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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BRANDEN BAGGOT, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

FOTO-KEM INDUSTRIES, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV31051

[Hon. William F. Highberger]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Notice of Motion and
Motion for Final Approval of Class Action
Settlement; Memorandum of Points and
Authorities; Declaration of Larry W. Lee;
Declaration of William L. Marder; Declaration
of Branden Baggot; Declaration of Jodey
Lawrence; [Proposed] Order and Final
Judgment]*

Date: November 18, 2021
Time: 11:30 a.m.
Department: 10

Complaint Filed: August 17, 2020

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff, Branden Baggot. I make this declaration
4 on the basis of my own personal knowledge, except as to those matters stated on information and belief
5 and, as to those matters, I believe them to be true. If called as a witness, I could testify competently as to
6 the facts stated in this declaration.

7 2. On August 17, 2020, Plaintiff initiated a class action against Defendant, Foto-Kem
8 Industries, Inc., by filing the Complaint in the Superior Court of the State of California for the County of
9 Los Angeles. On behalf of all current and former non-exempt employees in California since April 6,
10 2016, who earned non-discretionary incentive wages like shift premiums in workweeks that they took
11 paid sick leave, Plaintiff sued to remedy Defendant's failure to pay sick pay wages at the regular rate of
12 pay. In the Complaint, Plaintiff also alleged representative claims pursuant to the Labor Code Private
13 Attorneys General Act of 2004 ("PAGA"). As a proxy for the State of California, Plaintiff sued to
14 penalize the Labor Code violations resulting from Defendant's underpayment of sick pay wages since
15 April 6, 2019.

16 3. The Complaint alleges that Defendant violated the Labor Code by failing to pay sick pay
17 wages at the regular rate of pay by no later than the payday for the next regular payroll period after sick
18 leave was taken or upon termination of employment. Specifically, the Complaint alleges that Plaintiff
19 and other employees routinely earned shift premium wages, thus increasing employees' regular rate of
20 pay. It alleges that when sick leave was taken in workweeks that employees earned shift premium
21 wages, sick pay wages were paid at employees' base rate of pay rather than the regular rate of pay. The
22 Complaint also alleges that Plaintiff and other employees were not paid their underpaid sick pay wages
23 at the ends of their employments. On that basis, it alleges that Defendant violates Labor Code sections
24 201-204 and 246.

25 4. After Plaintiff filed the Complaint, Defendant produced data relating to the number of
26 individuals that earned shift premium wages in workweeks that they also took paid sick leave, the
27 number of pay periods impacted, the number of hours of PTO the individuals used, and the average
28 earnings for such individuals, among other things, which allowed Plaintiff to conduct a full damage

1 analysis. Class Counsel engaged in extensive investigation and negotiation before settling, including
2 reviewing class data produced by Defendant and conferring about disputed legal issues.

3 5. Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
4 face potential liability for underpaid sick pay wages and penalties in the amount of approximately
5 \$1,640,372.80. Approximately \$1,459,995.11 of the potential liability resulted from waiting time
6 penalties. Approximately \$38,177.69 of the potential liability resulted from damages or restitution for
7 underpaid sick pay wages, and approximately \$142,200 of the potential liability resulted from either
8 statutory or civil penalties. Defendant contended that all potential liability was subject to defenses and
9 that potential liability for waiting-time penalties was subject to additional defenses based on the facts
10 (i.e., furloughs) or law (i.e., good faith defenses).

11 6. The Parties settled after attending mediation with Gig Kyriacou, an experienced mediator
12 for labor and employment matters, including class and representative wage-hour matters. The settlement
13 was the product of negotiation between highly able and experienced attorneys on both sides. The Gross
14 Settlement Amount secures almost two times Defendant's potential non-waiting time penalty liability.
15 Even when factoring in waiting time penalties, the Gross Settlement Amount secures more than 21% of
16 Defendant's potential liability for the class.

