

1 **Farzad Rastegar (SBN 155555)**
farzad@rastegarlawgroup.com
2 **Danielle Sherrod (SBN 225352)**
danielle@rastegarlawgroup.com
3 **RASTEGAR LAW GROUP, APC**
22760 Hawthorne Boulevard, Suite 200
4 Torrance, California 90505
Tel. (310) 961-9600
5 Fax (310) 961-9094

6 Attorneys for Plaintiff Guillermo Valenzuela,
individually, and on behalf of all other similarly
7 situated current and former employees of Defendants

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10
11 GUILLERMO VALENZUELA,
individually, and on behalf of all other
12 similarly situated current and former
13 employees of Defendants,

14 Plaintiffs,

15 vs.

16 NU LINE TECHNOLOGIES, LLC, a
California corporation; and DOES 1 through
17 10, inclusive,

18 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/19/2021 at 08:47:00 PM
Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

CASE NO.: 37-2020-00015352-CU-OE-CTL

[Assigned to Hon. Keri Katz, Dept. C-74]

**DECLARATION OF FARZAD RASTEGAR
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF CLAIMS**

Date: June 11, 2021
Time: 8:30 a.m.
Dept: C-74

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1. I am now, and have been at all times relevant to this declaration (“Declaration”) been, an Active Member of the State Bar of California, the principal of Rastegar Law Group, A Professional Corporation (“Rastegar Law Group”), and counsel of record for Named Plaintiff Guillermo Valenzuela (“Named Plaintiff”) in the above-captioned Action, filed in the Superior Court of the County of San Diego. I make this Declaration on the basis of personal firsthand knowledge unless another source of information or belief clearly appears from the context, and as to all such matters I believe them to be true. If called as a witness, I could and would readily and competently testify to all matters stated herein.

3. On May 26, 2020, Named Plaintiff filed a class action complaint (the “Complaint”) against Defendant Nu Line Technologies, LLC (“Defendant,” and together with “Named Plaintiff,” the “Parties”), alleging a cause of action for civil penalties under the Private Attorneys General Act of 2004 (Cal. Lab. Code § 2699, *et seq.*) (“PAGA”). Specifically, Named Plaintiff alleges that Defendant failed to provide Class Members with timely and completely duty-free meal and rest periods.

5. Following the filing of the Complaint, my office made significant investigation regarding the claims of Named Plaintiff and the potential defenses thereto.

1 Parties arrived at a settlement during the mediation. As part of the Settlement, Named Plaintiff
2 agreed to sign a general release as to Defendant, which is to include a California Civil Code
3 section 1542 waiver and non-disparagement clause among other terms and provisions. Named
4 Plaintiff filed a First Amended Complaint on March 16, 2021 adding eight (8) causes of action to
5 the PAGA cause of action in accordance with the terms of the Settlement as follows: (a) Failure
6 to Provide Meal Periods [Cal. Lab. Code §§ 204, 226.7 and 558]; (b) Failure to Provide Required
7 Rest Breaks [California Labor Code §§ 226.7 and 512]; (c) Failure to Provide Accurate Records
8 of Meal Periods [Cal. Lab. Code § 1174 and IWC Order § 7(A)(3)]; (d) Failure to Pay Minimum
9 Wage [Cal. Lab. Code §§ 558 and 1197.1]; (e) Failure to Pay Overtime Compensation [Cal. Lab.
10 Code § 558]; (f) Failure to Timely Pay All Wages at Termination [California Labor Code §§
11 201, 202 and 203]; (g) Failure to Furnish Accurate Itemized Wage Statements [Cal. Lab. Code
12 §§ 226(a)]; and (h) Unlawful Business Practices [California Business and Professions Code §§
17200, et seq.].

13 7. The Settlement negotiations were at arm's length and, although conducted in a
14 professional manner, were adversarial. The Parties went into the mediation willing to explore
15 the potential for a settlement of the dispute, but each side was also committed and prepared to
16 litigate through trial and appeal if a settlement had not been reached. The proposed Settlement
17 was reached at the end of a process that was neither fraudulent nor collusive. To the contrary,
18 counsel for the Parties advanced their respective positions throughout the settlement
19 negotiations.

