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Attorneys for Plaintiff
ANGELICA MACIAS, on behalf of herself and all similarly aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

CECILIA ZAMUDIO, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

CYPRESS HEALTHCARE PARTNERS,
LLC; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV003329
[Related Case No. 21CV000056]

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 10, 2023

Time: 8:30 a.m.

Dept.: 15

ANGELICA MACIAS, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

CYPRESS HEALTHCARE PARTNERS,
LLC; and DOES 1 through 50, inclusive,

Defendants.

Complaint Filed: December 11, 2020
FAC Filed: February 23, 2021
Trial Date: Not Set

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I, Max W. Gavron, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Angelica Macias (“Macias”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. On January 8, 2021, Plaintiff Angelica Macias (“Macias”) submitted her written notice to the LWDA, alleging violations of Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, pursuant to the PAGA.

3. On January 7, 2021, Macias filed a complaint against Defendant in the Superior Court of California, County of Monterey (the “Macias Action”). The Macias Action complaint alleges claims for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly and overtime wages; (4) failure to provide accurate wage statements; (5) failure to pay all wages upon termination; (6) failure to timely pay wages; (7) failure to reimburse work-related expenses; (8) penalties pursuant to PAGA; and (9) unfair business practices.

4. Plaintiffs' class and PAGA claims as pled in their respective complaints are predicated on the following allegations. Plaintiffs allege that Defendant failed to pay wages for all hours worked. Specifically, Defendant required employees to keep their personal cell phones on their person and respond to work calls and text messages while off-the-clock. Plaintiffs also allege that Defendant failed to factor in non-discretionary incentive pay into the regular rate of pay for the purposes of paying overtime. Whenever non-discretionary incentive wages and overtime wages were paid during the same pay period, overtime pay was paid at the base rate of pay, rather than the higher, regular rate of pay. Further, Plaintiffs allege that Defendant failed to provide off-duty meal or rest periods to employees and failed to provide premium compensation in lieu of missed breaks. Plaintiff also allege that employees were not reimbursed for work-related costs, such as the use of personal cell phones and vehicles. Moreover, all wages owed were not paid within the time limits

1 specified by Labor Code § 204 and were not paid upon separation of employment. Due to the above
2 allegations, the wage statements issued to employees did not identify accurate information. As a
3 result of these alleged violations, Plaintiffs seek damages and penalties under the California Labor
4 Code, California Business & Professions Code, and the PAGA, as well as attorneys' fees and costs.

5 **MEDIATION**

6 5. After Plaintiffs initiated their respective actions, the Parties agreed to participate in a
7 global mediation. In connection with mediation, the Parties agreed to exchange informal discovery
8 sufficient to allow Plaintiffs to assess the claims and liability, as well as analyze the maximum
9 exposure of damages and penalties.

10 6. On April 20, 2022, the Parties engaged in a full-day mediation with mediator
11 Michael Masuda, Esq. While the Parties did not reach an agreement at the mediation, they
12 continued negotiations over the course of several months and reached an agreement with the
13 assistance of Mr. Masuda.

14 7. On October 21, 2022, the Parties submitted a stipulation to consolidate the Action
15 and the Macias Action for the purposes of settlement. The Court approved the Parties' stipulation
16 on November 2, 2022.

17 8. The Parties recognize the risk, expense, and delay in continuing litigation with the
18 class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.

19 9. Each side has apprised the other of their respective factual contentions, legal
20 theories, and defenses, resulting in negotiations taking place between the Parties.

21 10. From the inception of the case, Class Counsel have zealously represented the
22 interests of the Class. Class Counsel have engaged in significant meet and confer discussions with
23 opposing counsel to obtain informal data and documents and to discuss the merits of the claims on
24 behalf of the Class. The settlement was obtained for the benefit of the Class, as opposed to the
25 individual Class Representatives.

