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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ORANGE**

14 MARIO FERNANDEZ, an individual, on
15 behalf of himself and on behalf of all persons
16 similarly situated, and on behalf of the State of
17 California, as a private attorney general,

18 Plaintiffs,

19 vs.

20 NUVISION FEDERAL CREDIT UNION, a
21 Corporation; and DOES 1 through 50,
22 inclusive,

23 Defendants.

CASE NO.: **30-2020-01161691-CU-OE-CXC**

Consolidated with Case No.:

30-2020-01165529-CU-OE-CXC

**DECLARATION OF JOSE GARAY IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: June 16, 2022

Hearing Time: 2:00 p.m.

Judge: Hon. Peter J. Wilson

Dept.: CX102

Action Filed: September 23, 2020

Trial Date: Not Set

24 I, Jose Garay, declare:

25 1. I am an attorney licensed to practice law in the State of California. I have
26 personal knowledge of the matters stated herein and if called and sworn as a witness, I could and
27 would competently testify under oath thereto.

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JOSE GARAY, ESQ. DECLARATION

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement in this matter.

QUALIFICATIONS

3. I graduated from Stanford University in May 1989. I obtained my J.D. from Southern Methodist University in May 1998. I was admitted to the California State Bar in February 1999. In or around 2001, I focused my practice exclusively on employment wage and hour class litigation. Since the inception of my law firm, I have represented individuals exclusively in all wage related matters. I successfully represented individuals in DLSE filings and civil court. As a result, I transitioned into class actions with a broad and in-depth experience affecting class based lawsuits. In 2002, I filed one of the first known class action cases under Labor Code section 226.7. My law firm was instrumental in the state-wide dispute over the private right of action debate as well as the debate over wage versus penalty. I successfully litigated both issues in state and federal court. In 2004, as a result of my extensive experience, California Rural Legal Assistance selected my law firm to assist them with class litigation affecting migrant workers. I have been asked to sit on class action panels on numerous occasions, I have been asked to act as a mediator, law professors have requested that I speak on class action issues, ethics issues, and damage analysis, and I have written numerous articles tailored to high tech employees.

4. Since the time my law firm transitioned one hundred percent (100%) to wage and hour class actions in approximately 2003, numerous attorneys who have filed wage and hour class actions have sought the assistance of my law firm either as co-counsel or of-counsel. In nearly two decades, I have prosecuted hundreds of wage and hour class actions (over 400 class action lawsuits filed in state and federal court), including many with the same issues presented in the instant related matters.

5. In the last decade, I have litigated hundreds of class actions involving the same or similar issues. The following is a small sample of cases that were certified and/or in which I was appointed class counsel (either as lead counsel or co-counsel):

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JOSE GARAY, ESO. DECLARATION

