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Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SACHA ROBERTS, an individual, on behalf
of himself and others similarly situated,

PLAINTIFF,

v.

OSTENDO TECHNOLOGIES, INC., a
corporation; HUSSEIN S. EL-GHOROURY,
an individual; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 37-2020-00015752-CU-OE-CTL

[Case Assigned for All Purposes to Hon.
Katherine A. Bacal in Dept. C-69]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: August 25, 2023

Time: 1:30 p.m.

Dept.: C-69

Complaint Filed: May 26, 2020

FAC Filed: May 29, 2020

Trial Date: None Set

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. Plaintiff worked as a senior “Technical Artist” from approximately April 19, 2017 to January 31, 2020 when he resigned from his position after Defendants failed to make payroll for several months.

5. Plaintiff filed a putative class action Complaint for Damages on May 26, 2020, against Defendants in the San Diego County Superior Court, Case No. 37-2020-00015752-CU-OE-CTL, entitled *SACHA ROBERTS, an individual, on behalf of himself and others similarly situated v. OSTENDO TECHNOLOGIES, INC., a corporation; HUSSEIN S. EL-GHOROURY, an individual; and DOES 1 thru 50, inclusive* (“Action”). He alleged causes of action for: (1) Failure to Pay Wages and/or Overtime (2) Failure to Pay Timely Wages (3) Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code § 226(a); (4) Waiting Time Penalties Pursuant to Labor Code § 203; and (5) Violation of Business & Professions Code § 17200.

6. On March 25, 2020, in compliance with Labor Code § 2699.3(a)(l), written notice was provided via online filing to the Labor and Workforce Development Agency's ("LWDA"),

1 setting forth the facts and theories of the violations alleged against Defendants. As such, on May
2 29, 2020, Plaintiff filed a First Amended Class Action Complaint, adding an additional claim for
3 civil penalties pursuant to Labor Code section 2699, *et seq.* (“PAGA”) based upon the same alleged
4 Labor Code violations at issue in the complaint.

5 **THE DISCOVERY PROCESS AND MEDIATION**

6 7. After the matter was at issue, the Parties began to engage in informal discovery to
7 understand the nature of the allegations and the scope of potential liability.

8 8. Defendants provided Plaintiff’s counsel with pertinent data for the Class Members
9 and PAGA Members so that the Parties could fully-investigate the claims at issue and understand
10 their strengths and weaknesses.

11 9. On April 1, 2021, the Parties attended a full-day mediation with experienced
12 bankruptcy judge and mediator the Hon. Mitchell R. Goldberg (Ret.) Although a settlement was
13 not reached that same day, the Parties continued their settlement negotiations and meet and confer
14 efforts extensively and were able to reach a settlement, as provided herein, to settle Plaintiff’s
15 claims on a class-wide and representative basis.

16 10. This case is unique because the LWDA was also involved and had issued Defendant
17 a sizeable citation related to the same claims being litigated in this matter.

18 11. Based on their own independent investigation and evaluation, Class Counsel is of
19 the opinion that the Settlement Agreement with Defendants is fair, reasonable and adequate, and
20 in the best interest of the settlement classes in light of all known facts and circumstances, including
21 the risk of significant delay, defenses asserted by Defendants, uncertainties regarding a class and
22 representative action trial on the merits, and numerous potential appellate issues. Although
23 Defendants denies any liability, Defendants is agreeing to this Settlement Agreement solely to
24 avoid the cost of litigation. Accordingly, the Parties and their counsel desire to fully, finally, and
25 forever settle, compromise and discharge all disputes and claims arising from or relating to the
26 Action on the terms set forth here.

27 ///

1 **CERTIFICATION FOR SETTLEMENT PURPOSES**

2 12. Plaintiff maintains that the proposed Settlement Class Members is ascertainable for
3 several reasons: First, Defendants has agreed in the Settlement Agreement to provide a class list
4 to the Settlement Administrator containing the full name, last known home address, last known
5 home telephone number, social security number, and dates of employment and Compensable Pay
6 Periods for all putative class members after issuance of the preliminary approval order.

