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Attorneys for Plaintiffs
ALEJANDRA GUZMAN, KARLA QUIJADA,
and ANTHONY MACEDONIA,
individually and on behalf of other individuals employed
under common circumstances and facts

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO**

ALEJANDRA GUZMAN, KARLA
QUIJADA, and ANTHONY MACEDONIA,
individually and on behalf of other
individuals employed under common
circumstances and facts,

Plaintiffs,

v.

THE HACIENDA COMPANY, LLC, a
California limited liability company; AJ
SAY, an individual; and DOES 1 through
50, inclusive,

Defendants.

ELECTRONICALLY
FILED
3/1/2022 4:25 PM

SAN LUIS OBISPO SUPERIOR COURT
BY Carol L. McGuirk
Carol L. McGuirk, Deputy Clerk

CASE NO.: 19CV-0543

[CLASS ACTION]

**DECLARATION OF ALLEN K. HUTKIN
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 23, 2022
Time: 9:00 a.m.
Dept. 9

Assigned for all purposes to the
Honorable Tana L. Coates, Dept. 9

Action Filed September 13, 2019

I, Allen K. Hutkin, declare as follows:

1. I am an attorney duly licensed and admitted to practice law before the courts of

1 the State of California. I am counsel of record for Plaintiffs Alejandra Guzman, Karla Quijada,
2 and Anthony Macedonia in this action. I have personal knowledge of the information set forth
3 herein and if called to do so, I could and would testify competently to the facts set forth below.

4 2. On September 13, 2019, Plaintiffs Alejandra Guzman and Karla Quijada filed
5 this civil class action on behalf of themselves and all current and former non-exempt or hourly
6 paid employees of Defendants The Hacienda Company, LLC (“THC”) and Alan J. Fay
7 (improperly named as AJ Say (“Fay”) (collectively referred to as the “Defendants”), who
8 worked in the State of California at any time from September 13, 2015 onward.

9 3. Plaintiffs alleged causes of action for: unpaid minimum wages, nonpayment of
10 overtime compensation, premium pay for meal period violations, premium pay for rest period
11 violations, itemized wage statement violations, waiting time penalties, failure to provide
12 personnel and payroll records, failure to indemnify for work related expenses, unfair business
13 practices under Business and Professions Code sections 17200, *et seq.*, and claims for
14 penalties for alleged violations of the Private Attorneys General Act (“PAGA”) (“Original
15 Complaint”).

16 4. On February 28, 2020, Plaintiffs served a PAGA notice on Defendants and the
17 Labor and Workforce Development Agency (“LWDA”) alleging various PAGA claims
18 including: willful failure to timely pay a discharged or quitting employee, failure to pay all
19 wages due two times each month, failure to pay contractual wages, secret payment of wages
20 lower than designated scale, failure to pay overtime wages, failure to provide meal and rest
21 breaks, failure to provide accurate, itemized wage stubs, failure to pay for expense
22 reimbursement, violation of California Labor Code Sections 558 and 558.1 and Industrial
23 Welfare Commission Order 13-2001, and violation of California Labor Code Section 226.8.

24 5. Plaintiffs did not receive a written notice from the LWDA stating that it
25 intended to investigate any of the claims outlined in the PAGA Letter and, as a result,
26 Plaintiffs were authorized to act as private attorneys general to negotiate and resolve all PAGA
27 claims of the representative class on behalf of the LWDA.

1 6. On December 6, 2019, Defendants filed their operative First Amended Answer
2 to Plaintiffs' Original Complaint in which they assert a general denial of Plaintiffs' claims and
3 sixteen affirmative defenses. The Named Plaintiffs anticipate that Defendants will assert a
4 general denial and additional defenses to the First Amended Complaint had this case not
5 settled.

6 7. On March 4, 2020, approximately six months after the present action was filed,
7 a related case was filed in the Superior Court of Los Angeles County. The case titled
8 *Christopher Weldon Kinsey II, et al. v. Lowell Farms LLC, et al.*, Los Angeles County
9 Superior Court Case No. 20STC08659 ("Kinsey Action") alleged causes of action for
10 violation of the California WARN Act, failure to pay the employees who were laid off for half
11 their usual or scheduled day's work the day they were laid off, and for restitution,
12 disgorgement, and other equitable relief for violating the state laws alleged in the first two
13 causes of action under Bus & Prof. Code sections 17200-17209. The only Defendant in the
14 Kinsey Action was Lowell Farms, LLC which never had any employees.

