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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

DANIEL LARA DIAZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SHAMROCK FOODS CO., an Arizona
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: RIC 2004126
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**DECLARATION OF PLAINTIFF
DANIEL LARA DIAZ IN SUPPORT OF
MOTION TO APPROVE SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

Hearing

Date: July 6, 2022

Time: 8:30 a.m.

Dept.: 1

Reservation #: 266157493719

Complaint filed: 10/20/2020

I, Daniel Lara Diaz, state and declare:

1. I am the Plaintiff in the above captioned action and have personal knowledge of
all matters stated herein and could competently testify thereto.

2. I make this declaration in support of the motion to approve settlement pursuant to
the Private Attorneys General Act of 2004.

3. I was employed by Defendant Shamrock Foods Co. from October 2018 through
September 2020 as a shipping clerk. During my employment, I was bothered by the company's
policies and practices that resulted in its failure to properly provide meal breaks and rest periods

1 due to the hectic workload that often resulted in me working through breaks, taking breaks late
2 and/or shortening breaks to accommodate the workload. Moreover, on occasions where meal or
3 rest premiums were incurred, Defendant would change the punches to avoid paying premiums
4 which also resulted in unpaid work time. Additionally, when COVID started, the company began
5 to require that employees have their temperatures checked off-the-clock when entering the
6 building leading to approximately 2-3 minutes of off-the-clock time under the control of my
7 employer each day.

8 4. After I was terminated in September 2020, I researched attorneys and contacted
9 Lauby, Mankin & Lauby LLP. Although I strongly believed that there were violations of
10 California law, I was unsure if I wanted to bring a lawsuit because of the risk of stepping forward
11 as a whistle blower, since this could jeopardize my livelihood in the industry and make it
12 difficult to find future jobs. Nevertheless, because I did not think that myself or the other
13 employees were being treated properly, I retained Lauby, Mankin & Lauby, LLP, to move
14 forward with the case.

15 5. After retaining my attorneys, I understood that I had two options: I could pursue
16 my individual case, including claims for failure to pay minimum and overtime wages, failure to
17 provide meal periods and rest breaks, failure to timely pay wages each period and at the time of
18 separation, and failure to provide accurate and itemized wage statements (as discussed below) –
19 and attempt to maximize my personal recovery, or I could bring a class and representative action
20 and look out for the interests of all class members and aggrieved employees. The decision of
21 whether to bring my individual claims or to bring a representative action put me in a tough spot,
22 because on the one hand, I wanted to hold the company accountable for how they treated me and,
23 on the other hand, I wanted to help other employees that were not treated correctly according to
24 the labor code.

25 6. Ultimately, I elected to act as the named plaintiff in a class and PAGA action
26 which was filed on October 20, 2020. However, on December 28, 2020, counsel for Defendant
27 provided my attorneys with an arbitration agreement including a class waiver that I did not recall
28 signing and did not have in my possession. Ultimately, my attorneys and I agreed to dismiss the

1 class action and individual claims in order to proceed with the PAGA action.

2 7. Though, named Plaintiffs in PAGA actions are typically granted a service award
3 of \$5,000 to \$10,000, here, there is no request for a service award. Instead the parties agreed to
4 settle and release my individual wage and hour claims. However, I estimate that I have spent
5 over thirty (30) hours engaged in activities to the benefit of the aggrieved employees. I have
6 assisted my attorneys in numerous ways, including helping to explain and discuss the company's
7 practices and their general practices and procedures, locating and analyzing company documents,
8 preparing for and making myself available for the all-day mediation (including discussing the
9 company's general policies, practices, and procedures), and then reviewing all settlement
10 documents through this approval process. These efforts occurred through numerous telephone
11 conferences, letters, emails, and text communications. I believe that a request for a \$7,500
12 service award would be justified based on (a) the time I have spent on the case, which resulted in
13 a good settlement for the class, (b) the risks I took in bringing this case and the impact on my
14 ability to find work, and (c) my agreement to waive all of my individual claims beyond what is
15 alleged in the complaint including any potential claims for harassment, retaliation, and wrongful
16 termination.

17 8. After the PAGA settlement was finalized, the parties agreed to negotiate my
18 outstanding individual claims. Part of that separate agreement was that I am required to
19 compromise on and waive my separate individual wage and hour claims that were dismissed due
20 to the arbitration agreement, but the other aggrieved employees still retain the right to pursue.

21 9. The claims that I intended to file when initially contemplating this lawsuit were
22 the same wage and hour claims that were alleged on behalf of the aggrieved employees including
23 failure to pay minimum and overtime wages, failure to provide meal periods and rest breaks,
24 failure to timely pay final wages, and failure to provide accurate itemized wage statements.

25 10. The value of my individual claims if I were entirely successful at trial is estimated
26 as follows: unpaid overtime wages of \$3,278 (estimated at 15 minutes per day of lost overtime
27 wages (OT rate \$27.38) for a total of \$6.84 per day multiplied by an estimated 479 total shifts);
28 failure to pay meal periods damages of \$4,371 (50% of 479 shifts multiplied by regular rate of

1 pay at \$18.25); failure to pay rest break damages of \$2,185 (25% of 479 shifts multiplied by
2 regular rate of pay at \$18.25); failure to pay final wages of \$6,776 (average daily rate of pay
3 estimated at \$225.88 multiplied by 30); and failure to provide accurate itemized wage statements
4 of \$450 (\$50 initial violation plus \$100 x 4 pay periods from October 2019 through December
5 2019); plus interest in the amount of \$2,000. Therefore, I estimate that my total potential
6 recovery if I were to win at trial would be approximately **\$19,061**. Additionally, I would expect
7 to be awarded attorneys fees estimated to be \$65,000 through trial (estimated 100 hours of work
8 multiplied by \$650 per hour).

9 11. Taking into consideration all potential risks of taking the individual claims to trial
10 and defenses set forth by Defendant, my attorneys and I placed an approximately 50% risk
11 adjusted damages value on my individual claims and agreed to a \$15,000 individual settlement
12 including attorney's fees (attorney's fees were reduced to 1/3 of the individual recovery).

13 12. The individual settlement will be paid in cash with ten thousand dollars (\$10,000)
14 payable to me and five thousand dollars (\$5,000) payable to my attorneys for their fees.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed on May 17, 2022, at Riverside, California.

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18 *Daniel Lara*
19 By: Daniel Lara (May 17, 2022 12:22 PDT)
20 Daniel Lara Diaz
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