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DANIEL FRANCO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

DANIEL FRANCO, an individual, for the real
party in interest, the State of California

Plaintiff,

v.

KINGS & CONVICTS BP LLC.; and
DOES 1 through 50,

Defendants.

Case No. 37-2021-00004476-CU-OE-CTL

Judge: Hon. Gregory W. Pollack
Dept.: C-71

**DECLARATION OF TAMIM JAMI IN
SUPPORT OF PLAINTIFF'S UNOPPOSED
EX PARTE NOTICE AND EX PARTE
APPLICATION FOR APPROVAL OF
PAGA SETTLEMENT**

Judge: Hon. Gregory W Pollack
Dept.: C-71
Date: January 31, 2022
Time: 8:30 a.m.

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1. I am counsel of record in this matter. As such, I am fully familiar with the facts, pleadings, and history of this matter. The following facts are within my own personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.

3. This declaration is submitted in support of PLAINTIFF'S UNOPPOSED EX PARTE NOTICE AND EX PARTE APPLICATION FOR APPROVAL OF PAGA SETTLEMENT.

4. I was sworn in to practice in the State of California on December 1, 2016, and received my Juris Doctor, Cum Laude, from the University of San Diego School of Law where I received a Dean's Scholarship.

5. During law school, I externed as a clerk for Judge Dana M. Sabraw at the United States District Court for the Southern District of California and I was a law clerk and patent agent at Sheppard, Mullin, Richter & Hampton LLP in San Diego, California.

6. I am also a United States Patent Attorney licensed and registered to practice before the United States Patent and Trademark Office (Reg. No. 74,759).

7. Since becoming an attorney, I have advocated for the fair and equal treatment of numerous employees and consumers alike, and towards this end have filed and litigated a number of civil cases both in federal and state court, including class action and representative cases, on behalf of both employees and consumers in the area of consumer law, including, but not limited to, the areas of Wage and Hour, Consumer Protection, Identity Theft, Unfair Business Practices, and the Private Attorneys General Act.

8. I have personally represented thousands of clients in several class and representative actions (Private Attorneys General Act) prosecuting wage and hour claims as well as consumer claims. In five of those cases, I was able to secure class certification and final approval.

(See *Haji v. be.group*, San Diego Superior Court Case No. 37-2017-00025918-CU-OE-CTL; *Gamberg v. Five Guys Operations LLC*, San Diego Superior Court Case No. 37-2017-00040515-CU-OE-CTL; *Lizarraga v. Europa Auto Imports Inc.*, San Diego Superior Court Case No. 37-2018-00058131-CU-OE-CTL; *Ortiz v. Caraustar Industries, Inc.*, San Bernardino Superior Court Case No. CIV-DS1910308; *Campbell v. Fortunebuilders Inc.*, San Diego Superior Court Case No. 37-2019-00035583-CU-OE-CTL.

9. Additionally, I was appointed class counsel in federal court on a contested motion for class certification. (See *Magallon v. Vital Recovery Services, LLC*. (S.D.Cal. Mar.15, 2018) 2018 WL 1336291, Case No. 16-CV-02971-JAH-BLM.) The United States District Court for the Southern District of California in *Magallon* recently granted final approval of the class action settlement.

10. Prior to obtaining my legal education, I received my Bachelor of Science in Engineering, with distinctions, from San Diego State University.

11. In pursuing my Engineering degree, I took numerous courses in Microsoft Excel and used Microsoft Excel in conjunction with arithmetic as a routine part of my curricula. I have continued using Microsoft Excel in my legal practice to analyze wage and hour records and compile data. As a result, I am proficient in using Microsoft Excel functions to organize, compile, and ascertain data, statistics, and systemic patterns.

12. My hourly rate in employment cases, including this case, is \$425.00. My rate of \$425.00 per hour was approved last year in *White v. Wal-Mart Inc.*, San Diego Superior Court Case No. 37-2018-00059628-CU-OE-CTL. The rates charged by knowledgeable and experienced attorneys in the field of employment law in San Diego County, generally range from approximately \$400 per hour at the low end of the scale to approximately \$895 per hour at the high end of the scale for an attorney of my skill and experience. My hourly rate of \$425.00 is at the low end of the prevailing hourly rates and consistent with noted sources, such as the Westlaw Court Express' Legal Billing Report, Volume 17, Number 3, California Region for Dec. 2015, indicating that the law firms' ordinary hourly rates for attorneys with 4 to 9 years' experience are anywhere between \$390 to \$825. A true and correct copy of the Report is attached to Mr. Mashiri's declaration as