17 7. I believe that a class can be certified. I also believe that the terms of the Agreement are
18 fair, reasonable, and adequate and in the best interests of the Class and Defendant in light of all known
19 facts and circumstances and the expenses and risks inherent in litigation, including the uncertainty and
20 risks to the Class from the possibility of not prevailing on one or more of the causes of action or theories
21 alleged in the operative Complaint, the possibility of non-certification, and the potential for appeals.

22 8. The Notice sent to Class Members provided my office's contact information, where they
23 could further seek information regarding the class settlement, leave questions for the settlement
24 administrator, and update their address. There were no objections to the amount of attorney's fees or
25 litigation costs that Class Counsel seek in this case and for which Plaintiff asks the Court for final
26 approval.

1 9. My co-counsel and I will adequately represent the Class Members in this action.
2 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its
3 conclusion.

4 10. I am one of the primary attorneys on this matter. My qualifications are as follows: After
5 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
6 2004 with concentrations in Management and Human Resources, I continued studying labor and
7 employment issues by enrolling in post-graduate education at the School of Labor and Employment
8 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
9 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
10 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
11 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

12 11. Upon graduating from law school in 2008, I practiced labor and employment law at
13 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
14 practice focused on wage and hour class, collective, and representative actions, with a particular
15 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 ("PAGA").
16 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
17 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
18 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
19 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
20 not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal.
21 Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was
22 also able to obtain experience litigating representative claims or wage and hour matters through trial and
23 appeal. *E.g.*, *Velazquez v. Costco Wholesale Corporation*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015)
24 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
25 pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014)
26 (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in
27 collective action with involving deductions from final paychecks). I also litigated class certification on
28 numerous matters, including matters before this court. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles

1 Superior Court Case No. BC 498326 (denial of class certification on behalf of retail employees alleging
2 off-the-clock work).

3 12. Based on my experience in wage and hour class, collective, and representative actions, I
4 have been interviewed and quoted in articles published in the Northern California Record about
5 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
6 hour class and representative action litigation, including articles on California kin care requirements in
7 *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of California
8 employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break laws in
9 *California Transportation News*, a publication of the California Construction Trucking Association.

10 13. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
11 which also focuses primarily on employment law. I have handled a number of wage and hour class and
12 representative actions and continue litigating such matters in numerous Superior Courts and District
13 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
14 mediated the resolution of dozens of wage and hour class, collective, and representative actions.

15 14. My current billing rate is \$700.00 per hour, which is less than my billing rate would have
16 been had I remained at my prior firm. In January of 2019, clients were billed and paid my rate of \$630
17 per hour. In January of 2020, clients were billed and paid my rate of \$670 per hour. Had I remained at
18 my prior firm, I am informed and believe that my billing rate would have increased in January of 2021
19 to approximately \$710 per hour and in January of 2022 to approximately \$750 per hour.

20 15. To date, I have incurred approximately 72.5 hours in connection with the litigation of this
21 lawsuit, including time spent performing legal research on the underlying legal theories, analyzing
22 Defendant's records, and conferring with Defendant, including numerous discussions regarding the
23 disputed legal theory and the Parties' disagreement as to violations of Labor Code section 246 and
24 derivative liability under Labor Code sections 201-204, drafting Plaintiff's mediation brief, attending
25 mediation, drafting settlement papers, drafting and revising Plaintiff's Motion for Preliminary Approval,
26 and supporting documents, drafting and revising Plaintiff's Motion for Final Approval, and supporting
27 documents, and corresponding with the settlement administrator and Defendant, among other things.

16. I also anticipate spending an additional 5 hours addressing the approval process, conferring, and reviewing e-mails and other written communications with counsel for Defendant, the Settlement Administrator, Class Members, and the Court regarding post-final approval matters, including payments and related issues.

17. The total lodestar for my hours will be approximately \$61,250.00 based on an hourly rate of \$500.00 per hour, which is supported by my experience set forth above and prior billing rates on defense work in Los Angeles County.