7 13. The settlement class consist of Defendants' employees, and Defendants is required
8 to keep records of its employees' names, home addresses, and social security numbers.

9 14. Defendants informally produced Plaintiff's personnel file and sample pay data and
10 wage statements for Settlement Class Members containing class member contact information,
11 which confirms that all Settlement Class Members may be readily identified based on Defendants'
12 records.

13 15. Plaintiff is confident he will be able to establish that the proposed settlement class
14 is ascertainable and sufficiently numerous.

15 16. Plaintiff argues that there are questions of law and fact common to the proposed
16 settlement class that predominate over any questions affecting only individual Class Members.

17 17. These common questions include:

- 18 1) Whether Defendants failed to pay all wages and/or overtime compensation;
19 2) Whether Defendants failed to pay timely wages;
20 3) Whether Defendants failed to provide accurate itemized wage statements;
21 4) Whether Defendants failed to pay compensation due and owing upon
22 termination of employment;
23 5) Whether Defendants engaged in unfair competition; and,
24 6) Whether Defendants violated § 2699, et seq. of the Labor Code by engaging
25 in the acts previously alleged.

26 18. Plaintiff's challenge to Defendants' uniform policies and practices involves
27 common factual and legal issues that are amenable to class treatment.

28 19. Plaintiff maintains that the proposed Settlement Class Members suffered the same

injuries, in the same manner: (1) Settlement Class Members were not properly paid all wages/overtime; (2) Settlement Class Members did not receive timely wages as required; (3) Settlement Class Members were not provided accurate itemized wage statements; and (4) Settlement Class Members were not paid all wages owed upon termination/resignation.

20. Accordingly, for purposes of settlement, Plaintiff contends that certification for settlement purposes is appropriate.

21. Plaintiff also alleges that he experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq.

22. Plaintiff also contends that his claims are typical of those of the Settlement Class Members.

23. Plaintiff believes that he is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members.

24. The Settlement Class Members all worked for Defendants during the relevant time period and incurred the same type of alleged damages with regard to Defendants' alleged violations of the law.

25. Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions.

26. This demonstrates his commitment to bringing about the best possible results for the benefit of the proposed Settlement Class Members.

27. Plaintiff has provided his Counsel with all necessary and pertinent information.

28. He has been a very active participant in the litigation.

29. Plaintiff believes that he has and will continue to adequately represent the proposed Settlement Class Members.

30. Plaintiff has provided his Counsel with all necessary and pertinent information.

31. In this regard, the superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable.

32. The only alternative to certification would be to force over 118 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether.

33. Plaintiff maintains that this economic reality would result in a windfall for Defendants if this case were not certified.

THE PROPOSED SETTLEMENT

34. For purposes of Settlement, the settlement class is defined as:

“all persons who are employed or have been employed by Defendants in the State of California who worked one or more pay periods during the Class Period” (“Class Members” or “Settlement Class Members”).

35. The Class Period is March 25, 2019 through March 24, 2021.

36. Based on documents and other information produced by Defendant, there are approximately 118 Class Members.

37. For purposes of Settlement, the Aggrieved Employees are defined as.

“all persons who are employed or have been employed by Defendants in the State of California who worked one or more pay periods during the PAGA Period” (“Aggrieved Employee”, “PAGA Member”, or “PAGA Settlement Class”).

38. The PAGA Period is March 25, 2019 to March 24, 2021.

39. As detailed fully in the Settlement Agreement, the Settlement provides for Defendants to pay a Gross Settlement Amount of \$225,000.00, which includes the sum of the Individual Settlement Amounts, the Class Representative Enhancement/General Release Award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs.

40. The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement/General Release Award, PAGA Payment, and Settlement Administration Costs.

KULLAR ANALYSIS

41. The extensive informal discovery that was conducted in this matter permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.

42. Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement Agreement.

43. Plaintiff asserts that Defendants’ violated Section 204 by failing to timely pay wages to Class Members from approximately October 11, 2019 through January 17, 2020.