20 8. Prior to reaching a settlement, my office conducted an investigation into the
21 claims alleged by Named Plaintiff. My office met with Named Plaintiff and conducted legal
22 research regarding the application of the applicable California Labor Code ("Labor Code")
23 sections. After agreeing to engage in private mediation, Defendant provided my office with
24 information regarding the Class, including the estimated number of putative Class Members, a
25 sampling of Class Members' timekeeping and payroll records, and other relevant information.
26 Defendant provided Plaintiff limited payroll and timekeeping data. My office carefully analyzed
27 this information and, based on this analysis, was able to act intelligently and effectively in
28 negotiating the proposed Settlement.

The Proposed Settlement Is Reasonable

9. The proposed Settlement Agreement is a fair, reasonable, and adequate settlement for Named Plaintiff and the members of the Class. There is no doubt that litigation of Named Plaintiff's claims would have been lengthy and expensive for both sides. There was risk that, at the end of the litigation process, members of the Class might have received nothing. Even if a class was certified and the class prevailed at trial, Class Members would have had to wait several years to receive any relief. *Id.* In contrast, through the proposed Settlement, Class Members will receive timely relief and will not have to bear the risk of an unfavorable judgment.

10. My office and Named Plaintiff were and remain confident of the merits of this case. My office considered several factors in reaching the decision to settle at this point in the litigation. My office has calculated Defendant's potential liability for wage and hour violations (including meal period, minimum, straight time and overtime wage and reimbursement violations) and civil penalties at Seven Million Eight Hundred Forty-Nine Thousand Seven Hundred Sixty-Six Dollars and Eighty-Three Cents (\$7,849,766.83). The Class Period is the period of time from May 26, 2019, through February 9, 2021. The calculation of damages and penalties is as follows:

Damages

Meal Periods:

The universe of sample data provided by Defendant was purported to be representative of the payroll and timekeeping data for all former and current employees employed by Defendant. Database expert Aaron Woolfson's ("Woolfson") analysis of that data shows that, out of a total of 5,008 paychecks, 4,594 reflected meal period violations that would have entitled the subject employees to meal period premiums for apparent incomplete, missing and late (i.e., after five (5) complete hours on a shift) meal periods (i.e., ninety-one percent (91%)). Based on the data, the aggregate amount owed to employees reflected in the sample data set for unpaid meal period premiums is \$1,034,045.35. Applying a legal rate of interest of ten percent (10%) through the date of the mediation (i.e., December 9, 2020), that amount becomes \$1,137,449.88.

Minimum Wages, Straight Time, and Overtime:

16,163 (total number of shifts in data sample)
x 0.1667 hours (10 minutes per shift converted to hours)
x \$56.24 per hour (estimate of average hourly rate for drivers)
x 1.5 (most, if not all, of this time should be paid at overtime rate)
= \$227,297.23 (with annual legal interest rate of 10% = \$250,026.95)

Reimbursement Claims:

93 (total number of employees)
x \$70.00 (average amount deducted for uniform at employment initiation)
\$6,510.00 (with annual legal interest rate of 10% = \$7,161.00)
Total Damages = \$1,394,637.83 (i.e., \$1,137,449.88+ \$250,026.95+\$7,161.00)

Penalties

Plaintiff and all Aggrieved Employees are entitled to civil penalties as a result of the violations by Defendant set forth above. For the purpose of PAGA and its one-year statute of limitations, the relevant period of analysis is from May 26, 2019 (i.e., one (1) year prior to filing of the Initial Complaint) to the present, equating to approximately 1.58 years (i.e., the PAGA Period). The analysis will also be conducted based on the total number of Aggrieved Employees or ninety-three (93).

Labor Code § 226

For its failure to maintain accurate payroll records, by not accounting for premium payments owed to the Aggrieved Employees, and off-the-clock work, Defendant is liable for Labor Code section 226 penalties calculated by Woolfson to equal \$369,300.00. Woolfson calculated penalties pursuant to Labor Code section 226.3 at \$4,524,250.00.

