

1 Thomas D. Rutledge (SBN 200497)
The Law Office of Thomas D. Rutledge
2 16956 Via de Santa Fe, Suite 1847
3 Rancho Santa Fe, California 92091-4606
Phone: (619) 886-7224
4 thomasrutledgelaw@gmail.com

5 Ian Pancer (SBN 246600)
6 The Law Office of Ian Pancer
7 105 West F Street, Suite 400
San Diego, California 92101
8 Phone: (619) 955-6653
9 Facsimile: (619) 374-7410

10 Attorneys for Plaintiffs JOSE
11 FERNANDO ROBLES and Aggrieved
Employees

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF SAN DIEGO

14 JOSE FERNANDO ROBLES, an
15 individual in his representative capacity
16 and on behalf of all Aggrieved
17 Employees,

18 Plaintiffs,

19 v.

20 JCS ACQUISITION, INC., a Texas
21 corporation, and DOES 1 through 50,

22 Defendants
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27
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) Case No.: 37-2021-00007056-CU-
) OE-CTL

) **DECLARATION OF THOMAS D.**
) **RUTLEDGE ISO PLAINTIFFS'**
) **EX PARTE APPLICATION FOR**
) **COURT APPROVAL OF THE**
) **PRIVATE ATTORNEYS**
) **GENERAL ACT SETTLEMENT**
) **AND DISMISSING THE ACTION**
) **WITH PREJUDICE**

)
) Complaint Filed: February 18, 2021
) Judge: Hon. Katherine Bacal
) Department: 69
)
)
)

DECLARATION OF THOMAS D. RUTLEDGE

I, THOMAS D. RUTLEDGE, declare and state as follows:

1. I am counsel of record for the named Plaintiff, and I represent the interests of the State of California (i.e., the Labor Workforce Development Agency (LWDA)) and Aggrieved Employees with respect to the Private Attorneys General Act (PAGA) claims, in the above-captioned 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.

2. This declaration is submitted in support of Plaintiffs' Ex Parte Application for Court Approval of the Private Attorneys General Act Settlement and Dismissing the Action with Prejudice.

3. On February 18, 2021, Plaintiffs filed his complaint against Defendant JCS Acquisition, Inc. ("Defendant") (collectively, "Parties") alleging (1) Labor Code allegations via the PAGA Claim for Failure to Pay State Minimum/Regular Wages; (2) Labor Code allegations via PAGA Claim for Failure to Pay State Overtime Wages; (3) Labor Code allegations via PAGA Claim for Failure to Timely Pay Wages; (4) Labor Code allegations via PAGA Claim for Meal and Rest Break Labor Code Violations; (5) Labor Code allegations via PAGA Claim for Inaccurate Wage Statements; (6) Labor Code allegations via PAGA Claim for Failure to Maintain Payroll Records; (7) Labor Code allegations via PAGA Claim for Failure to Comply with California Sick Pay Laws; and (8) Labor Code allegations via PAGA Claim for Miscellaneous Labor Code Provisions.

4. After I am informed my co-counsel complied with the requirements set forth in Labor Code § 2698 et seq., of the PAGA, by sending a letter by online submission to the LWDA, Plaintiffs filed a First Amended Complaint on April 29, 2022.

5. Thereafter, Plaintiffs propounded discovery on Defendant, including Special Interrogatories and Inspection Demands.

6. Thereafter, the Parties agreed to attend mediation, to participate in an informal exchange of documents and information, and to stay formal discovery pending the outcome of mediation.

7. The Parties scheduled mediation on January 5, 2022 before a well-respected neutral, Eve Wagner, Esq.

8. The Parties memorialized the parties' agreement to mediate in a stipulation that was filed with this Court, and sought an order from the Court regarding the same.

9. On June 16, 2021, the Court entered an order on the Parties' stipulation, staying formal discovery and law and motion practice pending the mediation.

