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Attorneys for Plaintiff, KATHERINE TOWNSEND

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KATHERINE TOWNSEND, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

RO-AL, INC., a California Corporation;
PATRICK MOLLOY BASTIAN, an
individual; ALICE BASTIAN HAHN, an
individual; FRED HAHN, an individual; and
DOES 1 through 50 inclusive.

Defendants.

Case No. 20STCV18526

Hon. Yvette M. Palazuelos, Dept. SSC-9

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
DAVID R. GREIFINGER IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: April 7, 2022 [Reserved]
Time: 10:00 a.m.
Dept.: SSC-9

DECLARATION OF DAVID GREIFINGER

I, David R. Greifinger, declare as follows:

1. I am an attorney of record in the above-captioned case. I am admitted, in good standing, to practice as an attorney before all courts in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central and Eastern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness, I would testify fully to the matters stated in this declaration. All of these matters are within my personal knowledge, except those matters that are stated to be upon information and belief, and as to those matters, I believe them to be true.

2. I submit this supplemental declaration in support of Plaintiffs' Motion for Preliminary Approval of PAGA Action and Class Settlement in *Katherine Townsend v. Ro-Al, Inc., et al.* – Los Angeles County Superior Court Case No. 20STCV18526.

3. I have practiced law since 1982 and been engaged in representing plaintiffs in class action lawsuits in the employment, telecommunications, insurance, banking, consumer fraud, antitrust, civil rights, and mass and toxic tort fields since 2000.

4. During that time, I have been named as lead or co-counsel in class action cases in the Superior Court of the State of California, County of Los Angeles, in the County of Orange, in the County of Riverside, and in the County of Santa Barbara. A list of those cases is attached to this declaration as EXHIBIT 1. In class action matters, I have jointly obtained published appellate decisions from the Ninth Circuit Court of Appeals, in *Douglas v. Talk America, Inc.* (9th Cir. 2007) 495 F.3d 1062 and the California Court of Appeal in *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508.

5. I am a member of the appellate panel for the California Appellate Project Los Angeles and Appellate Defenders, Inc. in San Diego. I have filed appellate briefs in over 100 cases and am counsel of record in numerous cases that have resulted in published appellate decisions.

6. My associate, Calvin A. Marshall, Esq. has practiced law since 2017. Mr.

1 Marshall's practice focuses on representing plaintiffs in employment and consumer class
2 actions. Mr. Marshall has assisted in the prosecution of numerous class actions that were deemed
3 complex. Mr. Marshall's assistance has included investigation, drafting of complaints, motions,
4 pleadings, and settlement agreements, propounding and responding to discovery, and attending court
5 appearances. My associate, Calvin Marshall, was named as my co-counsel in the class action
6 matter of *Checketts v. Advanced Veterinary Specialty, Inc.*, Santa Barbara Superior Court Case No.
7 20CV03056 on September 22, 2021.

8 7. Plaintiffs' Counsel conducted a thorough year-long investigation of the
9 factual and legal issues, starting shortly after Ms. Townsend retained them and continuing
10 until the parties reached a settlement in principle.

11 8. At the outset of the litigation, Ms. Townsend provided Plaintiffs' Counsel
12 with a detailed summary of her experiences working for Defendants, and the circumstances
13 that gave rise to the alleged Labor Code violations. Ms. Townsend was able to share with
14 Plaintiffs' Counsel her intimate knowledge of Defendants' policies and practices, and how
15 these policies and practices were implemented on a daily basis. In addition to establishing
16 Plaintiffs' Counsel's initial evaluation of the lawsuit, the information that Ms. Townsend
17 provided also influenced Plaintiffs' Counsels' discovery efforts.

18 9. On December 17, 2020, the parties agreed on a scope of informal discovery
19 while staying formal discovery. The informal discovery required Defendants to produce the
20 following information and documents: a putative class list; all applicable policies provided to
21 putative class members (during the class period) related to allegations in the complaint
22 including, Overtime, Meal Breaks [e.g. policies, waiver forms, waiver revocation forms,
23 requests for premiums/notification of missed meal], Rest Breaks, Timekeeping/Clocking In and
24 Out/Attendance, Reimbursement of Business Expenses, Provision of Adequate Seating,
25 Distribution of Gratuities, and any job descriptions for hourly employees; Statistically valid
26 sample data for putative class members, including timekeeping data and information, including
27 time audits and adjustment reports, and payroll data; paystubs for Plaintiff; and financial data
28 for 2018 through 2020. Plaintiffs' Counsel received the requested documentation, which

1 included approximately 6000 pages of documents and 39 extensive spreadsheets. Plaintiff's
2 counsel have also been informed that the individual defendants, who are the proprietors of
3 the restaurant, are elderly and in ill health. The documents and Damages Analysis enabled
4 Plaintiffs' Counsel to fully assess the nature and scale of the claims being settled, as well as
5 the obstacles to recovery, and to make an independent assessment of the reasonableness of
6 the terms to which the parties have agreed.

7 10. Plaintiff's Counsel performed a thorough investigation into the claims at
8 issue, which included: (1) determining Plaintiff's suitability as putative class
9 representatives and as private attorneys general through interviews and analyses of
10 employment files and related records; (2) drafting the PAGA Notice Letter; (3) evaluating
11 all of Plaintiff's potential representative claims; (4) researching similar wage-and-hour
12 class actions as to the claims brought, the nature of the positions, and the type of employer;
13 (5) drafting the Complaint and First Amended Complaint; (6) propounding informal
14 discovery requests; (7) analyzing a sample of the Settlement Class' time and wage records;
15 (8) analyzing Defendants' employment policies and practices applicable to the Settlement
16 Class; (9) researching settlements in similar cases; (10) evaluating Plaintiff's claims and
17 estimating Defendants' liability for purposes of settlement; and (12) negotiating a
18 settlement with Defendants' counsel.