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1 *Labor Code § 1174.5*

2 For its failure to maintain accurate payroll records, by not accounting for premium
3 payments owed to the Aggrieved Employees, and off-the-clock work, Defendant is liable for
4 Labor Code §1174.5 penalties calculated as follows:

5 $93 \text{ employees} \times \$500.00 \text{ per employee} \times 1.58 \text{ years} = \$73,470.00$

6
7 *Labor Code § 203*

8 For failure to pay its employees all earned and unpaid wages to discharged or quitting
9 employees in a timely fashion, Defendant is liable for waiting time penalties. Under Labor Code
10 § 203, the wages of the discharged or quitting employee continue as a penalty from the due date
11 at the same rate until paid for up to thirty (30) days. Based upon Woolfson's analysis, seventy-
12 three (73) of the ninety-three (93) employees comprising the total number of employees in the
13 sample data set quit or were discharged during the period covered by the sample (i.e., seventy-
14 eight percent (78%)). Per Woolfson's analysis, the average number of hours worked per day for
15 employees in the sample data set is 8.39. Based on these assumptions, the calculations are as
16 follows:

17 $\$56.24 \text{ average wage} \times 8.39 \text{ hours per day} \times 30 \text{ days} \times 73 \text{ former employees} = \$1,033,359.00.$

18 *Labor Code § 558*

19 Under Labor Code § 1197.1, Plaintiffs are entitled to penalties for each underpaid
20 employee for each pay period amounting to \$50.00 for each initial violation and \$100 for each
21 subsequent violation, regardless of whether the violation is intentionally committed. Our
22 database expert calculated this amount to be \$454,750.00.

23 Total Penalties = \$6,455,129.00 (\$369,300.00 + \$4,524,250.00 + \$73,470.00 + \$1,033,359.00 +
24 \$454,750.00).

25 *Total Exposure*

26 Total Exposure = \$7,849,766.83 (\$1,394,637.83 + \$6,455,129.00).

1 11. The foregoing analysis does not include the other claims alleged by Named
2 Plaintiff (i.e., failure to maintain required records, failure to pay all wages due to discharged and
3 quitting employees, etc.) because these claims are largely derivative from the meal period and
4 rest break claims and/or are difficult to quantify from the analysis of timekeeping records. They
5 were therefore excluded from the damages analysis.

6 12. Given the potential damages and the substantial risks entailed by this case, the
7 Three Hundred Thousand Dollar (\$300,000.00) non-reversionary Total Settlement Amount is
8 reasonable. This Settlement is reasonable as it equates to an approximate gross settlement
9 amount per Class Member of Three Thousand Two Hundred Twenty-Six Dollars (\$3,226) per
10 person (i.e., $\$300,000.00 \div 93 = 3,225.8$). This is a very good result compared to similar cases of
11 which Class Counsel are aware. Although Named Plaintiff and my office are confident of the
12 merits of this case, we still had to balance the strengths of this case against the risks in further
13 litigating this Action. A significant risk in this case is whether Named Plaintiff's claims would
14 be deemed suitable for class treatment. Brinker Restaurant Corp. vs. Superior Court presents a
15 high hurdle in terms of class certification, as it established a "provide" standard for meal periods
16 as opposed to an "ensure" standard, creating a tougher standard relating to certification of meal
17 period claims. 53 Cal. 4th 1004 (2012). Based on my experiences, trial courts often interpret
18 Brinker to find that common issues are outweighed by individual inquiries related to why an
employee may not have taken a compliant meal period.

19 13. Moreover, certifying the rest break claim would be problematic as Named
20 Plaintiff would be required to rely heavily on anecdotal testimony. Demonstrating common
21 issues would be fraught with assertions of individual inquiries at both the class certification stage
22 and beyond. If the certification motion was not granted, the likelihood is that Defendant would
23 end up paying only a tiny fraction of the amount it is agreeing to pay pursuant to this Settlement,
24 which would, of course, be nothing paid to the absent Class Members.