1 **Exhibit 1.** My rate is also lower than the 2020-2021 Laffey Matrix, which indicates an hourly rate
2 of \$465 for attorneys with 4 to 7 years' of experience. A true and correct copy of the Laffey Matrix
3 is attached to Mr. Mashiri's declaration as **Exhibit 2.** Since most plaintiffs cannot pay for my
4 services on an hourly basis, I represent virtually all of my wage and hour employment clients
5 (plaintiffs) on a contingency fee basis. Pursuant to this arrangement, I am not compensated for my
6 time unless and until I prevail at trial or successfully settle my client's case. Because I am taking
7 the risk that I will not be reimbursed for my time and expenses incurred unless my client settles or
8 wins his or her case, I generally cannot afford to represent clients for less than my hourly rate.

9 13. I, together with Mr. Mashiri, undertook the representation of Plaintiff in this
10 litigation at great financial risk, because I believed that Plaintiff, and other aggrieved employees,
11 had been wronged and their rights under the wage and hour laws of this state had been violated.

12 14. I spent in excess of 130 hours on this case, which includes, but is not limited to,
13 client intake, preparing and requesting Plaintiff's employment records, reviewing and analyzing
14 Plaintiff's payroll records and employment file, drafting the PAGA notice to the LWDA, preparing
15 and reviewing the pleadings, meetings and conference calls with my co-counsel Mr. Mashiri
16 regarding the factual and legal issues in this case, email exchanges with defense counsel,
17 conducting legal research as to the claims in dispute, assisting in drafting (but not serving) written
18 discovery, drafting the brief for the informal discovery conference, preparing for and attending
19 mediation including drafting the mediation brief, assisting in revising and reviewing the PAGA
20 settlement agreement, assisting Mr. Mashiri in drafting Plaintiff's ex parte application for PAGA
21 settlement approval and all supporting documents, among other tasks. The time I spent on this case
22 was necessary—separate and apart—from the time Mr. Mashiri spent on this case.

23 15. On November 25, 2020, after drafting the statutorily required notice, my office sent
24 the PAGA Notice to the California Labor and Workforce Development Agency ("LWDA") and
25 Defendant, declaring Plaintiff's intent to proceed with the enumerated Labor Code claims on behalf
26 of himself and all other aggrieved employees against Defendant.

27 16. Defendant is an brewery based in San Diego, California with a half-dozen retail
28 breweries throughout California. Plaintiff is an ex-employee who worked for Defendant from

1 approximately July 2016 to October 2020.

2 17. My office requested Plaintiff's employment/personnel file from Defendant. In
3 response, Defendant produced records including, among other things, wage statements and time
4 records for Plaintiff. Mr. Mashiri and I, reviewed these documents and conducted a detailed
5 analysis of Plaintiff's wage and hour claims.

6 18. On January 29, 2021, after my office drafted the complaint, Plaintiff filed his
7 complaint under the PAGA in this matter. The complaint alleged representative claims for civil
8 penalties under the PAGA for civil penalties under the PAGA for (1) violation of Labor Code
9 sections 510 and 1194; (2) violation of Labor Code section 246; (3) violation of Labor Code
10 sections 233 and 234; (4) violation of Labor Code section 227.3; (5) violation of Labor Code
11 section 226(a)(1); (6) violation of Labor Code section 226(a)(5); (7) violation of Labor Code
12 section 226(a)(9); (8) violation of Labor Code section 226(a); (9) violation of Labor Code sections
13 512, 226.7 and the IWC Wage Order; (10) violation of Labor Code section 226.7 and the IWC
14 Wage Order; (11) violation of Labor Code section 204; (12) violation of Labor Code sections 201,
15 202, and 203; and (13) violation of Labor Code section 1197 and the applicable IWC Wage Order.

16 19. After service of the complaint, the Parties, through counsel, engaged in several
17 discussions regarding the claims in this case. While the Parties tentatively agreed to attend a
18 mediation, they disagreed as to the scope of this action. Defendant contended that the scope of this
19 action is limited to those employees who worked at the location where Plaintiff was employed and
20 in the same position. Plaintiff contended that the scope of this action is broader and encompasses all
21 non-employees who suffered from at least of one of the alleged Labor Code violation within the
22 applicable period. To resolve the dispute before mediation, the Parties presented the issue via
23 briefing at an informal discovery conference before the Court on May 6, 2021. The Court opined
24 that the scope of this action is not limited to the same location of or similar position as Plaintiff but
25 rather to the entirety of Defendant's non-exempt employees and locations throughout California.
26 After considering the Court's informal opinion, the Parties agreed to exchange comprehensive
27 employee records and attend a mediation.