19 11. By engaging in such a thorough investigation and evaluation of Plaintiff's
20 claims, Plaintiff's Counsel can opine that the Settlement, for the consideration and on the
21 terms set forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the
22 best interests of Class Members in light of all known facts and circumstances, including the
23 risk of significant delay and uncertainty associated with litigation, and various defenses
24 asserted by Defendants.

25 12. The proposed Settlement Class consists of all persons who are or were
26 employed by Defendants at Patrick Molloy's Sports Pub in California in hourly paid and/or
27 non-exempt positions at any time during the period from May 12, 2016, to the date of
28 Preliminary Approval. Based on the documents (including time and payroll records) which

1 have been produced, and on defendant's discovery responses, there are approximately 323
2 Class Members.

3 13. Given that there are only approximately 323 Class Members, the average net
4 recovery will be approximately \$333.00. This recovery will be a windfall for members of
5 the Settlement Class, who mostly earn at or near the minimum wage.

6 14. As revealed by the tax returns, the restaurant and bar have been losing money
7 since 2018 and have been suffered severe financial consequences from the Covid-19
8 Pandemic. The individual defendants are elderly and in frail health.

9 15. Plaintiff's counsel, reviewed the records described in Paragraph 9, and
10 submitted those records to Mr. Jarrett Gorlick, a Senior Data Analyst with Berger
11 Consulting Group, LLC, which provides expert litigation and consulting services for
12 California law firms in employment class action litigation. Based on a thorough analysis of
13 the data in the above-mentioned records, Mr. Gorlick estimates Defendants' maximum
14 exposure for damages to the Class at \$1,764,694 principal and interest, including \$845,004
15 for unpaid tips, \$479,066 for rest break violations, \$406,206 for meal break violations,
16 \$34,418 for unpaid business expenses. Using the most generous method of calculation of
17 penalties for the PAGA group, Mr. Gorlick estimates that PAGA penalties total \$3,936,849.

18 16. Defendant disputes that tips were not paid to employees, that rest break
19 violations occurred, that meal break violations occurred, or that it failed to pay business
20 expenses when required to do so. Proving these claims on a class-wide basis will depend on
21 the testimony of individual employees. Defendant contends that the circumstances of each
22 individual employee are unique and that it will be impracticable to establish liability and
23 damages on a class-wide basis. If the court does not approve this settlement, there is a
24 substantial risk that Plaintiff will not be able to satisfy the requirement of typicality for
25 class certification and that each putative class member would therefore have to litigate his
26 or her own claims individually. In light of the difficulty in certifying a class, Defendants'
27 financial position, the individual defendants' frail health, and the anticipated time and
28 expense of protracted litigation that would negatively impact any potential recovery for

1 class members, Plaintiff's counsel has concluded that the proposed settlement is adequate,
2 fair, and reasonable.

3 17. Based on the documents (including time and payroll records) which have
4 been produced, and on defendant's discovery responses, there are approximately 103
5 aggrieved employees during the "PAGA Period," namely October 17, 2019, and October
6 25, 2021 [the date set for Preliminary Approval]. These employees will receive an average
7 of \$24.27 in individual payments *in addition* to their average net recovery of \$333.00 for
8 their class claims.

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

11 Executed this 28th day of February 2022, at Pacific Palisades, California.

12 
13 DAVID R. GREIFINGER

Ex. 1

David R. Greifinger Class Action Cases—Named as Lead or Co-Counsel

Date Filed	Case No.	Case Title	Judge	Class Cert
	LOS ANGELES COUNTY SUPERIOR COURT			
June 14, 2001	BC242430 (Consolidated Case)	Armenderez, et. al. v. Six Flags, Inc.	Hon. Charles McCoy	Certification per settlement
May 8 2008	BC413434	Ortega v. L.A. Grand Club, Inc.	Hon. John A. Kronstadt	Certification per settlement
May 5, 2010	BC437103	Stone v. Four Seasons Hotels Limited	Hon. Terry A. Green	Certification per settlement
April 2, 2012	BC481956	De Guzman v. Affordable Wireless Technologies	Hon. Teresa Sanchez- Gordon	Certification per settlement
April 13, 2016	BC616783	Timberlake v. Fusione, Inc.	Hon. Carolyn B. Kuhl	Certification after contested motion; motion for preliminary approval per settlement granted; final approval pending
May 11, 2018	BC705659	Stone v. Chatsworth Fitness, LLC	Hon. Ann I. Jones	Certification per settlement

	ORANGE COUNTY SUPERIOR COURT			
May 16, 2005	05CC00109	Gomez, et. al. v. Lincare, Inc.	Hon. Nancy Wieben Stock	Certification per settlement
	RIVERSIDE COUNTY SUPERIOR COURT			
July 29, 2015	RIC1508918	Rich v. EOS Fitness Brands, LLC	Hon. Craig Riemer	Certification per settlement
	SANTA BARBARA SUPERIOR COURT			
Sept. 22, 2020	20CV03056	Checketts v. Advanced Veterinary Specialty, Inc.	Hon. Thomas P. Anderle	Certification per settlement

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