25 14. In addition, proving the amount of wages due to each Class Member would be an
26 expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and
27 damages, my office will need to request and analyze thousands of pages of documents, obtain
28 Class Member contact information, contact them, obtain declarations at great expense, and

1 utilize expert analysis at great expense. There is a further risk that, for at least part of their
2 employment, some Class Members were not improperly denied meal periods and rest breaks.
3 Obtaining the cooperation of current employees would also be difficult, given the likely
4 reluctance to aid the prosecution of a lawsuit against a current employer. Id. On the other hand,
5 Defendant would likely be able to obtain the cooperation of its employees. Id. Moreover, even if
6 Named Plaintiff prevails at class certification, trial and possible appeals would substantially
7 delay any recovery by Class Members. In contrast, through the proposed Settlement, Class
8 Members greatly benefit by receiving timely relief and avoiding the risk of an unfavorable
9 judgment.

10 15. Accordingly, when the risks of litigation, the uncertainties involved in achieving
11 class certification, the burdens of proof necessary to establish liability, and the probability of
12 appeal of a favorable judgment are balanced against the merits of Named Plaintiff's claims, it is
13 clear that the settlement amount is fair, adequate, and reasonable.

14 **Enhancement Award and General Release Payment for Named Plaintiff**

15 16. Throughout this litigation, Named Plaintiff has cooperated immensely with my
16 office and has taken many actions to protect the interests of the Class. Named Plaintiff provided
17 valuable information regarding the alleged wage and hour violations, kept himself informed of
18 the developments in this Action, informed my office of developments and information relevant
19 to this Action, participated in decisions concerning this Action, participated in the mediation, and
20 provided my office with the names and contact information of potential witnesses in this Action.
21 The information and documentation provided by Named Plaintiff was instrumental in
22 establishing the wage and hour violations alleged in this Action, and the recovery provided for in
23 the Settlement Agreement would have been impossible to obtain without his participation.

24 17. At the same time, Named Plaintiff faced many risks in adding himself as a class
25 representative in this matter. Named Plaintiff faces actual risks with his future employment, as
26 putting himself on public record in an employment lawsuit could also very well affect Named
27 Plaintiff's likelihood for future employment. Named Plaintiff also placed himself at substantial
28

1 risk because if Defendant was to prevail in this Action, he could be liable for Defendant's
2 attorney's fees under California Labor Code section 218.5.

3 18. In turn, approximately ninety-three (93) Class Members will now have the
4 opportunity to participate in a settlement, reimbursing them for wage violations they may have
5 never known about or been willing to pursue on their own. If these Class Members would have
6 each tried to pursue their legal remedies on their own, that would have resulted in each having to
7 expend a significant amount of their own monetary resources and time, which were obviated by
8 Named Plaintiff acting as a representative on behalf of these other Class Members.

9 19. In the final analysis, this class action would not have been possible without the
10 aid of Named Plaintiff, who put his own time and effort into this litigation, sacrificed the value
11 of his own individual claims, and placed himself at risk for the sake of the Class Members. A
12 Class Representative Payment of Seven Thousand Five Hundred Dollars (\$7,500.00) is a
13 relatively small amount of money when the time and effort put into the litigation are considered,
14 and is fair and reasonable to compensate Named Plaintiff for his participation in the Lawsuit.

15 **Attorney's Fees and Costs**

16 20. The Settlement Agreement provides for attorney's fees payable to Class Counsel
17 in an amount up to one-third (1/3 or 33.33%) of the Total Settlement Amount, for a maximum
18 fees award of One Hundred Thousand Dollars (\$100,000.00), plus actual costs and expenses not
19 to exceed Eighteen Thousand Dollars (\$18,00.00). The proposed award of attorney's fees in this
20 case can be justified under either method – lodestar or percentage recovery.