- 1 • GRAHAM V. DST OUTPUT WEST, LL, ET AL., EDCSC NO. PC 2008 0109 [Wage and
2 Hour Class Action];
- 3 • CANALE v. AUTO NATION ET AL., LASC NO. BC 323890 [Joint Employer Wage
4 And Hour Class Action Resulting In Summary Judgment In Favor Of Defendant];
- 5 • SARKISIAN V. SYMANTEC CORPORATION. ET AL., LASC NO. BC 423476 [Wage
6 and Hour Class Action];
- 7 • CLAUDIA SHEPHERD AND DELFINA GARCIA V. AYRES GROUP, ET AL., 30-
8 2010-00372924 30-2010-00404619 [Alleging that defendant failed to provide meal
9 periods and rest breaks under California law class action];
- 10 • NAVA V. CHAPMAN CARE, ET AL., OCSC 30-2010-00413245 [Alleging that
11 defendant failed to provide meal periods and rest breaks under California law class action];
- 12 • VAZQUEZ V. MARRIOTT INTERNATIONAL, INC. ET AL. OCSC 30-2010-
13 00396748-CU-OE-CXC [Alleging that defendant failed to provide meal periods and rest
14 breaks under California law class action];
- 15 • SANDOVAL, JUAN JOSE, ET AL. VS. ADVANCED DYNAMIC SOLUTIONS, INC.,
16 OCSC 30-2010-00395127-CU-OE-CXC [Alleging that defendant failure to provide meal
17 periods, rest periods and overtime];
- 18 • O 'FLYNN V. GOLFSMITH OCSC 30-2009-00180164-CU-OE-CXC [Alleging that
19 defendant failed to provide meal periods, rest periods and overtime compensation];
- 20 • ESPINOZA V. BIG LOTS STORES INC., ET AL., VCSC NO.CIV 236538 [Alleging
21 that defendant failed to provide rest breaks under California law class action];
- 22 • PERALTA, ET AL. VS. B&V ENTERPRISES OCSC 30-2010-00405905-CU-OE-CXC
23 [Alleged failed to pay wages for off the clock time, meal and rest period violations];
- 24 • PEREZ V. EL TORITO RESTAURANTS, INC., ET AL., LASC NO. NC 036649
25 [Alleging that defendant failure to provide meal periods, rest periods and overtime
26 compensation];
- 27 • CULBERTSON VS. IKEA ET AL., ACSC NO. RG07348854 [Alleging that defendant
28 failed to provide meal periods and rest breaks under California law class action];
- CORBIN V. LANDRY'S RESTAURANTS ET AL., LASC NO. BC380713 [Alleging that
defendant failed to provide meal periods, rest periods and overtime compensation];
- ABRAHAM VEGA V. DOMINO'S PIZZA CALIFORNIA LLC. ET AL., OCSC NO. 03
CC00203[Alleging that defendant failed to provide meal periods and rest breaks under
California law class action];

JOSE GARAY, ESQ. DECLARATION

- 1 • BERTHA MERCADO V. GATE GOURMET, INC., ET AL., UNITED STATES
2 DISTRICT COURT No.CV-07-02305-JHN(CWx) [Wage and Hour Class Action,
3 settlement of two subclasses alleging failure to provide lawful meal and rest periods];
- 4 • DELLMORE V. TOYS 'R' US ACSC RG07306616 [Alleged failed to pay wages for off
5 the clock time, meal and rest period violations];
- 6 • MENDOZA V. PANDA EXPRESS LASC BC 371019 [Alleged Defendant failed to
7 provide meal periods or compensation];
- 8 • GALAVIS V. PATINA GROUP LASC BC3755225 [Alleged Defendant failed to provide
9 meal periods or compensation];
- 10 • GIDINO V. MCGRATH RENT CORP., ET AL., ACSC VG09446874 [Alleging that
11 defendant failed to provide meal periods and rest breaks under California law class action];
- 12 • GOMEZ, ET AL. V. ADRIANA'S INSURANCE SERVICES, INC., ET AL. SCSB
13 CIVRS 806612 [Alleging that defendant failed to provide meal periods and rest breaks
14 under California law class action];
- 15 • BRIAN JOHANSON V. HOME LOAN CENTER OCSC CASE NO: 07CC01405
16 [Alleging that defendant failed to provide meal periods, rest periods and overtime];
- 17 • DAVID O'FLYNN V. WORLDWIDE GOLF ENTERPRISES, INC., ET AL. OCSC
18 07CC01393 [Alleging that defendant failed to provide meal periods, rest periods and
19 overtime];
- 20 • ARAVENA V. VMWARE INC., ET AL., OCSC NO. 07CC01368 [Misclassification class
21 action for software engineers];
- 22 • KAREN ROBERTS V. PALM, INC., ET AL., SCSC NO. 1-10 CV 161497
23 [Misclassification of test engineers alleging that defendant misclassified test engineers as
24 exempt];
- 25 • [CHAN V. PAYPAL, INC.](#) V. [1-10-CV-168947](#) [Misclassification class action for
26 software engineers and related positions in multiple job families alleging that defendant
27 misclassified software engineers as exempt];
- 28 • [VU V. EBAY, INC.](#) [1-10-CV-167040](#) [Misclassification class action for software
engineers and related positions in multiple job families alleging that defendant
misclassified software engineers as exempt];
- JOHN THOMAS v. COGNIZANT TECHNOLOGY SOLUTIONS U.S.
CORPORATION, UNITED STATES DISTRICT COURT NO. CV 11-1123 JST

