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Attorneys for Plaintiffs
ILDIKO O'CONNOR, LAURA RAYA, and DINA
SHASHUA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

ILDIKO O'CONNOR, an individual and on
behalf of all others similarly situated,
LAURA RAYA, an individual and on
behalf of all others similarly situated, and
DINA SHASHUA, an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

FERGUSON SM, INC., a California
Corporation; SEAN CORREA, an
individual; THOMAS HUMPHREY, an
individual, MICHAEL REYES, an
individual, INFINITI HR WEST, LLC, an
Arizona Limited Liability Company, HR
SERVICE GROUP, LLC, a Maryland
Limited Liability Company, and DOES 3-
50, inclusive,

Defendants.

CASE NO.: 56-2020-00543357-CU-OE-VTA

**DECLARATION OF KELLY HANKER IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Date: 1/16/2024
Time: 8:30 a.m.
Dept.: 40
Hon. Judge: Judge Mark S. Borrell

Complaint Filed: July 17, 2020
SAC Filed: Nov. 24, 2020
Trial Date: None set

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I, Kelly Hanker, declare as follows:

1. I am an attorney licensed to practice in California and, together with the Patrick R. Kitchen, Esq., and Trial Lawyers for Justice, serve as counsel of record to Plaintiffs Ildiko O'Connor, Laura

1 Raya, and Dina Shashua (“Plaintiffs”) and the putative settlement class. I make this declaration in
2 support of Plaintiffs’ motion for preliminary approval of the class action settlement in this case.

3 2. I have served as defense counsel in a number of wage and hour class actions in California.

4 3. In this specific case, I have worked diligently to protect and advance the interest of my clients
5 and the putative class. Together with my co-counsel, Patrick Kitchin we have:

- 6 • Met with Ms. O’Connor, Mr. Shashua and Ms. Rayas multiple times, and have
7 communicated with each via telephone calls, emails, and text messaging consistently
8 throughout the duration of this case;
- 9 • Interviewed 12 additional Class Members and witnesses;
- 10 • Analyzed very complex wage systems developed by Defendants to develop appropriate
11 theories of liability;
- 12 • Prepared significant written discovery requests to all defendants, and analyzed Defendants’
13 responses and extensive rolling document production;
- 14 • Assisted in taking the deposition of Defendant Thomas Humphrey, the designated person
15 most qualified to address all of the wage and hour matters at issue in the case;
- 16 • Assisted in retaining a qualified wage economist to develop a damages and penalties model
17 based on the records produced to Plaintiffs in response to our written discovery, together
18 with data obtained during settlement negotiations and in the mediation process;
- 19 • Worked with our wage economist to ensure that his calculations were firmly grounded in
20 California law, including with respect to the calculation of civil penalties under our clients’
21 PAGA claims;

22 4. By the time we engaged in mediation with the Hon. Judge Jamie Jacobs-May (Ret.) in
23 January 2023, our clients, Mr. Kitchin and I were well equipped with all of the data and analyses we
24 needed to negotiate a fair, evidence-based and risk-assessment-based resolution.

25 5. During the course of this litigation, we learned that Ferguson SM, Inc. ceased operations
26 entirely in mid-2020 during the COVID-19 pandemic. The company has no assets and its primary
27 owner, Thomas Humphreys, has financed the defense of this lawsuit, and will be responsible for
28 paying Ferguson’s share of the proposed settlement.

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6. We also learned through discovery that the Infiniti defendants served as Ferguson’s PEO (Professional Employer Organization), only from November 2018 through December 2019.

7. Ferguson is out of business and the Infiniti defendants’ potential liability exposure is limited to about 14 months. These factors raised the significant risk that absent settlement, our clients and the putative class likely would soon face an insolvent defendant (Ferguson and its owner) and a difficult fight establishing liability against the PEO as a joint employer.

8. Our wage and hour economist, Nikita Pimenov, calculated the Class’s underlying damages to be approximately \$3 million, comprised of \$1,613,500 in all PAGA penalties combined (“stacked”), plus \$1,339,617 in wage and hour damages and statutory penalties. Defendants did not provide any damages calculations at mediation.

9. Plaintiffs’ damages models relied on a number of assumptions regarding the putative class. Because Defendants failed to keep a record of meal period times, for example, we used liberal estimates of the number of meal periods missed and the number of meal periods provided late to the class based on limited data. Class Members did estimate off-the-clock time and missed meal and rest periods varied, each of them spending some time working without pay and each regularly missed meal and rest periods. Workweek calculations, days and hours worked, and commissions paid were based entirely on Defendants’ own payroll records, however.

10. With respect to all major components of the damages analysis, our wage economists generated a range of models based on assumptions we provide to him based on our understanding of the experience of our clients and others who worked for Defendants. We used those models in our negotiations with the Defendants.

11. We determined that the only alternative to the settlement agreement we were able to achieve at mediation was high-risk litigation. Further litigation would have subjected our clients and the putative class to substantial and unwarranted risks, including the risk that Defendant Thomas Humphreys (the owner of Ferguson SM, Inc.) would file for bankruptcy protection.

12. The gross settlement amount is \$175,000. The net settlement amount to be paid to the class is estimated to be \$69,421.

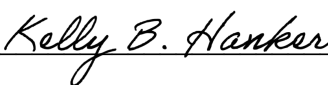
“Net Settlement Amount” means the Gross Settlement Amount minus

1 the Court approved Class Representative Enhancement Payments to
2 Plaintiffs, the Court approved Administration Costs to the Claims
3 Administrator, the Court approved Class Counsel Award of attorneys'
4 fees, the Court-approved Class Counsel Award of costs, and Court
5 approved PAGA Payment. The Net Settlement Amount is the amount
6 from which Individual Settlement Payments to Participating Class
7 Members and to PAGA Aggrieved Employees are made to and is
8 estimated to be approximately \$69,421.00 [Gross Settlement Amount
9 (\$175,000) – Claims Administration Costs (\$8,000.00) – Class
10 Representatives Enhancement Payments (\$15,000) – Class Counsel
11 Award for Fees (\$58,332.00) – Class Counsel Award for Costs
12 (approximately \$16,250.94) – LWDA Payment (\$5,625.00).]

13 13. The Claims Administrator will determine the amounts of Individual Settlement Payments to
14 be awarded to the Participating Class Members as follows: Class Members' gross share of the Net
15 Settlement Amount (before deduction for the standard employee's share of payroll taxes) is
16 calculated by dividing the Net Settlement Amount by the total number of weeks worked by all Class
17 Members during the Class Period and multiplying that amount by the number of workweeks worked
18 by each Class Member during the Class Period.

19 14. Defendant Ferguson SM, Inc. became insolvent during the Covid-19 Pandemic. Infiniti
20 served as a PEO for only 14 months during the applicable statutes of limitation. Given the risks
21 inherent in further litigation under these conditions, including the inevitability of substantial
22 additional delays and costs regardless of the outcome of the initial trial, I believe the proposed
23 settlement is fair and in the best interest of all Class Members.

24 I declare under penalty of perjury under the laws of the United States of America that the
25 foregoing declaration is true and correct to the best of my recollection and that this declaration was
26 made on December 15, 2023, in Los Angeles, CA

27 
28 Kelly B. Harker

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