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Attorneys for Plaintiff Gina Robertson and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

GINA ROBERTSON, individually, on behalf
of all similarly situated current and former
employees, and on behalf of the State of
California and all Aggrieved Employees;

Plaintiff,

vs.

ALL CARE HOME HEALTH PROVIDER, a
California Corporation; ALL CARE HOME
HEALTH OF SAN GABRIEL, a California
Corporation; ALL CARE HOSPICE, a
California Corporation; ALL CARE
PROVIDER SERVICES, INC., a California
Corporation; COMCARE HOME HEALTH,
INC., a California Corporation; ANDREW J.
PAGSISIHAN, an individual; LILIA
PAGSISIHAN, an individual; APOLONIO
PAGSISIHAN, an individual; and DOES 1
through 10, inclusive;

Defendants

Case No.: 20STCV18318
*[Assigned to the Hon. Judge Daniel J.
Buckley, Dept. 1]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing:
Date: March 16, 2022
Time: 10:30 a.m.
Dept.: 1

Complaint Filed: May 14, 2020

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in
4 Orange County and Riverside County, and I manage the firm's employment law department. I
5 am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I
6 submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action
7 Settlement. If called as a witness, I could and would competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

9 2. I have been a member, in good standing, of the State Bar of California since 2001.
10 I am admitted to practice in the United States District Courts for the Central and Southern
11 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
12 courts in California.

13 3. I have handled approximately 500 employee vs. employer litigation matters
14 during my 21 years in practice. Over the last 15 years, my practice has almost entirely consisted
15 of representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled over 250 class action and representative
17 action wage/hour cases, and have been appointed by the court as class counsel and have received
18 final court approval and judgment over half of those actions to date, and anticipate receiving
19 final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). My team and I once held the record for the largest known PAGA-only
24 case in California's history - a \$12.5 million-dollar court approved settlement, which followed
25 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
26 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

27 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
28 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court

1 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
2 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
3 Both cases were appealed.

4 6. Over each of the last several consecutive years, I have been selected by my peers
5 as a “Super Lawyer” in Employment Litigation.

6 **ADEQUACY OF THE SETTLEMENT**

7 7. The Class, as conditionally certified by this Court, consists of 912 non-exempt
8 employees who performed nursing duties for Defendants in California (the “Class” or “Class
9 Members”) at any time during the period from May 14, 2016 and May 24, 2021 (the “Class
10 Period”).

11 8. As set forth in the Declaration of the Settlement Administrator, Laura Singh of
12 CPT Group, the Net Settlement Amount is approximately \$843,333.34, after the deductions set
13 forth in the chart below:

	Total Amount
<i>Settlement Amount</i>	\$1,400,000
Attorneys’ Fees (1/3)	\$466,666.66
Litigation Costs	\$15,000
Administrator Costs	\$15,000
PAGA payment to LWDA (75% of \$50k award)	\$37,500
PAGA payment to PAGA Group Members (25%)	\$12,500
Class Representative’s Service Award	\$10,000
<i>Net Settlement Amount</i>	\$843,333.34

21 9. The process of mailing the Notice Packets was very successful, as less than 1% of
22 the Notice Packets were deemed undeliverable by the Settlement Administrator. This means
23 that over 99% of the Class Notices were successfully delivered.

24 10. The response from the Class Members was overwhelmingly positive, as no Class
25 Member objected to or opted-out of the settlement.

26 11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in
27 the Motion for Final Approval, this Settlement is favorable to the Class and the release is
28 narrowly limited to the claims alleged.

1 12. Sufficient information existed to allow Class Counsel to intelligently value this
2 case. Given the parties' arms' length bargaining facilitated by a reputable and experienced wage
3 and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact
4 that 100% of the Class elected to participate and no objections were submitted, the presumption
5 of fairness is justified.

6 13. I believe that the Settlement is fair, reasonable and adequate, and in the best
7 interests of the Class, given the litigation risks and delay inherent in further litigation and
8 possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations
9 submitted in support thereof, Defendant vigorously contested Plaintiff's claims, and Plaintiff
10 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
11 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
12 that it is desirable that the action be fully and finally settled in the manner and upon the terms
13 and conditions set forth in the Settlement Agreement in order to limit further expense,
14 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
15 the operation of Defendant's business without further expensive litigation and the distraction and
16 diversion of its personnel with respect to matters at issue. All parties took into account the
17 uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The
18 parties determined that it is desirable and beneficial to both the Class and Defendant that this
19 case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The
20 recoveries contemplated by the Settlement represent a good result for the Class, fairly
21 proportioned to the likely risk-adjusted recovery in litigation.

22 **ADEQUACY OF COUNSEL AND**
23 **REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

24 14. As set forth above, I have handled over 250 class and representative actions, have
25 been appointed as class counsel and have successfully resolved over half of those class actions,
26 and many others remain pending and will successfully resolve in the future while recovering
27 many, many dozens of millions of dollars for my clients and Class Members. This is
28 substantially better than average accordingly to Mayer Brown LLP's study entitled, An

1 Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-
2 55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared
3 to two-thirds that are defeated and result in no payment to the class members.¹

4 15. When this case was taken on a contingency fee basis, with my firm agreeing to
5 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
6 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
7 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

8 16. It has been my experience that the benchmark for attorney fee awards in
9 California state cases is one-third of a common settlement fund, which the CA Supreme Court
10 recently upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement,
11 Class Counsel is seeking a fee of \$466,666.66, which is one-third of the Settlement Amount.