10. In advance of mediation, the Parties engaged in an informal exchange of information and documents as contemplated by their stipulation and the Court's order thereon.

11. On January 5, 2022, mediation took place.

12. The Parties were unable to reach a resolution on the date of mediation.

13. The mediator made a mediator's proposal following the mediation, however, giving the parties a reasonable period to consider her proposal and get back to her if either party, or both, accepted her proposal.

14. On January 12, 2022, the mediator reported that the proposal had been accepted by all Parties and a settlement had been reached.

15. Thereafter, the Parties negotiated the terms of a long form settlement agreement.

16. After considerable back and forth communications between and among the parties via counsel regarding the long form agreement, it ultimately became executed by all Parties on June 6, 2022.

TERMS OF THE SETTLEMENT

17. A true and correct copy of the PAGA settlement agreement is attached hereto as Exhibit 1 to the Declaration of Ian Pancer ISO Settlement of Private Attorneys General Act Claims.

18. Exhibit A attached to the PAGA settlement agreement is the letter that will be included in the correspondence mailed to each aggrieved employee.

19. Defendant agrees to make the gross settlement payment of \$150,000. (Exhibit 1 to Pancer Decl., para. 6.1).

20. The aggrieved employees covered by the settlement include all of Defendant's current and former employees Defendant employed in the State of California at any time during the Settlement Period, which is defined as all pay periods between February 17, 2020 and January 31, 2022. (Exhibit 1 to Pancer Decl., para. 1.1, 1.15).

21. Defendant represents in the settlement agreement that the number of pay periods within the Settlement Period does not exceed 8,400. (Exhibit 1 to Pancer Decl., para. 6.2).

22. Defendant further represents the approximate number of employees in the settlement period is 679.

23. If the number of pay periods reaches the maximum of 8,400, the gross settlement of \$150,000 equates to \$17.85 per pay period for the release of civil penalties and averages out that the payment per Aggrieved Employee, to be divided between the aggrieved employees and the LWDA, will be about \$220.91 on average, up or down depending on how long Defendant employed them during the PAGA Period.

24. The settlement agreement permits Plaintiffs' counsel to seek attorney fees of up to 35% of the gross settlement, equaling \$52,500, and Plaintiffs' counsel seek that sum. (Exhibit 1 to Pancer Decl., para. 6.6).

27. The costs incurred by Plaintiff's counsel are \$11,630.70 (\$461.36 for filing and e-filing complaint, \$40 for service of process, \$15.44 for e-filing; \$13.90 for certified mailings; \$1,575 for Berger Consulting Services for data analysis of records produced by Defendant; \$9,450 for mediator services to Signature Resolution for Eve Wagner, Esq.; \$75 to LWDA for filing PAGA Notice).

EXPERIENCE OF COUNSEL

30. Mr. Pancer is the originating attorney in this action, yet during all times relevant we served as the attorneys of record for the named Plaintiffs in the above-entitled action.

Army National Guard as a Private First Class in a combat engineer's unit and in 1990, after receiving my commission from the Commonwealth of Massachusetts's Officers' Candidate School, I served as a field artillery officer, mortar platoon leader, and thereafter as an infantry company executive officer in the Commonwealth of

1 Massachusetts and Pennsylvania National Guard.

2 35. In 1990, I earned a B.A. in History and Political Science from the
3 University of Massachusetts, Boston, Massachusetts.

4 36. In 1992, I earned a C.S.S. in Management and Administration from
5 Harvard University, Cambridge, Massachusetts.

6 37. In 1995, I earned a J. D. from Temple University and became a member
7 of the State Bars of Florida and the Commonwealth of Massachusetts.

8 38. In 1999, I earned admission to the California Bar.

9 39. I am an active member of the California Employment Lawyers
10 Association and the Consumer Attorneys of San Diego ("CASD"), and a former
11 member of the National Employment Lawyers Association.

