonable, and adequate and the
13 settlement is in the best interests of the Class and Defendant in light of all known circumstances
14 and the expenses and risks inherent in litigation. Although Plaintiff believes in the merits of the
15 alleged claims and maintains that there is no reason for reducing penalties under the Private
16 Attorneys General Act (the "PAGA"), Plaintiff is aware that Defendant may raise defenses on
17 the reduction of PAGA penalties and that these arguments could be persuasive to the Court.
18 Thus, even if Plaintiff were to successfully prove his claims at trial, there is a possibility that the
19 Court may only award a small percentage of the maximum PAGA penalties, as the Court has
20 discretion to do so. The Gross Fund Value was premised with these risks in mind associated
21 with the possibility of the Court denying class certification, refusing to award waiting time
22 penalties, and significantly reducing Plaintiff's PAGA penalties, along with other attendant risks.

23 8. Plaintiff also believes in the fairness of the settlement that is based on factoring in
24 the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of
25 action or theories alleged in the operative Complaint, the possibility of appeals.

26 9. Plaintiff and Plaintiff's counsel are adequate representatives in that they have no
27 conflicts with the class and will adequately represent the class.

28 10. On February 20, 2020, Plaintiff filed a Class Action Complaint in the Superior

Court of the State of California for the County of Solano. The Complaint alleges the following claims: (1) failure to pay minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; (2) failure to provide rest breaks in violation of Labor Code sections 226.2 and 226.7. (3) failure to provide accurate itemized wage statements in violation of Labor Code section 226(a); (4) violation of Business and Professions Code section 17200 *et seq.* for unfair business practices.

11. On March 26, 2020, Plaintiff filed a First Amended Complaint which added a cause of action under the PAGA, seeking Labor Code penalties on behalf of the State of California and Defendant's non-exempt California employees.

12. Since the filing of the Complaint, the Parties engaged in formal and informal discovery, including the production of payroll records for the Class, after which the Parties agreed to mediate the case. On December 1, 2020, the Parties participated in a full-day mediation with mediator Michael E. Dickstein, Esq., wherein the Parties and their counsel agreed to settle this action in its entirety. In connection with the mediation, Defendant produced data, including payroll records for the Class, which allowed Plaintiff to conduct a full damage analysis. Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face liability in the amount of approximately \$2.7 million if Plaintiff prevailed on his class and representative claims. This number is based upon Plaintiff's analysis of the payroll records of the putative class. Specifically, Plaintiff calculated this amount based on the following breakdowns for each class and PAGA claim:

Minimum wages principal damages	\$252,266.27
Minimum wages PAGA penalties	\$608,100.00
Rest break minimum wage principal damages (unpaid wages)	\$263,979.33
Rest break premium wages	\$395,969.00
Rest break PAGA penalties	\$608,100.00
203 penalties	\$154,560.00
Total	\$2,696,074.60

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2 13. The Stipulation provides for \$725,000.00 as the Gross Fund Value. Stipulation at
3 ¶ 6. The Net Fund Value (calculated after deduction of Class Counsel Award of fees (up to
4 \$253,750.00) and costs (up to \$30,000.00), Class Representative Enhancement Award (up to
5 \$15,000.00), LWDA portion of the PAGA Payment (\$30,000.00), and Settlement Administration
6 Costs (estimated at \$2,997.45)), is estimated to be approximately \$393,252.55. Stipulation at ¶¶
7 5, 7-9. Each individual Settlement Share shall be determined by first dividing the NFV by the
8 total number of weeks worked by all Settlement Class Members (and paid below the applicable
9 minimum wage) during the Class Period and then multiplying that amount by the total number of
10 weeks worked by the individual Settlement Class Member (and paid below the applicable
11 minimum wage) during the Class Period. Stipulation at ¶ 12.

12 14. Further, this case was heavily litigated in another matter entitled, *Corona v DS*
13 *Services of America, Inc.*, Los Angeles County Superior Court Case No. 19STCV03835 (the
14 “*Corona* Action”). Defendant and the plaintiff therein, Hector Corona (“Corona”), entered into a
15 class and PAGA settlement and they were asserting the position that the release in the *Corona*
16 Action applied to this action and wiped out at least some of the claims asserted by Plaintiff
17 herein. As a result, Plaintiff filed a motion to intervene in the *Corona* Action and objected to the
18 settlement reached therein in an effort to protect the claims in this current action. As a result of
19 the efforts of Plaintiff and his counsel, they preserved the viability of this action and did not
20 concede the applicability of the settlement in the *Corona* Action. Indeed, Plaintiff and his
21 counsel achieved a settlement where the average award is approximately \$3,090.61, with the
22 estimated highest gross payment being \$4,797.23. These numbers undisputedly show a fair and
23 adequate settlement, which was achieved only after Plaintiff and his counsel fought to preserve
24 the rights of class members in this action by objecting to the settlement in the *Corona* Action.