21 21. I am informed and believe that the fee and costs provision is reasonable. The fee
22 percentage requested is less than that charged by my office for most employment cases. My
23 office invested significant time and resources into the case, with payment deferred to the end of
24 the case, and then, of course, contingent on the outcome. My office's efforts have resulted in
25 substantial benefits to the Settlement Class, in the form of substantial settlement funds
26 established to compensate Settlement Class Members for Defendant's illegal wage and hour
27 practices. Without the efforts of my office, the claims as alleged in the Complaint would almost
28 certainly have gone completely unremedied.

1 22. I received a B. A. in Economics in 1988 from UCLA. I received my J.D. from
2 Southwestern University School of Law in 1991. I became an Active Member of the State Bar
3 of California in December 1991, and have been an Active Member in good standing
4 continuously since then. I am a lifetime sustaining member of the Consumer Attorneys
5 Association of Los Angeles (CAALA), a current member of the National Employment Lawyers
6 Association (NELA), and am a current member of the California Employment Lawyers
7 Association (CELA). I have also been named as one of the Super Lawyers of Southern
8 California.

9 23. I founded Rastegar Law Group, A Professional Corporation (“Rastegar Law
10 Group”), in 2011. Prior to starting Rastegar Law Group, I was a founding partner of Rastegar &
11 Matern, Attorneys at Law, A Professional Corporation (“Rastegar & Matern”) which was
12 founded in 1999. In 1992, I founded the general partnership which was the predecessor of
13 Rastegar & Matern, where I acted as the managing partner of the firm from its inception.

14 24. During the twenty-nine (29) years since I began practicing law, I have built my
15 practice to have a heavy emphasis on employment and related litigation. I have been heavily,
16 successfully, and continuously involved in active litigation and trial work, including without
17 limitation, wage and hour class action litigation, employees’ rights, civil rights, discrimination,
18 and sexual harassment claims, and other forms of employment litigation.

19 25. Including myself, Rastegar Law Group includes six (6) attorneys, all of whom are
20 actively and continuously practicing in employment litigation, representing almost entirely
21 employee plaintiffs, in both individual and class actions, in this Superior Court, and other
22 Superior Courts throughout the State, in the Court of Appeal, and in various Federal courts. The
23 attorneys at Rastegar Law Group have litigated hundreds of cases against the largest firms in the
24 country, including but not limited to Gibson Dunn & Crutcher, O'Melveny & Myers, Morrison &
25 Foerster, Littler Mendelson, Jackson Lewis LLP, Kecker & Van Nest, DLA Piper and Skadden
26 Arps. Because of the unique history and nature of our practice, all of the attorneys at my firm
27 have a high level of knowledge and experience in areas of wage and hour class actions, and labor
28 and employment law. Currently, more than half of Rastegar Law Group’s active caseload

1 includes wage and hour class action cases. Besides myself, my firm includes attorneys with the
2 following qualifications:

- 3 a. Douglas W. Perlman, University of California, Davis School of Law, over
4 twenty-six (26) years of litigation experience;
- 5 b. Thomas S. Campbell, Southwestern University School of Law, over twenty-one
6 (21) years of litigation experience;
- 7 c. Danielle E. Sherrod, Stanford University Law School, over eighteen (18) years of
8 experience;
- 9 d. Rose Sorial, Trinity Law School, over nine (9) years of litigation experience; and
- 10 e. Ryan D. Aliman, Syracuse University College of Law, first-year litigation
11 associate.

12 26. My office is qualified to handle this litigation because we are experienced in
13 litigating Labor Code violations in both individual and class actions. I and the other attorneys at
14 my office have served as lead counsel in numerous wage and hour class actions, and have
15 successfully negotiated several settlements, including multiple seven-figure cases, amounting to
16 over \$100 million in settlements.

