

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Kelsey A. Webber (State Bar No. 303721)
Kelsey.Webber@WebberLawGroup.com
Shaelyn A. Stewart (State Bar No. 335149)
Shaelyn.Stewart@webberlawgroup.com
WEBBER LAW GROUP
333 University Ave, Suite 200
Sacramento, California 95825
Telephone: (916) 588-0683

Attorneys for Plaintiff and the Class

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

JAMIE ELLSWORTH, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LECLAIR FITNESS II, LLC, a California
limited liability company; LECLAIR
FITNESS III, LLC, a California limited
liability company; LECLAIR FITNESS IV,
LLC, a California limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 34-2021-00295114-CU-OE-GDS

**DECLARATION OF KRISTEN M.
AGNEW IN SUPPORT OF PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: September 20, 2022

Time: 9:00 a.m.

Dept.: 54

Reservation #: 2658341

Complaint Filed: February 23, 2021

FAC Filed: May 6, 2022

Trial Date: None

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I, Kristen Agnew, 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, P.C., counsel of record for Plaintiff Jamie Ellsworth (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. The Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”) was the product of negotiation between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research, which they had carefully analyzed. Class Counsel engaged in extensive factual investigation before settling, including the exchange of informal discovery.

3. Additionally, the Parties reached a settlement with the assistance of Steven G. Pearl, Esq., a well-regarded neutral with experience mediating employment matters. In advance of the mediation, Defendants produced data regarding the number of putative class members and sub-class members, the number of workweeks and pay periods during the liability period, the average hourly rate of putative class members, and the number of putative class members who separated employment during the liability period. Defendants also provided a copy of its employee handbooks, which included the meal and rest period policies and cellphone reimbursement policy. Using the data provided by Defendants, I conducted a full damage analysis.

4. As set forth in my declaration in support of the Motion for Preliminary Approval, based on the class data provided by Defendants, I estimate that Defendants' maximum liability exposure is approximately \$1,397,194. Thus, the Gross Settlement Amount is approximately 12.50% of the maximum recovery of the class and representative PAGA claims.

5. Based on my own independent investigation and evaluation, I am of the opinion that the Settlement is fair, reasonable, and adequate and that the settlement is in the best interests of the Class, in light of all known circumstances and the expenses and risks inherent in litigation. I also believe in the fairness of the settlement based on factoring in the uncertainty and risks to

1 Plaintiff in not prevailing at class certification and/or at trial, and the possibility of appeals.

2 6. The Settlement Agreement contains the following escalator clause:

3 Calculation of Gross Settlement Amount. The Gross Settlement
4 Amount was calculated with, and is premised on, Defendants'
5 representation that Class Members worked 3,579 pay periods
6 during the Class Period. If the actual number of pay periods
7 worked by the Class exceed this number by more than ten percent
8 (10%) (*i.e.* more than 3,936), the Gross Settlement Amount will
9 increase in proportion to the increase over ten percent. In other
10 words, a twelve percent (12%) increase in pay periods will result
11 in a two percent (2%) increase in the Gross Settlement Amount.

12 *See* Settlement Agreement § C-10. On June 10, 2022, the Settlement Administrator notified
13 counsel for the Parties that the escalator clause had been triggered, as the number of pay periods
14 at issue during the Class Period increased approximately 12.13% from 3,579 to 4,013. As a result
15 of the increase in pay periods, and pursuant to Section C-10 of the Settlement Agreement,
16 Defendants agreed to pay an additional \$3,721.01 to the Gross Settlement Amount for an
17 updated Gross Settlement Amount of \$178,721.01 (\$175,000 [Original Gross Settlement
18 Amount] + \$3,721.01).

19 7. I am one of the primary attorneys on this matter. I was retained based upon a
20 contingency fee arrangement wherein Plaintiff's counsel agreed to advance all costs and receive
21 no fee unless a recovery was accomplished. Specifically, had Plaintiff failed to prevail in this
22 case, counsel for Plaintiff would have spent a significant amount of time, money and other
23 resources without any benefit or return. In addition, had Plaintiff also failed to prevail in the
24 present case, Defendants would have been able to seek costs in connection with their defense of
25 the case

26 8. Diversity Law Group has a great deal of experience in wage and hour class action
27 litigation and has been approved as class counsel in a number of class actions.

28 9. My qualifications are as follows: I was the 2003 recipient of the Spelman
Presidential Scholarship to Emory University School of Law. During law school, I was a summer
associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta
office of the Equal Employment Opportunity Commission. I received my J.D. from Emory

University in 2006 and was admitted to the California Bar in December 2006. Following law school, I was an associate at Sonnenschein from September 2006 to May 2009.

10. Since 2009, my primary area of practice has been employment litigation. I have practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500 companies in employment litigation in both state and federal courts, as well as before government agencies, including the California Department of Labor. My practice included the defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I also handled a number of wage and hour class actions.

11. As an associate at Ogletree and Seyfarth, I served as the lead associate on a number of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

12. I also second chaired two jury trials where I represented the prevailing defendant. Both cases involved employees who brought claims against their former employers pursuant to the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*, Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*

1 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

2 13. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
3 handling employment cases. I primarily represent employees.

4 14. I have been approved as class counsel in numerous wage/hour class actions that
5 have been granted class certification and final approval, including: *Antonio Becerra-Mata v. PSC*
6 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal*
7 *So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No.
8 BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-
9 16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara
10 County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara
11 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
12 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
13 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
14 *Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt*
15 *Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-
16 02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court
17 Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin
18 Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S.
19 District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v.*
20 *Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA;
21 *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court
22 Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court
23 Case No. 19CV341582.

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

Kristen M. Agnew