15 8. On October 1, 2020, more than a year after the present action was filed, and
16 after receiving a Notice of Related Case informing Kinsey's counsel of the present action,
17 Kinsey filed a First Amended Complaint which added causes of action which largely mirrored
18 those alleged in the present action except the case lacked a PAGA claim.

19 9. On or about November 12, 2020, I contacted Kinsey's counsel, Dennis Wilson,
20 to discuss the situation. I asked him to dismiss his case since it was filed long after the present
21 case and named the wrong defendant. Mr. Wilson said he would not. I then asked how he
22 thought we should handle this situation. Mr. Wilson told me that he would send me a proposal,
23 but he never did. Instead, on December 23, 2020, Mr. Wilson filed a Doe amendment in the
24 Kinsey action adding The Hacienda Company as a defendant. The Hacienda Company had
25 been a defendant in this action since it was filed back in September 2019.

26 10. In March 2020, Plaintiffs and Defendants began extensive settlement
27 negotiations in this matter. The settlement negotiations throughout were at arms-length and,
28 although conducted in a professional manner, were adversarial. Mediation was scheduled and

1 then cancelled several times because Defendants did not provide the records that Class
2 Counsel sought were necessary to properly evaluate this case for a possible settlement.

3 11. Ultimately, Defendants provided Class Counsel with extensive records which
4 Class Counsel and their forensic accountant examined before and during mediation. Although
5 no formal discovery was conducted, starting in the months preceding the mediation, Defendants
6 produced voluminous documents comprising employment data concerning Plaintiffs and the
7 Settlement Class, including but not limited to payroll records and time records. In addition,
8 Defendants produced substantial and extensive company financial data and tax returns which
9 were reviewed by me and the forensic accountant I retained. This informal discovery allowed
10 me to evaluate the strengths and weaknesses of the case, case value, and settlement value.

11 12. During the negotiations, Defendant THC represented and continued to
12 emphasize that it is experiencing extreme financial difficulties due to the COVID-19 Pandemic
13 and changes in the cannabis industry and that it may be forced into bankruptcy absent a
14 settlement of this class action litigation. My accountant reviewed Defendants' financial records
15 to confirm this claim.

16 13. Defendant THC laid off its workers because of the financial difficulties it was
17 experiencing, which is the basis for the California WARN Act claim in the First Amended
18 Complaint ("FAC").

19 14. Plaintiffs and Defendants formally mediated this matter on November 21, 2020,
20 before a highly respected and experienced mediator, Eve Wagner, Esq., to explore the potential
21 for a settlement. Plaintiffs were committed and prepared to litigate their position through trial
22 and appeal if a settlement was not reached. Defendants were contemplating bankruptcy. A
23 settlement was reached at the end of a long process in which counsel for the Parties vigorously
24 advanced their respective positions throughout the settlement negotiations.

25 15. The parties continued to negotiate the terms of the settlement for months after
26 the mediation which ultimately resulted in a fully executed, 22-page Joint Stipulation of Class
27 Action and PAGA Settlement and Release of Claims ("Settlement Agreement"), a true and
28 correct copy of which is attached as Exhibit 1 to this declaration. The Settlement Agreement

1 was not fully finalized until April 21, 2021.

2 16. On April 30, 2021, Plaintiffs filed a FAC in order to perfect the settlement
3 reached by the parties, which added plaintiff Anthony Macedonia (referred to herein
4 collectively with Alejandra Guzman and Karla Quijada as the “Named Plaintiffs”) and added
5 three new causes of action for: violations of the California WARN Act; reporting time
6 violations; and conversion.

7 17. I am fully familiar with the legal and factual issues in this case, having handled
8 dozens of wage and hour class actions, PAGA representative actions, as well as other types of
9 class actions and complex litigation. In my opinion, the settlement in this action is fair,
10 adequate, and reasonable. Based on all documents and information provided by Defendants
11 before, during, and after the mediation, I have determined that total damages to the Settlement
12 Class, including PAGA penalties, could yield a verdict at trial of over five million dollars. I
13 settled the case for a gross settlement of \$1,200,000.00 for two major reasons: (1) the discount
14 reflects the uncertainties of litigation plus years-long litigation, trial, and possibly appellate
15 process, in which it is possible the Settlement Class could end up recovering little or nothing;
16 and (2) the discount reflects the very substantial risk, based on company financial information
17 provided by Defendants, that Defendants would be forced into bankruptcy, in the absence of a
18 class action settlement, due to the extreme financial difficulties Defendants have experienced
19 due to the COVID-19 Pandemic and changes in the cannabis industry, which resulted in layoffs
20 of Defendants’ workers. If Defendants file bankruptcy, the Settlement Class likely will recover
21 little, if anything.