17 27. My predecessor firm, Rastegar & Matern, had a number of published appellate
18 victories including several published opinions - *Franco v. Athens Disposal Company, Inc.*
19 (March 10, 2009) 171 Cal.App.4th 1277; *Gutierrez v. California Commerce Club* (August 2,
20 2010) 187 Cal.App.4th 969; *Pantoja v. Anton* (August 9, 2011) 198 Cal.App.4th 87; *Fuentes v.*
21 *Autozone, Inc.* (November 16, 2011) 200 Cal.App.4th 1221; *Ventura v. ABM Industries,*
22 *Inc.*(2012) 212 Cal.App.4th 258; *Franco v. Arakelian Enterprises, Inc.* (2012) 211 Cal.App.4th
23 314; *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277 – and other non-published
24 appellate victories. Moreover, Rastegar & Matern was successful in procuring class certification
25 of several wage and hour class action lawsuits, including *Domonique Hines v. KFC U.S.*
26 *Properties, Inc.*, Case No. 09cv2422JM(POR)(Southern District of California).

27 28. My office invested significant time and resources into the case, with payment
28 deferred to the end of the case, and then, of course, contingent on the outcome. My office's
efforts included, without limitation, the following: interviews with Named Plaintiff; review of

1 documents produced by Named Plaintiff; legal research and investigation regarding Defendant's
2 practices at numerous points in the litigation; preparation of multiple drafts of the Complaint;
3 appearance at status conferences; correspondence with Defendant's counsel to obtain relevant
4 documents and information through both formal and informal discovery; in-depth analysis and
5 review of Class timekeeping records; interviews with Class Members regarding the alleged wage
6 and hour allegations; research and preparation of Named Plaintiff's mediation brief; attendance
7 at mediation; drafting the Settlement Agreement and attachments; and preparation of the Motion
8 for Preliminary Approval. My office's lodestar for the completed and anticipated work on these
9 cases is in line with the total amount of attorney's fees agreed to by the Parties.

10 29. It is further estimated that my office will need to expend at least another fifty (50)
11 hours to monitor the process leading up to the Final Approval and payments made to the Class.
12 My office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.
13 In two (2) recent cases, that has meant over 500 hours spent post final approval in efforts to
14 collect on behalf of the class.

15 30. The risk to my office has been very significant, particularly if we would not be
16 successful in pursuing this class action. In that case, we would have been left with no
17 compensation for all the time taken in litigating this case. Indeed, we have taken on a number of
18 class action cases that have resulted in thousands of attorney hours being expended and
19 ultimately having certification denied or the defendant company going bankrupt. The contingent
20 risk in these types of cases is very real and they do occur regularly. Furthermore, we were
21 precluded from focusing on, or taking on, other cases which could have resulted in a larger, and
22 less risky, monetary gain.

23 31. Because most individuals cannot afford to pay for representation in litigation on
24 an hourly basis, Rastegar Law Group represents virtually all of its employment law clients on a
25 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
26 we prevail at trial or successfully settle our clients' cases. Because Rastegar Law Group is
27 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
28 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
end of our representation, all we are to receive is our regular hourly rate for services. It is

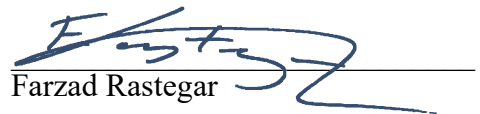
1 essential that we recover more than our regular hourly rate when we win if we are to remain in
2 practice so as to be able to continue representing other individuals in employment disputes.

3 32. I am informed and believe that the efforts of my office have resulted in substantial
4 benefits to the Class, in the form of a substantial settlement fund established to compensate Class
5 Members for missed meal periods and rest breaks, among the other wage and hour violations
6 noted above. Through the efforts of my office and Named Plaintiff in this case, a fair and
7 reasonable resolution has been reached that includes a settlement payment by Defendant of
8 Three Hundred Thousand Dollars (\$300,000.00). I am informed and believe that, without the
9 efforts of my office, the Labor Code and California Industrial Welfare Commission ("IWC")
10 Wage Order violations alleged in the Complaint would have gone completely unremedied. The
11 fee award of One Hundred Dollars (\$100,000.00) provided for in the Settlement is therefore
12 reasonable given the result achieved.

13 33. To my knowledge, the Parties to this Action and their counsel do not have any
14 interest in the Settlement Administrator, Phoenix Settlement Administrators, and are not
15 involved in its governance or work.

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

18 Executed on May 19, 2021, at Torrance, California.

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