25 15. My current billing rate is at \$750.00 per hour. Courts have approved my hourly
26 rate of \$650 since 2014. In cases approved in 2018 and 2019, the Santa Clara County Superior
27 Court approved my hourly rate of \$750 in *Hernandez v. Wells Fargo Bank*, Santa Clara Sup. Ct.
28

1 Case No. 16CV299319, and \$700 in *Huertas v. Chevron Stations*, Santa Clara Sup. Ct. Case No.
2 17CV309996, and *Chavez v. Hugo Boss, Inc.*, Santa Clara Sup. Ct Case No. 18CV322644. In
3 2019, the Honorable David Cunningham of the Los Angeles County Superior Court approved
4 my hourly rate of \$700 in connection with awarding attorneys' fees after we prevailed on the
5 certified class action in *Stafford*, Case No. BC532260. In 2020, Judges Davila and Beeler of the
6 United States District Court, Northern District of California, approved my hourly rate of \$750 in
7 *Ramirez v. Walgreen*, N.D. Cal. Case No. 18-cv-03921-EJD (Dkt. No. 34), and in *Reilly v.*
8 *Recreational Equipment, Inc.*, N.D. Cal. Case No. 3:18-cv-07385-LB (Dkt. No. 61), respectively,
9 as well as the Santa Clara County Superior Court in *Hernandez v. Wells Fargo Bank*, Santa Clara
10 Sup. Ct. Case No. 16CV299319. Moreover, in *Brown*, C.D. Cal. Case No. 2:15-cv-07631-PSG-
11 PJW, *Pace*, Case No. SACV13-500 DOC, *Barrera* N.D. Cal. Case No.: C 12 5199 LHK (HRL),
12 *Naranjo*, N.D. Cal. Case No. C 14-02748 LHK, *Ortegon-Ramirez*, Case No. 1-13-CV-254098,
13 and *Vass*, Case No. 39-2013-294819-CU-OE-STK, the Courts in those cases found my fee
14 request as reasonable, which was supported by a lodestar based on my hourly rate of \$650.
15 Further, Judge Gutierrez in *Brown v. CVS* noted as follows when approving my hourly rate of
16 \$650: "[t]he Court finds that, given the type of work performed and the experience of counsel in
17 this case, **Plaintiff's attorneys performed in the upper quartile of similarly situated**
18 **attorneys**, and so are entitled to fees in the top range of that suggested by the Real Rate Report."
19 *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWX), 2017 WL 3494297, at *8 (C.D.
20 Cal. Apr. 24, 2017) (emphasis added). I have incurred a total of 183.8 hours to date. I anticipate
21 spending an additional 10 hours through approval and post-approval, including conferring with
22 class members, defense counsel and the administrator, as well as appearing on the hearing of the
23 Motion for Approval. As such, the total of my firm's attorney's fees through the approval
24 hearing is expected to be \$145,350.00 (193.8 hours x \$750). A true and correct copy of the
25 breakdown of my hours is attached hereto as Exhibit "A."

27 I declare under penalty of perjury under the laws of the State of California and the United
28 States that the foregoing is true and correct.

1 Executed on July 7, 2021, at Los Angeles, California.

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3 _____
Dennis S. Hyun

EXHIBIT “A”

Description of Time	Amount
Review client documents	2.5
Research re claims, including minimum wage of various cities/counties	3.2
Review and revise paga letter	1.3
Draft complaint	7.5
Draft first amended complaint	5.9
Research re court	2.1
Meet and confer with defense counsel	0.4
Draft cmc statement	1.5
Draft first set of special interrogatories	4.6
Draft first set of requests for production	5.9
Review discovery responses and defendant's document production	8.4
Draft meet and confer email	5.7
Review docket in Corona v. DS Services, LA Superior Court Case No. 19STCV03835	0.6
Review motion for settlement, settlement agreement, supporting documents in Corona	8.3
Research and draft motion for leave to intervene	9.5
Draft complaint in intervention	4.6
Draft proposed order	1.2
Review opposition to motion to intervene	5.9
Draft reply iso motion to intervene	8.5
Draft objection to Corona settlement	5.2
Draft notice of appearace in Corona	1.2
Draft notice of objection in Corona	0.6
Draft mediation brief	8.3
Review data produced by Defendant	1.2
Conduct premediation conference call with mediator	0.7
Attend mediation	7.5
Review and revise memorandum of understanding	3.5
Review and revise long-form settlement agreement	8.5
Review and revise notice of class action settlement	6.9
Draft attorney declaration in support of motion for preliminary approval	4.5
Draft client declaration in support of motion for preliminary	3.6
Draft motion for preliminary approval	8.9
Draft proposed order	3.5
Review tentative ruling	1.5
Appear and argue at hearing on motion for preliminary	1.2
Draft motion for final approval	8.5
Draft attorney declaration for final approval	5.2
Draft client declaration for final approval	2.5
Review settlement administrator reports	1.6
Communicate with settlement administrator	1.5
Review and revise administrator declaration	3.2
Communicate with class members on settlement	2.4
Draft proposed judgment and order	4.5
Total	