22 18. Several former employees of Defendants, including Karla Quijada, Alejandra
23 Guzman, Karla Bautista, Israel Ortiz, Maria de la Luz Yanez, Maria Luisa Yanez, Beatrice
24 Barajas, and Anthony Macedonia, whose actions on behalf of the class served to benefit the
25 class will each receive service awards of either \$12,500 (Karla Quijada, Alejandra Guzman,
26 Karla Bautista, Israel Ortiz) or \$5,000 (Maria de la Luz Yanez, Maria Luisa Yanez, Beatrice
27 Barajas, and Anthony Macedonia) for their participation in prosecuting this action. The service
28 awards of \$12,500.00 or \$5,000.00 are justified for their level of service to the class and vary

1 depending on their level of participation in this lawsuit and the risks they took to pursue the
2 interests of the class. They assisted in the investigation, interviewed, and selected counsel,
3 attended meetings with counsel, gathered wage information and start dates for themselves and
4 other class members, contacted other Settlement Class members to seek their participation in
5 the case, prepared for and participated in the mediation, and were willing to testify at trial if
6 necessary. The Named Plaintiffs and other identified putative class members who will receive
7 service awards have undertaken personal risks in serving as the driving force behind this
8 lawsuit. They understand the proceedings in this case are a matter of public record and work
9 opportunities are scarce for potential employees labeled as “trouble-makers.” They were
10 willing to run this risk for the benefit of not only themselves, but their co-workers.
11 Additionally, they have agreed to a general release of all individual claims in addition to class
12 claims. Accordingly, the requested service awards are fair and reasonable considering all the
13 circumstances.

14 19. The Parties allocated \$15,000.00 to PAGA penalties, of which the State of
15 California Labor and Workforce Development Agency will receive \$11,250.00 and the
16 remaining \$3,750.00 will be shared by the Settlement Class. I agreed to this allocation based on
17 the following factors: (1) the settlement is a compromise which does not fully reimburse Class
18 Members for all unpaid wages they experienced; (2) the PAGA claim was not a driving factor
19 in the prosecution or settlement of the class action; and (3) the actual value of the PAGA claim
20 is highly uncertain at this stage.

21 20. Under the proposed Settlement Agreement, I am applying for an attorneys’ fee
22 award of \$400,000, or one third of the Maximum Settlement Amount of \$1,200,000.00. I have
23 borne, and continue to bear, the entire risk and cost of litigation associated with this class and
24 representative action on a pure contingency basis. The settlement reached in this case was hard
25 fought and a fair result for Defendants’ employees. The Court should approve the requested
26 attorneys’ fees and costs, which are justified by the results achieved, the complexity of the
27 issues, the difficulty of the case, and the great risk undertaken by me. The requested attorneys’
28 fees are not opposed by Defendants and are well within established guidelines.

1 21. In addition, I request reimbursement of actual costs and expenses not to exceed
2 \$25,000.00 and third-party settlement administration costs of \$44,000.00 to be paid to CPT
3 Group, which are appropriate amounts given my firm's prior expenditures and the need for
4 third-party administration of the settlement over a multi-year time period.

5 22. As set forth in Plaintiffs' FAC, there is substantial factual support for the
6 numerous alleged Labor Code violations by Defendants. I am confident Plaintiffs would
7 establish liability against Defendants on their claims. However, there are risks and factors
8 militating against litigating this matter all the way through to a trial. First, although the Parties
9 have stipulated to class certification for purposes of this motion and obtaining final approval of
10 their class action settlement, Named Plaintiffs have not yet filed a class certification motion,
11 and Defendants have said they will vigorously oppose it. Second, obtaining testimony to
12 support class certification would be challenging and complex as many of Defendants' former
13 workers may be difficult to locate, and any remaining employees might be afraid to testify
14 against Defendants or to appear in court.