26 11. Further, Class Counsel have been approved as class counsel on a number of prior
27 cases, have litigated numerous other class action cases, and are competent to represent the class.

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1 **SUMMARY OF THE MONETARY TERMS OF THE SETTLEMENT**

2 12. The material terms of the settlement are memorialized in the Settlement Agreement.
3 As defined by the Settlement Agreement, the proposed Class consists of: all current and former
4 non-exempt employees of Defendant who worked for Defendant in the State of California at any
5 time from December 11, 2016, through May 31, 2022 (“Class” or “Class Member(s)”). *See*
6 Agreement ¶ 4. The Class Period means the period from December 11, 2016, through May 31,
7 2022. *Id.* ¶ 8. Pursuant to the Agreement, Defendant has represented that there are approximately
8 1,337 individuals that comprise the Class. *Id.* ¶ 4.

9 13. With respect to PAGA, employees who comprise the Aggrieved Employees include:
10 all current and former non-exempt employees of Defendant who worked for Defendant in the
11 State of California at any time from December 11, 2019, through May 31, 2022 (“Aggrieved
12 Employees”). *See* Agreement ¶ 3. Pursuant to the Agreement, Defendant has represented that there
13 are approximately 938 Aggrieved Employees.

14 14. The Settlement Agreement provides for One Million Six Hundred Thousand Dollars
15 (\$1,600,000.00) as the Gross Settlement Amount. *See* Agreement ¶ 16. The Net Settlement Amount,
16 calculated after deduction of attorneys’ fees (up to \$533,333.33), litigation costs (up to \$30,000.00),
17 the enhancement payment to the Class Representatives (up to \$20,000.00), the PAGA Payment
18 (\$100,000.00), and Settlement Administration Costs (up to \$13,495.00), is estimated to be
19 approximately **\$903,171.67**. *Id.* ¶¶ 6, 16, 10, 18, 21, 34.

20 15. Each Class Member who does not opt-out of the settlement (“Participating Class
21 Member”) will be awarded a portion of the Net Settlement Amount on a *pro rata* basis, based upon
22 the total number of workweeks each Class Member worked during the Class Period. *Id.* ¶ 47.

23 16. Additionally, as part of the PAGA Payment, 25% of the PAGA Payment, or
24 \$25,000.00, will be distributed to Aggrieved Employees who worked during the PAGA Period
25 (December 11, 2019, through May 31, 2022), on a pro rata basis, based on the number of pay
26 periods worked by each Aggrieved Employee during the PAGA Period as compared to the total
27 number of pay periods during the PAGA Period. Agreement ¶ 46.

28 17. As part of the Settlement Agreement, Defendant does not object to Class Counsel’s

1 request for attorneys' fees of up to one-third of the Gross Settlement Amount, or up to \$533,333.33.
2 Agreement ¶ 43. Defendant also does not object to Class Counsel's request for reimbursement of
3 actual litigation costs of up to \$30,000.00, subject to the Court finally approving this Settlement. *Id.*
4 Class Counsel have, at their own risk, expended costs, for example, to file this instant action and
5 other pleadings in the case, effect service of process, participate in mediation, and advance other
6 litigation-related costs.

7 18. Defendant does not object to Plaintiffs' request for an enhancement payment to each
8 Class Representative of \$10,000.00, to compensate Plaintiffs for prosecuting this action on behalf of
9 other employees and for executing a general release of all claims, including a waiver under Section
10 1542. Agreement ¶¶ 44, 73.

11 19. The Settlement Agreement provides for the payment of the fees and expenses
12 incurred by the Settlement Administrator in connection with the administration of this settlement.
13 The Parties have received a quote from Phoenix Settlement Administrator for the amount of
14 \$13,945.00 to administer the settlement. Agreement ¶ 45. Phoenix Settlement Administrators is a
15 well-recognized class action settlement administrator. The Parties believe that the administration fee
16 is reasonable and should be approved.