12 17. There are several additional factors why I believe that the Court should award
13 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
14 resulted in a common fund settlement amount of \$1,400,000, whereby the Class Members will
15 receive approximately \$924.69 on average and up to a maximum of \$3,552.19 for those
16 employees that worked the entire Class Period. This is a very good result in light of the disputed
17 nature of the claims alleged. This result was achieved by the work and success of my office,
18 who negotiated the settlement after extensive preparation, investigation, mediation, and
19 substantial work thereafter.

20 18. Second, Plaintiff faced significant risks going forward with the litigation. As
21 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
22 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
23 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
24 going forward with this litigation, and it would have taken several more years to realize any
25 recovery in this action along with the possibility of post-trial appeals.

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28 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 19. Third, Class Counsel are experienced class action litigators. This experience and
2 expertise, combined with the high quality of work performed in this case, resulted in the
3 settlement achieved in this case.

4 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
5 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
6 substantial amount of time, money, and resources, and have done so since the inception of this
7 case without any payment or compensation. If Plaintiff had lost this case, we would have
8 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
9 my office, which is a small firm. If, despite these hardships and risks, the best my office could
10 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
11 the hardships and serious risks we faced litigating this contingency case, and would not be
12 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
13 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
14 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
15 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
16 only one-third of class actions are successful, compared to two-thirds that are defeated and result
17 in no payment to the class members.

18 21. Fifth, the request for attorney's fees in the amount of one-third of the common
19 fund falls well within the norms accepted by state and federal courts in California in comparable
20 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
21 recovery under the common fund doctrine was recently approved by the California Supreme
22 Court in *Laffitte, supra*, 1 Cal.5th 480, 503.

23 22. For all of the above reasons, a common fund fee award here in the amount of one-
24 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

25 23. At my office, this case was primarily handled by Misty Lauby and me. As noted
26 in Ms. Lauby's declaration, she is a partner who works exclusively on employment law matters
27 and has been in practice for about 14 years. She bills at the hourly rate of \$650/hour. I have
28 been in practice for 21 years, with most of those years handling complex litigation and over the

1 last 15 years, my practice has almost entirely consisted of handling class action wage and hour
2 matters. My billing rate is \$775/hour. I believe these rates are consistent with Plaintiff and
3 Defense attorneys who handle complex class action litigation, if not somewhat lower.

4 24. The hourly rates above are comparable to those of other attorneys with equal or
5 similar experience, if not somewhat lower (i.e., the Laffrey Matrix at *www.laffreymatrix.com*
6 indicates that the benchmark rate for a 4-7 year attorney to be \$468/hour and a 11-19 year
7 attorney at \$764/hour, and a 20+ year attorney at \$919/hour).

8 25. Moreover, the Wolters Kluwer Real Rate Report (“Real Rate Report”), provides
9 directly applicable information in this regard. The Real Rate Report is based on an enormous and
10 statistically significant compilation of data. For instance, in 2017, the report was based on 25.8
11 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from
12 4,620 law firms, totaling \$9.02 billion in fees billed. The Real Rate Report then compiles and
13 analyzes this data to provide the hourly rates for partners and associates in major metropolitan
14 areas. In 2018, for the southern California area, which is based on billing entries for 999 partners
15 and 1,361 associates, the Real Rate Report states that: (a) the median rate for partners in Los
16 Angeles is \$695 and the upper quartile is \$995 per hour, and (b) the median rate for associates in
17 Los Angeles is \$550 and the upper quartile is \$721 (2018 Kluwer Real Rate Report, page 21).
18 And, perhaps most importantly, the information provided in the Real Rate Report is not based on
19 self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real
20 Rate Report is based on the actual hours and fees billed by law firms.

21 26. The table below includes a summary of the hours worked by Ms. Lauby, as set
22 forth in her declaration, and my hours, plus additional hours that I will bill in finalizing and filing
23 the motion, preparing for and attending the approval hearing, and working with the administrator
24 and defense counsel to finalize this matter. Our aggregated lodestar between the attorneys that
25 have worked on this case is approximately \$243,820, resulting in a multiplier of only 1.91, as
26 follows:

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Attorney	Experience	Hourly Rate	Hours	Total Lodestar
Brian Mankin	21 years	\$775	155 ²	\$120,125
Misty Lauby	16 years	\$650	190.3	\$123,695
Total Lodestar				\$243,820

27. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

28. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediator fees including travel to mediation, and other incidental expenses directly related to this action. Through final approval, my office will have incurred an estimated \$15,367.11 in litigation costs (see Exhibit "B" attached hereto). Since the Settlement Agreement allocated up to \$15,000 in costs, we are only seeking \$15,000 in costs. Defendant does not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARD

29. I also believe that the service award of \$10,000 to Plaintiff is fair and warranted for the reasons outlined in her declaration and in the motion. She came forward and worked directly with my office in analyzing the claims and documents, providing valuable information. (See her declaration for supporting information.) Indeed, her participation was an essential element of Defendant's desire to mediate and of the pre and post mediation analysis that allowed Class Counsel to settle the case. Of course, she also took on various risks, including the risk that she could have been ordered to pay Defendant's costs if she lost and the risk of retaliation and being black-balled in the industry. She also provided a full release of all claims. Defendant does not oppose the requested service award.

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31. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

32. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement of my firm’s litigation costs.

34. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys fees, costs, and service award.

By: Brian J. Mankin, Esq.

DECLARATION OF BRIAN MANKIN IN SUPPORT OF MOTION FOR FINAL APPROVAL