1 44. Plaintiff contends that Defendants failed to issue accurate itemized wage statements
2 to Plaintiff and the Class Members from approximately October 11, 2019 through January 17,
3 2020.

4 45. This claim alleges that Defendants failed to pay all wages due and owing upon
5 termination or resignation based upon the failure to pay wages at all from approximately October
6 11, 2019 through January 17, 2020.

7 46. The main risk taken into account with PAGA is the discretionary nature of the
8 penalty award.

9 47. A judge can award the statutory maximum of \$100 for the initial violation and \$200
10 thereafter or – in theory – one cent per wage statement.

11 48. While there is a dearth of available authority, in Plaintiff's view, the LWDA has
12 already occupied the filed by issuing its citations and it is unlikely that a court would award any
13 penalties on top of the citations.

14 49. There is significant expense associated with the class certification process, which
15 the Parties can avoid by entering into the contemplated Settlement Agreement now.

16 50. If the Court did eventually certify class, trial of a case involving approximately 118
17 Settlement Class Members would require the retention of expensive expert witnesses, the accrual
18 of extensive litigation costs, and a significant time overlay by the parties.

19 51. Given the complexity and unsettled nature of the issues in this case it is likely that
20 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result
21 in further delay for the Settlement Class Members who are waiting for a resolution in this matter.

22 52. This case has not been certified to be tried as a class action. While Plaintiff believes
23 there is strong evidence to support certification, it is always hard fought and subject to judicial
24 discretion. Moreover, in class actions, decertification is always a possibility. In attempting to
25 certify a class, the parties would need to conduct multiple depositions, including of the Class
26 Representative and of several person(s) most knowledgeable regarding Defendants' wage policies.
27 There is a risk for both sides as to what these depositions will reveal and whether they will support
28 class certification to the extent expected.

1 53. It was very difficult for the Parties to reach this Settlement of \$225,000.00.

2 54. This Settlement is the result of adversarial, non-collusive, and arms-length
3 negotiations. The Parties arrived at it after extensive investigation and discovery; careful
4 evaluation of the law, risks, and all information substantiating Defendant's repayment of wages;
5 and the assistance of experienced mediator, Mitchell R. Goldberg (Ret.), who reviewed extensive
6 financials in this matter.

7 55. The circumstances surrounding settlement here were quite unique because of the
8 LWDA intervention and citations totaling \$3,147,268.71, Defendant's repayment of unpaid wages
9 in the amount of \$1,928,830.47 for the time period October 11, 2019 through January 17, 2020,
10 and Defendant's solvency issues.

11 56. Plaintiff and his Counsel worked very closely with Judge Goldberg to verify
12 Defendant's ability to pay issues and come to a proposal that is fair and reasonable giving the
13 circumstances.

14 57. The main factor affecting the proposed Settlement was Defendant's financial
15 condition.

16 58. Judge Goldberg closely reviewed Defendants' financials and made a proposal for
17 resolution that would permit the Defendants to continue to operate, but also provide some benefit
18 to the Class.

19 59. Both Parties ultimately agree to the proposal and Class Counsel believes the Gross
20 Settlement Amount of \$225,000.00 is fair and reasonable.

21 **ATTORNEY COMPETENCE**

22 60. Kingsley & Kingsley is very experienced in prosecuting employment litigation, and
23 since 2000 we have focused our practice on wage, hour, and working condition violations. My
24 firm is extremely well-versed in class action litigation and has diligently and aggressively pursued
25 this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending
26 class action lawsuits in Northern, Central, Eastern, and Southern California in both State and
27 Federal Court. Below is a small, but representative sampling of wage and hour cases handled by
28 my firm:

- 1 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
2 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
3 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 4 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
5 December 2005, Honorable Rita Miller granted final approval of Settlement in the
6 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 7 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
8 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
9 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 10 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
11 2008, the Honorable Mary Thornton House granted final approval of Settlement in
12 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
13 33 1/3%.
- 14 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
15 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
16 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
17 33.3%.
- 18 f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
19 March 2012, the Honorable James P. Kleinberg granted final approval of
20 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
21 fees request of 33.3%.
- 22 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
23 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
24 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the
25 court granted attorneys' fees request of 38%.
- 26 h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
27 2014, the Honorable William F. Highberger granted final approval of Settlement in
28 the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of

33.33%.