17 20. Finally, the terms of the Settlement provide that uncashed checks (upon the
18 expiration date) shall be distributed to Legal Aid at Work as the *cy pres* beneficiary. *See* Agreement
19 ¶ 63. Legal Aid at Work is a non-profit legal services organization that provides free clinics and
20 legal information, litigation services, and policy advocacy to strengthen workers' rights, in
21 accordance with California Civil Procedure § 384.

22 21. I do not have a relationship with Legal Aid at Work, the proposed *cy pres*
23 beneficiary, nor am I aware of any relationship between Class Counsel and Legal Aid at Work.

24 **PAYMENTS TO CLASS MEMBERS**

25 22. Provided that the Court approves the above amounts in full, Class Counsel estimates
26 that the Net Settlement Amount will be approximately **\$903,171.67**.

27 23. Pursuant to the Agreement, Defendant has represented that there are 1,337
28 individuals that comprise the Class. Based on the anticipated Net Settlement Amount, on a pure raw

1 average, each Participating Class Member may potentially recover approximately **\$675.52**. The
2 amount actually paid to each Participating Class Member may increase or decrease depending on
3 the actual number of workweeks worked during the Class Period and the number of opt-outs
4 received. To the extent that there are valid opt-outs, the Settlement Administrator will
5 proportionately increase the individual settlement payments to each Participating Class Member so
6 that the amount actually distributed to Participating Class Members equals 100% of the Net
7 Settlement Amount.

8 **POTENTIAL DAMAGES AND PENALTIES**

9 24. Using the data and sample records provided by Defendant, Class Counsel performed
10 a damages analysis.

11 25. Based on the class data provided by Defendant, Plaintiffs estimated that Defendant
12 would realistically face potential liability of up to approximately \$11,552,540.90 for Plaintiffs' class
13 claims if Plaintiffs succeeded at trial on all class claims. Plaintiffs were able to estimate the
14 potential class penalties based on class data and sample records provided by Defendant. *Id.*
15 Specifically, this amount was calculated based on the following breakdowns for each class claim:

- 16 • \$3,236,625 for meal period violations;
- 17 • \$3,236,625 for rest period violations;
- 18 • \$1,521,116.50 for unpaid wages;
- 19 • \$2,674,000 for Labor Code § 226(e) penalties;
- 20 • \$225,000 for unreimbursed business expenses; and
- 21 • \$659,174.40 for waiting time penalties under Labor Code § 203

22 26. Based on the data provided by Defendant, Plaintiffs also calculated potential civil
23 penalties for Plaintiffs' PAGA claims. Plaintiffs estimated that Defendant could face civil penalties
24 of up to \$3,858,600. The breakdown for the calculation of Plaintiffs' PAGA penalties is as follows:

- 25 • \$771,720 for meal period violations;
- 26 • \$771,720 for rest period violations;
- 27 • \$771,720 for unpaid wages;
- 28 • \$771,720 for wage statement violations; and

- \$771,720 for PAGA penalties with respect to the overtime regular rate claim.

27. However, even assuming Plaintiffs ultimately prevail on their PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at p. 539.

28. Although Plaintiffs believe in the merits of the alleged claims and maintains that there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise defenses to the claims and further with respect to the reduction of PAGA penalties and that it could be persuasive to the Court. Thus, even if Plaintiffs were to successfully prove their claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was premised with this risk in mind, associated with the possibility of the Court significantly reducing Plaintiffs’ PAGA penalties, along with other attendant risks, even if Plaintiffs were to prevail at trial.

29. Further, Defendant raised several defenses that presented risk on Plaintiffs’ claims. With respect to the meal and rest period premium claims, it is Defendant’s position that it maintains and follows a compliant meal and rest break policy, and that it provides proper training and periodic reminders to employees regarding the policy. Furthermore, Defendant contends that waiting time penalties are not available for any alleged late payment of meal and rest period premiums, as it disputes that meal and rest period premiums constitute “wages.” It is Defendant’s position that waiting time penalties are only available in an action or claim to recover nonpayment of wages.

