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of himself and all others similarly situated

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

CHARLES RODRIGUEZ, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,
dba U.S. Bank; and DOES 1 through 100,
inclusive

Defendants.

Case No. BC617356

CLASS ACTION

Assigned to: Hon. Amy D. Hogue; Dept. 7

**DECLARATION OF NICK ROSENTHAL IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND PAGA
SETTLEMENT**

Date: March 9, 2022

Time: 11:00 a.m.

Dept.: 7

Action filed: April 15, 2016

Related Case: 19STCV17516

1 Larry W. Lee (State Bar No. 228175)
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3 Nicholas Rosenthal (State Bar No. 268297)
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15 Attorneys for Plaintiff Ali Malik, Atefeh Yousefi,
16 and all others similarly situated.
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I, Nick Rosenthal, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, P.C., counsel of record for Named Plaintiffs Ali Malik and Atefeh Yousefi (collectively, "Plaintiffs"). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. Plaintiff Ali Malik (“Malik”) filed a class action complaint on February 1, 2019 in San Mateo Superior Court, Case No. 19CIV00693, containing overlapping putative class claims as alleged in the *Rodriguez* Action. The *Malik* Action was transferred to Los Angeles Superior Court as Case No. 19STCV17516 and this Court deemed the *Malik* and *Rodriguez* matters related on August 2, 2019. *Id.* The operative Complaint in the *Malik* Action alleges (1) Violations of Labor Code §226.7 due to captive and non-duty free rest periods, (2) Violations of Labor Code §226(a); and (3) a derivative Unfair Competition Law Claim. Plaintiff Malik’s operative Complaint is on behalf of himself and all other individuals who worked for Defendant in California as non-exempt employees.

3. Plaintiff Malik conducted two separate Person Most Knowledgeable (“PMK”) depositions and was deposed. Further, counsel for Plaintiff Malik attended Plaintiff Rodriguez’s depositions. Plaintiff Malik served two rounds of written discovery. This written discovery produced thousands of pages of documents related to the policies and practices at-issue as well as payroll records and timekeeping records. On November 16, 2020, Plaintiff Malik filed a Motion to Certify Class Action

4. The parties engaged in global private mediation with Michael Loeb, Esq. on April 28, 2021. Mr. Loeb is a well-respected wage and hour class action mediator. After a full day of mediation, the parties did not reach a settlement, but negotiations continued by and through mediator Loeb. On or about May 21, 2021, the Parties agreed to a settlement in principle.

5. Prior to attending the mediation, Plaintiffs conducted a comprehensive investigation into the facts and legal issues raised by these Actions. In addition to the extensive formal discovery in this matter, Defendant provided informal discovery that included information relevant to prepare

1 a damages model.

2 6. On July 31, 2020, Plaintiff Malik participated in private mediation with Defendant
3 that was unsuccessful. Before this mediation, Defendant also engaged in informal discovery to
4 supplement the then existing formal discovery that, in part, allowed Plaintiff Malik to prepare a
5 damages model.

6 7. Plaintiffs and Counsel have concluded, after taking into account sharply disputed
7 factual and legal issues involved in this litigation, the risks of further litigation, and the substantial
8 benefits received and to be received pursuant to the compromise and settlement of the litigation,
9 that settlement on the terms hereinafter set forth is in the best interest of the class members.

10 8. In this case, Plaintiffs and Class Counsel engaged in three (3) separate private
11 mediations and settlement negotiations that occurred after they had possessed sufficient information
12 and documentation to make an informed decision and conducted a comprehensive review and
13 analysis of the facts, potential damages, and legal issues raised by the Actions. The final private
14 mediation with Michael Loeb, Esq., and subsequent settlement negotiations through Loeb that
15 resulted in the proposed Settlement, were subsequent to Plaintiffs Rodriguez and Malik filing
16 Motions to Certify Class Actions. Through the assistance of private mediator Loeb, a well-
17 informed, independent, and well-respected wage and hour class action mediator, the parties were
18 able to reach the proposed Settlement. Thus, the settlement negotiations in this matter were at arm's
19 length and non-collusive.