18. My firm has incurred costs in the amount of \$10,965.49. The costs are all litigation-related costs, including filing fees, mediation fees, deposition costs, and travel costs. Attached hereto as **Exhibit C** is copy of the costs my firm has incurred in connection with prosecution of this lawsuit.

19. I understand that the attorneys' fees awarded in this action will be split 65% to Diversity Law Group, P.C. and 35% to Polaris Law Group.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of October 2021, at Pasadena, California.


Simon L. Yang

EXHIBIT C

10/26/2021
1:40 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Baggot, Brandon v. Foto
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description		Timekeeper Activity Client Reference	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
63413 7/28/2020 WIP LWDA	EXP	Olympia Court fees Baggot, Brandon v. Foto	1	75.00	75.00
63543 7/31/2020 WIP Photocopies	EXP	Olympia Photocopies Baggot, Brandon v. Foto	2	0.25	0.50
63544 7/31/2020 WIP Postage	EXP	Olympia Postage Baggot, Brandon v. Foto	1	7.40	7.40
63921 8/17/2020 WIP Attorney Service	EXP	Olympia Atty Service Baggot, Brandon v. Foto	1	1632.95	1632.95
63977 8/31/2020 WIP Photocopies	EXP	Olympia Photocopies Baggot, Brandon v. Foto	31	0.25	7.75
63978 8/31/2020 WIP Postage	EXP	Olympia Postage Baggot, Brandon v. Foto	1	2.50	2.50
64360 9/21/2020 WIP Attorney Service - Notice of ISC	EXP	Olympia Atty Service Baggot, Brandon v. Foto	1	58.45	58.45
64361 9/21/2020 WIP Attorney Service - POS of Summons/Notice & Acknowledgment of Receipt	EXP	Olympia Atty Service Baggot, Brandon v. Foto	1	54.95	54.95

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
64504	EXP	Olympia	10	0.25	2.50
9/30/2020		Photocopies			
WIP		Baggot, Brandon v. Foto			
Photocopies					
64505	EXP	Olympia	1	0.65	0.65
9/30/2020		Postage			
WIP		Baggot, Brandon v. Foto			
Postage					
64709	EXP	Olympia	1	54.50	54.50
10/6/2020		Atty Service			
WIP		Baggot, Brandon v. Foto			
Attorney Service - Proposed Order					
65684	EXP	Olympia	1	7500.00	7500.00
1/13/2021		Arbitrators			
WIP		Baggot, Brandon v. Foto			
Gig Kyriacou Mediation					
65681	EXP	Olympia	1	121.20	121.20
1/13/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
Case Anywhere					
66473	EXP	Olympia	1	1.60	1.60
2/28/2021		Postage			
WIP		Baggot, Brandon v. Foto			
Postage					
66843	EXP	Olympia	1	120.00	120.00
4/6/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
Case Anywhere					
67469	EXP	Olympia	1	173.20	173.20
5/12/2021		Atty Service			
WIP		Baggot, Brandon v. Foto			
Attorney Service - Motion					
67402	EXP	Larry W. Lee	1	15.00	15.00
6/4/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
LACourtConnect					
67800	EXP	Olympia	1	85.34	85.34
6/9/2021		Atty Service			
WIP		Baggot, Brandon v. Foto			
Attorney Service - Supp Decl					

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Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
67521	EXP	Simon Yang	1	15.00	15.00
6/11/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
LA Court Connect					
67603	EXP	Olympia	1	5.00	5.00
6/17/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
LASC - Order Granting MPA Order					
67869	EXP	Olympia	1	162.00	162.00
7/8/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
Case Anywhere					
69332	EXP	Olympia	1	120.00	120.00
10/14/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
Case Anywhere					
69447	EXP	Olympia	1	250.00	250.00
10/21/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
Case Anywhere					
69448	EXP	Olympia	1	500.00	500.00
10/21/2021		Court fees			
WIP		Baggot, Brandon v. Foto			
Filing Fees					
Grand Total					
			Billable	0.00	10965.49
			Unbillable	0.00	0.00
			Total	0.00	10965.49