30. Although Plaintiffs believe that the class can be certified, Plaintiffs also believe in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in the operative

1 complaints, the possibility of non-certification, and the potential for appeals.

2 31. Taking these defenses above into account on the class and PAGA claims, Plaintiffs
3 believe that the settlement for the amount stated herein is fair, reasonable, and adequate.

4 32. Thus, the settlement for each Class Member is fair, reasonable, and adequate, given
5 the inherent risks of litigation, including the substantial risks relative to class certification, the costs
6 of pursuing such litigation, and the risks associated with the Court's discretion to reduce PAGA
7 penalties. The settlement is the result of extensive arm's-length negotiations between the Parties and
8 their counsel and was facilitated by an experienced and neutral mediator.

9 **ATTORNEY EXPERIENCE**

10 33. I am one of the primary attorneys on this matter. My qualifications are as follows: I
11 received a full-tuition scholarship, and graduated from Southwestern Law School in 2013, magna
12 cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a Notes and
13 Comments Editor on the Southwestern Law Review. I also received awards for achieving the
14 highest grade in my class in several courses. In 2012, I was a full-time extern, at the United States
15 District Court for the Central District. Immediately after law school, I taught several courses at
16 Southwestern, including Principles of Legal Analysis and Legal Methods. I taught those courses for
17 approximately four years.

18 34. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
19 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted in
20 a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute. I also
21 regularly litigated cases across the civil litigation spectrum, including employment matters.

22 35. From February 2016, through Fall 2017, I practiced at the international law firm of
23 Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
24 companies in Multi-District Litigation primarily in the product liability sphere. I also successfully
25 drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary judgment
26 decision regarding trade secret issues, in addition to working in several other practice groups.

27 36. From September 2017, through September 2018, I served as a law clerk to a Judge
28 sitting on the United States District Court, Central District of California. I regularly prepared bench

1 memoranda, on cases involving all types of civil litigation, including regularly working on wage
2 and hour class actions.

3 37. I am currently an associate at the law firm Diversity Law Group, P.C., an
4 employment law firm that has handled numerous wage and hour class and individual actions, on
5 both plaintiff and defense sides. My current practice focuses on employment matters involving both
6 class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior Courts,
7 the Orange County Superior Courts, the San Diego County Superior Courts, and the United States
8 District Courts for the Central, Northern, and Eastern Districts of California. I am currently
9 handling numerous wage and hour class action lawsuits with the firm, including, but not limited to:
10 *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-001906, Stanislaus County Superior
11 Court); *Cunningham, et al. v. Diverse Business Solutions* (Case No. CIVDS1817095, San
12 Bernardino County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No. 16CV300475, United
13 States District Court, Northern District of California); *Parsons v. Estenson Logistics, LLC* (Case
14 No. 34-2019-00252929, Sacramento County Superior Court); and *Coronel v. Pinnacle Agriculture*
15 (Case No. 18CV004287, Monterey County Superior Court).

16 38. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
17 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
18 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our clients.
19 *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

20 39. I have also assisted the firm in numerous wage and hour class action mediations.

21 40. My co-counsel and I will adequately represent the Class Members in this action.
22 Class Counsel have and will zealously represent Plaintiffs and the Class and pursue this lawsuit to
23 its conclusion.

24 41. I have no conflicts with the Class and will adequately represent the Class.

25 **NOTICE TO THE LWDA**

26 42. Concurrent with the filing of the Motion for Preliminary Approval of Class Action
27 Settlement, my office uploaded the Motion and Settlement Agreement to the LWDA's website.

28 I declare under penalty of perjury under the laws of the State of California that the foregoing

1 is true and correct.

2 Executed on this 15th day of February 2023, at Los Angeles, California.

3 
4 Max W. Gavron