15 23. The trial of this matter would likely consume a month, and Defendants could
16 insist upon a jury trial. Given the ongoing COVID-19 Pandemic, and the apparent backlog of
17 cases set for jury trial, a trial of such length likely would not be scheduled until at least 2023 or
18 2024, given the amount of time that will be consumed beforehand to obtain class certification,
19 conduct discovery, bring pre-trial motions, and prepare for trial. Even if successful at trial,
20 Defendants would have the right to appeal any judgment awarded, which likely would delay
21 recovery for another one or two years. The length of time to trial is always significant in any
22 case, as memories fade and witnesses move away. As a practical matter, the longer the case
23 drags on, the more difficult it could be to locate class members to testify at trial and to
24 compensate them for their losses once the case has concluded. Thus, the avoidance of any
25 further delay, as well as the immediate financial needs of the Settlement Class, weighs in favor
26 of settlement.

27 24. In this case, the proposed Settlement Class consists of low-wage workers who
28 no longer work for Defendants and may be difficult to locate, and none of whom have the

1 means to finance an individual lawsuit. Their claims, while significant to them as individuals,
2 are too small to warrant the filing and prosecution of a host of separate actions. I believe the
3 cost of litigating the individual claims would be prohibitive to class members, and burdensome
4 on the court system. Finally, for purposes of this settlement only, the Parties have stipulated to
5 class certification.

6 25. On May 26, 2021, the Court granted preliminary approval of the Parties' class
7 action settlement. A true and correct copy of the Notice of Ruling with the Court's order which
8 is attached hereto as Exhibit 2.

9 26. On June 2, 2021, the Court entered a "REVISED ORDER GRANTING
10 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT," a true
11 and correct copy of which is attached hereto as Exhibit 3.

12 27. The motion for final approval of the class action settlement was originally set
13 for hearing on October 27, 2021. The hearing did not go forward on that date because through
14 the notice process, we learned that there may have been some incorrect start dates for some of
15 the class members because of the nature of payments during the relevant class period. After
16 further investigation by both sides, we worked to correct this.

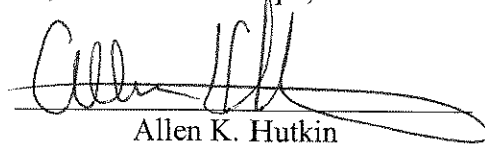
17 28. This issue has now been corrected as we were able to identify the correct start
18 dates for 28 class members. They will receive supplemental notices with the proper number of
19 workweeks. Defendants have agreed to pay the Settlement Administrator the cost of sending
20 out these additional notices and to pay an additional \$21,465.00 to the Maximum Settlement
21 Fund so that these additional workweeks are properly compensated.

22 29. At the hearing on October 27, 2021, the Court continued the hearing on the
23 motion for final approval and consideration of the Objectors objection to the settlement to
24 March 23, 2022. The Court also ordered that Objector's supplemental objection was to be filed
25 by November 30, 2021, and any supplemental objections based on further investigations was to
26 be filed by February 23, 2022. To date, the Objector has not filed anything further.

27 30. At the hearing on October 27, 2021, the Court encouraged Class Counsel and
28 the Objector's counsel to meet and confer prior to the next hearing. On February 14, 2022, I

1 called and met and conferred with the Objector's counsel. Unfortunately, our discussion did
2 not resolve the objection.

3 I declare under penalty of perjury of the laws of the State of California that the foregoing
4 is true and correct. Executed February 28, 2022, at San Luis Obispo, California.

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6 Allen K. Hutkin
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PROOF OF SERVICE

I am employed by the Hutkin Law Firm in the County of San Luis Obispo, State of California. I am over the age of 18 years and not a party to the within action. My business address is: 1220 Marsh Street, San Luis Obispo, California, 93401. My email address is: jmendoza@hutkinlaw.com. On March 1, 2022 I served the following document:

DECLARATION OF ALLEN K. HUTKIN IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope (envelope omitted if service by electronic service and/or facsimile) addressed as follows:

_____ **By United States Mail.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth below.

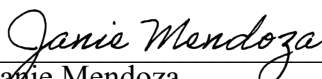
_____ **By Personal Service.** I served the above referenced document(s) by placing them in an envelope or package addressed to the person(s) at the address(es) listed below and hand delivered to them to the office of the addressee(s) shown below.

✓ _____ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the above-reference document(s) to be sent to the person(s) at the electronic address(es) listed below.

Todd B. Scherwin
Hannah Sweiss
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I declare under penalty of perjury that the foregoing is true and correct. Executed on March 1, 2022 in San Luis Obispo, California.



Janie Mendoza