20 9. In reaching the proposed Settlement, Plaintiffs and Class Counsel's negotiation
21 efforts took into consideration relevant factors such as the size of the class, the information and
22 documents obtained through informal and formal discovery, the common experience of Plaintiffs,
23 Defendant's projected liability, the expense of continued litigation, the uncertainty inherent in
24 litigating complex matters, such as obtaining and maintaining class certification, Defendant's
25 policies including its timekeeping and compensation practices, and the potential for appeals. Based
26 on Class Counsel's experience handling similar such claims, they are of the opinion that the
27 proposed settlement represents a favorable resolution for the Settlement Class as it provides for
28 compensation to the absent class members for Defendant's alleged violations without the further

1 expense and uncertainty of further litigation.

2 10. Prior to attending the April 2021 mediation with Loeb, Plaintiffs conducted a
3 comprehensive investigation into the facts and legal issues raised by these Actions. Plaintiffs'
4 investigation included requesting documents relating to Defendant's compensation, meal and rest
5 break policies, paid leave, overtime, wage statements, wage and hour training materials,
6 timekeeping practices for non-exempt employees, payroll and timekeeping data to permit Plaintiffs
7 to prepare a damages model. Class Counsel conducted five (5) separate depositions of Defendant's
8 employees, Defendant deposed Plaintiff Malik and deposed Plaintiff Rodriguez three times.
9 Defendant also provided information concerning security protocols. The Parties participated in
10 numerous rounds of written discovery that included meet and confer efforts to produce
11 supplemental responses related to the claims at-issue. Such requests resulted in Defendant
12 providing Class Counsel with thousands of pages of documents. Class Counsel thoroughly
13 reviewed and analyzed the information, documents and data it obtained in connection with
14 Plaintiffs' and the putative class's claims.

15 11. Class Counsel's experience and success in similar wage and hour class action
16 litigation further supports the fairness of the proposed settlement. To date, Class Counsel has
17 collectively handled hundreds of class action and complex cases, the majority of which they served
18 as Class Counsel. Class Counsel relied on their extensive experience when negotiating the proposed
19 settlement. As discussed above, Class Counsel's settlement negotiations were conducted with
20 consideration given to the class size, the information and documentation obtained in formal and
21 informal discovery, the common experience of Plaintiffs and other putative class members,
22 Defendant's general denial of any wrongdoing, and the uncertainty, risk, expense and delay
23 associated with litigating the Actions through trial, including the risks of obtaining and maintaining
24 class certification through trial and the potential for appeals.

25 12. Class Counsel also considered the just nature of the proposed non-reversionary
26 settlement, which requires Defendant to remit any unclaimed funds to the California State
27 Controller's Office, Unclaimed Property Division in the name of the Class Member.

28 13. This proposed settlement is fair and reasonable and comparable to similar class

1 action settlements involving these types of claims. Based on Class Counsel's review and analysis of
2 the information and documentation obtained in these Actions, Class Counsel anticipates that if these
3 matters were certified as class actions, proceeded to trial, and resulted in verdicts for Plaintiffs and
4 the Class Members, Defendant's reasonable exposure for the claims at-issue is \$292,660,681.00.
5 However, for the reasons described in the Motion, the Court might ultimately determine the Claims
6 are not suitable for class certification, or would be subject to possible decertification after initially
7 granting class certification.

8 14. Class Counsel are of the opinion that the proposed settlement is fair, reasonable and
9 adequate in light the following: Plaintiffs contend that Defendant engaged in a systematic course of
10 illegal employment and payroll practices and policies, which were applied to all current and former
11 non-exempt employees of Defendant in California, and as a result of which, with respect to all
12 Class Members, Defendant failed to provide legally compliant duty free rest periods, timely pay all
13 wages due, including minimum wages and overtime wages at the correct regular rate of pay, failed
14 to pay all penalties and premiums due, failed to provide legally compliant meal periods, failed to
15 pay sick leave at the regular rate of pay, failed to maintain required records, failed to furnish
16 accurate itemized wage statements, and failed to pay all wages due to discharged and quitting
17 employees; Defendant denies Plaintiffs' claims and has asserted various defenses thereof; PSCM
18 will receive compensation for Defendant's alleged violations without further delay; the release of
19 claims is carefully crafted to only resolve the claims that were or could have been asserted based on
20 the facts of the operative complaints; the uncertainty of the outcome, risk and expense of litigation
21 in complex class actions; and that no amount of the Gross Settlement Amount will revert back to
22 Defendant, among other things.