28 20. On September 8, 2021, after considering the Court's view, the Parties attended a

1 full day mediation with Mr. Jeffrey Krivis, Esq., a well-regarded mediator of complex class and
2 representative wage and hour actions.

3 21. While the case did not settle on the day of the September 8, 2021 mediation, the
4 Parties were able to continue settlement discussions with the assistance of Mr. Krivis and ultimately
5 reached a proposed settlement in the gross amount of \$225,000.00 in the days that followed. From
6 that amount, \$210,000 was for the PAGA settlement and \$15,000 was for Plaintiff's individual
7 settlement.

8 22. Prior to negotiating a settlement at the mediation, my office, together with Mr.
9 Jami's office, conducted a thorough investigation into the facts and claims in this case and
10 conducted extensive legal research as to the claims and applicable laws, including attending an
11 informal discovery conference regarding the scope of this case.

12 23. Additionally, prior to mediation, Defendant provided a Sample Set of
13 approximately 56 randomly selected employees who have worked for Defendant throughout
14 California. I personally analyzed the sample of approximately 56 randomly selected employees
15 These records were produced by way of PDF documents, consisting of thousands of documents
16 which I had to manually analyze, evaluate, and audit in detail due to the esoteric nature of the
17 claims. Using the information in the PDF documents, I created an Excel spreadsheet outlining the
18 systemic violations, resulting claims, and civil penalty exposure in preparation of the Parties'
19 September 8, 2021 mediation. We also provided a mediation brief to Mr. Krivis' office.

20 24. The parties subsequently entered into a long-form settlement agreement
21 ("Settlement Agreement") outlining the terms of the parties' agreement. A copy of the settlement
22 agreement was provided to the LWDA on November 22, 2021.

23 25. The proposed PAGA settlement amount is \$210,000.00. The Parties' proposed
24 settlement includes PAGA civil penalties, administration costs, litigation costs, and attorney's fees.
25 The proposed PAGA civil penalties are \$111,581.65 of which 75% (or \$83,686.24) will be paid to
26 the LWDA and the remaining 25% (or \$27,895.41) will be allocated to the approximately 556
27 PAGA Represented Employees. Of the remaining balance, \$9,768.35 will be allocated towards
28 litigation costs incurred in this case, \$4,650 will be allocated towards the Settlement

1 Administrator's costs, and the remaining amount of \$84,000 will be allocated towards Plaintiff's
2 attorneys' fees incurred as a result of the PAGA lawsuit.

3 26. Based on my professional experience in handling wage and hour PAGA
4 representative and class action matters, the circumstances of this case, and the tremendous work
5 performed, I find the proposed PAGA settlement to be an above average result and to be a fair,
6 reasonable, and adequate.

7 27. I have incurred the following costs:

8 Complaint	\$447.00
9 Stipulation	\$447.00
10 Mediation Fee	\$8,000.00
11 Ex Parte Filing and Courtesy Copy costs	\$150.00
12 CMC Filing Fee	\$14.00
13 One Legal Courtesy Copy	\$39.25
14 One Legal Discovery Dispute Filing	\$12.00
15 Investigator Fee	\$100.00
16 File Set Up Fee & Materials	\$75.00
17 LWDA Filing Fee	\$75.00
18 Certified Mail & Postage	\$4.10
19 Copy and Printing	\$50.00

20 **Total Costs: \$9,413.35**

21 28. My office charges an initial set up fee of \$75.00 for every case we sign up.

22 29. The costs spent for copies and printing is approximately \$50.00. My office printed
23 approximately 500 pages at \$.10 per page. The pages we printed included but were not limited to:
24 Plaintiff's employment records, payroll records, settlement briefs and supporting exhibits and
25 records, settlement agreements and supporting exhibits, and ex parte application for PAGA
26 settlement approval.

27 30. The Parties' settlement agreement provides that we may recover costs expended on
28 this case. My office incurred \$9,413.35 in costs and Mr. Mashiri's office incurred \$355.00 in costs.
The total cost incurred in this case are \$9,768.35. The costs incurred are ordinary and necessary.

Except as to those matters made upon information and belief, I declare under penalty of
perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01/05/2022 at San Diego, California.


TAMIM JAMI, DECLARANT