- i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.
- j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.
- k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.
- l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.
- m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was proposed for final settlement by the Honorable Richard L. Fruin on February 19, 2016, in the gross amount of \$5,250,000.
- n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739). The matter was approved for final settlement by the Honorable Lee Smally Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of 38%.
- o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The matter was approved for final settlement by the Honorable Anthony W. Ishii in November 2017, in the gross amount of \$6,100,000.00, plus interest, with

attorney's fees benchmark award of \$1,525,000.

- p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-15-101333). The matter was approved for final settlement before the Hon. Stephen D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with attorneys' fees request of 33.33%.

61. Kingsley & Kingsley, APC filed its first motion for class certification in the year 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for class certification in 15 matters and has successfully obtained class certification in 15 of those cases. A brief sampling of which includes:

- a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927)*, approved for Class Certification in 2011.
- b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).
- c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).
- d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct., filed January 27, 2015) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).
- e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214). contested class certification granted in June 2020.
- f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court (BCV-16-102833), contested class certification granted in 2018.
- g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544), contested class certification granted in June 2020.
- h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),

1 contested class certification granted in August 2020.

2 62. Class Counsel is experienced in the handling of wage and hour class actions and
3 supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair
4 and reasonable and in the best interest of the Class.

5 63. After factoring in the risks explained above, Class Counsel believes that the
6 proposed settlement is fair and reasonable.

7 64. This allocation distributes Settlement Agreement funds proportionally to each class
8 member's potential damages and should therefore be approved as fair, adequate, and reasonable.

9 **SERVICE AWARD TO THE NAMED PLAINTIFF**

10 65. The Class Representative is entitled to an enhancement for his valiant effort and
11 time expended in this matter. This not a typical class action resolution and the time spent by
12 SACHA ROBERTS is significant and includes researching and retaining competent counsel;
13 providing information to Class Counsel regarding the nature of the work at Defendants; compiling
14 relevant documents; working closely with Class Counsel to develop the theories of liability and
15 martial relevant evidence; regularly discussing the status of the case with Class Counsel;
16 discussing the case via telephone with many Settlement Class Members; and responding promptly
17 to Class Counsel's communications regarding settlement.

18 66. As set forth in the Settlement Agreement, Plaintiff will also be entering into a
19 general release of liability pursuant to Civil Code Section 1542.

20 67. Class Counsel considers this to be a fair and reasonable enhancement. The
21 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
22 forward to litigate this matter on behalf of all Settlement Class Members. Plaintiff will provide a
23 detailed declaration with the Final Approval Motion detailing his participation and further
24 justification for the enhancement.

25 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

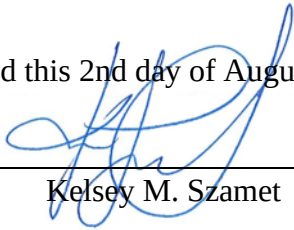
26 68. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
27 email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as
28 Exhibit "1."

EXHIBITS

69. Attached hereto as Exhibit “1” is a true and correct copy of the proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt.

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

This Declaration was executed this 2nd day of August, 2023, in Altadena, California.



Kelsey M. Szamet

EXHIBIT "1"
(PROOF OF SUBMISSION TO THE LWDA)

(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On August 2, 2023, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

JACKSON LEWIS P.C.

Guillermo A. Escobedo, Esq.
Samantha S. McPherson, Esq.
225 Broadway, Suite 2000
San Diego, CA 92101

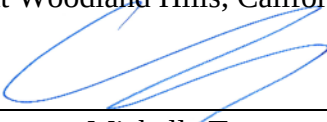
Guillermo.escobedo@jacksonlewis.com
Samantha.mcpherson@jacksonlewis.com

☐ **(BY MAIL):** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **(BY ELECTRONIC MAIL TRANSMISSION):** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

☒ **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 2, 2023, at Woodland Hills, California.



Michelle Tanzer