23 15. Plaintiffs' interests are not antagonistic to the interest of the Settlement Class since,
24 as discussed herein, Plaintiffs allege that the Class Members were subject to the same unlawful
25 policies and practices. Consequently, Plaintiffs seek the same or similar relief sought by the
26 Settlement Class. Moreover, Plaintiffs have prosecuted this case on behalf of the Settlement Class
27 and have spent considerable time meeting and corresponding with Class Counsel and providing
28 documentation to Class Counsel.

1 16. Plaintiffs also spent significant time litigating these actions, reviewing documents,
2 providing documents and information to Class Counsel, sitting for depositions, responding to
3 written discovery and supplementing written discovery responses, discussing their experience with
4 Class Counsel, reviewing settlement documents, and providing consistent support to Class Counsel.

5 17. Additionally, as discussed herein, Class Counsel is very experienced litigating wage
6 and hour class actions. In this litigation, Class Counsel thoroughly investigated Plaintiffs' claims,
7 the underlying case law and potential defenses, and reviewed the substantial information and
8 documents exchanged in informal discovery prior to attending mediation. Accordingly, Class
9 Counsel were sufficiently informed prior to engaging in settlement negotiations. Furthermore, the
10 settlement negotiations between the Parties were non-collusive, at arm's length and conducted with
11 the assistance of a mediator.

12 18. My qualifications are as follows: I received my JD from University of Southern
13 California Gould School of Law in 2009. Upon graduation, I practiced law as an associate at
14 Seyfarth Shaw LLP, representing corporate clients in both single-plaintiff and wage hour class
15 actions. In 2014, I began as an associate at Diversity Law Group.

16 19. I have handled a number of wage and hour matters including class actions and
17 multiple-plaintiff actions. I have been named as Class Counsel in a number of class actions that
18 have been granted certification or preliminary or final approval by the Superior Courts of Los
19 Angeles County, Orange County, Alameda County, and Monterey County, the United States
20 District Court for the Central District of California, and the United States District Court for the
21 Northern District of California. These cases include, but are not limited to: *Diller v. Under Armour*
22 *Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Dall v. Post Alarm*
23 *Systems*, Los Angeles County Superior Court Case No. BC598528, *Lopez v. Imperial Body Shop,*
24 *Inc.*, Orange County Superior Court Case No. Case No. 30-2015-00816193-CU-OE-CXC, *Hughes*
25 *v. Lincare, Inc., et al.*, Monterey County Superior Court Case No. M124764, *Pittman v. Martinez*
26 *Steel Corporation*, San Bernardino County Superior Court Case No. CIVDS1823132, *Della*
27 *Maggiore v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No.
28 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No.

1 RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento County Superior Court Case No.
2 34-2018-00245481-CU-OE-GDS, *Chavez v. Converse, Inc.*, United States District Court – Northern
3 District of California Case No. 15-cv-03746-NC, and *Rodriguez v. Nike Retail Services, Inc.*,
4 United States District Court – Northern District of California Case No. 5:14-CV-1508 BLF.

5
6 I declare under penalty of perjury under the laws of the State of California that the foregoing
7 is true and correct.

8 Executed on November 29, 2021, at Los Angeles, California.

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11 Nick Rosenthal
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PROOF OF SERVICE

I am employed in the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Ste. 100, Rancho Cucamonga, California 91730.

On November 29, 2021, I served the foregoing document described as **DECLARATION OF NICK ROSENTHAL IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PAGA SETTLEMENT** on the interested parties in this action as follows:

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Los Angeles, CA 90071
Attorneys for Plaintiff Ali Malik and Atefeh Yousefi
SERVICE BY EMAIL

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PROOF OF SERVICE

1 I am “readily familiar” with the firm’s practice of services of process. Under that
2 practice, this document would be deposited:

3 **(VIA E-SERVICE)** I caused the document(s) to be served by CASEANYWHERE
4 by transmitting a true and correct copy to CASEANYWHERE to serve the parties listed
5 above; and

6 **(BY EMAIL)** I caused the document(s) to be sent to the person(s) at the electronic
7 address(es) listed above.

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

10 Executed on November 29, 2021 at Rancho Cucamonga, California.

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12 _____
13 Yvonne Medina
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