JOSE GARAY, ESQ. DECLARATION

1 [Misclassification];

- 2 • LOPEZ v. WARE DISPOSAL, INC., Case No.: 30-2010-00405307-CU-OW-CXC [Meal
3 and Rest Period Class Action];
- 4 • BARAJAS v. BEST BRANDS CORP, SBSC CASE NO. CIVDS 1014454[Wage And
5 Hour Class Action];
- 6 • GERARDO ORTEGA AND JAIME BOTELLO v. CR&R WASTE SERVICES LASC
7 NO. BC414624 [Meal and Rest Period Class Action]; and
- 8 • MEDINA v. IDS USA WEST, INC CASE NO.:CIVRS1111028 Wage And Hour Class
9 Action].

10 **SUMMARY OF PARTICIPATION**

11 6. From the date Plaintiff first contacted me, I thoroughly investigated the claims of
12 the class and aggrieved employees from pre-filing investigation and up until mediation. I was
13 involved in many meetings and telephone conferences with Plaintiffs and witnesses, reviewed
14 documents provided by Plaintiffs, reviewed, and contributed to the complaint, and researched
15 Defendant and various legal issues in preparation for the filing of a complaint. Thereafter,
16 Plaintiff's counsel and I discussed developments and mediation and merits issues as they arose.
17 I regularly communicated with Plaintiff to update and status him.

18 7. I had many conversations with class counsel (Nicholas De Blouw) regarding
19 litigation and settlement issues as they arose. The class action settlement was a result of arms-
20 length negotiations and in my opinion is fair, reasonable, and adequate. Although adversarial,
21 the negotiations remained cordial despite the Parties steadfastly maintaining their positions with
22 respect to the merits of the claims and class certification. Agreement did not come easily, and an
23 agreement was reached only after a thorough investigation of the class claims.

24 8. I have reviewed the Preliminary Approval Motion documents and have assessed
25 the claims raised in this litigation, the risk factors, defenses, viability, the mediation, the
26 preliminary hearing, and the potential outcome of future hearings, and, after taking into account
27 the disputed factual and legal issues involved in this Action, the risks attending further
28 prosecution, and the benefits to be received pursuant to the compromise and settlement of the

JOSE GARAY, ESQ. DECLARATION

1 Action as set forth in the Agreement, I conclude that the settlement terms are fair, reasonable,
2 adequate, and in the best interest of the Class.

3 **ATTORNEY'S FEES**

4 9. At all times, I have been diligent with my time. As there are multiple attorneys
5 advocating for the class, all counsel were incentivized to operate as efficiently as possible and
6 not to engage in duplicative activities merely to increase time spent on this case. At the same
7 time, however, Plaintiffs' counsel must protect the interests of the class by diligently pursuing
8 investigations, researching, and leaving no stone unturned that may increase the value of the
9 case and likelihood of success on behalf of the class.

10 10. My previously approved hourly rate in similar class actions is \$850.00 per hour,
11 which is reasonable in light of my prior approval rates, my nearly twenty (20) years of
12 experience practicing wage and hour class action litigation in Southern California, and my
13 position as the founder of the firm. My total hours worked on this case is 30 hours.

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15 I declare under penalty of perjury, under the laws of the State of California, that the
16 foregoing is true and correct. Executed this 28th day of April 28 at Coto de Caza, California.

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