12 40. I am the former member of the San Diego County Bar Association
13 (SDBA) and Co-Chairman to the SDBA Labor and Employment Law Section.

14 41. I am a former Board of Director for the CASD.

15 42. I am a former U.S. Navy Judge Advocate General's ("JAG") Corps
16 attorney.

17 43. From 1995 to 2008, I served on active duty (1995-2002) and in the
18 reserve (2002-2008) in various capacities as a prosecutor, defense attorney, tax
19 officer, and staff judge advocate in the U.S. Navy JAG Corps handling hundreds of
20 criminal and civil litigation matters and preparing thousands of state and federal tax
21 returns.

22 44. I served a total of 20 years in the U.S. military retiring from the U.S.
23 Naval Reserve in 2008.

24 45. From 2002 to 2004, I was a litigation associate at Christensen, Miller,
25 Fink, Jacobs, Glaser, Weil & Shapiro LLP in Los Angeles, California, a firm of more
26 than 100 lawyers at that time, working on complex litigation.

27 46. From 2004 to 2009, I was a litigation associate for Branton & Wilson,
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1 APC, a firm of more than 15 lawyers at that time, working mostly on employment
2 law matters (defense and plaintiff).

3 47. From 2009 to the present, I opened my own law office focusing my
4 practice almost exclusively on prosecuting employment law claims on behalf of
5 employee-plaintiffs, with a very small part of my practice devoted to personal injury,
6 landlord-tenant, and family law matters.

7 48. All my employee-plaintiff cases, including this case, are accepted on a
8 nothing down contingency fee basis.

9 49. As to this case only, my office partnered up with Mr. Pancer, wherein
10 we entered a fee sharing agreement (later signed by the named Plaintiffs) that
11 provides a fee split of 50/50, the metrics of which is generally based on shared
12 contributions of each firm to the cases.

13 50. I personally have represented hundreds of plaintiffs and thousands of
14 class members in more than three dozen class and/or representative (Private Attorney
15 General Act) actions prosecuting wage and hour claims against employers, more than
16 20 of which were certified as class actions. (See, e.g., *Julio, et al. v. Express Tires*,
17 S.D. Superior Court Case No.: 37-2010-00097801; *Epton v. ADP TotalSource, et al.*,
18 U.S.D.C. Case No.: 11cv0856-JM; *Tuter, et al. v. King's Seafood Company, LLC, et*
19 *al.*, San Diego Superior Court Case No.: 37-2011-00084756; *Crosby v. CHMB*, San
20 Diego Superior Court Case No.: 37-2011-0087583-CU-OE-CTL; *Diego v. JMS*
21 *Properties LLC, et al.*, San Diego Superior Court Case No.: 37-2013-00056177-CU-
22 OE-CTL; *Mitchell, et al. v. Phone Ware Inc., et al.*, San Diego Superior Court Case
23 No.: 37-2014-00008449-CU-OE-CTL; *Long, et al. v. Stanley Black & Decker, Inc.,*
24 *et al.*, U.S.D.C. Case No.: 14CV1246 JLS BGS; *Villagrana v. 7-Eleven*, San Diego
25 Superior Court Case No.: 37-2014-00008449-CU-OE-CTL; *Parnell, et al. v. Harte-*
26 *Hanks Shoppers, Inc., et al.*, Orange Superior Court Case No.: 10-2014-00736236-
27 CU-OE-CXC; *Martz v. T.R.L. Systems, Inc.*, San Bernardino Superior Court Case
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No.: CIVDS1515312; *Rosentein v. Pratt and Whitney, et al.*, U.S.D.C. Case No.: 15CV2183 JM/JLB; *Don v. Penn*, San Diego Superior Court Case No.: 37-2016-00025005; *Scott v. Coastal Trans. Serv.*, San Diego Superior Court Case No.: 37-2016-00020248; *Horton v. Neostrata*, U.S.D.C. Case No.: 16CV2189 AJB JLB; *Velez v. CoWorx Staffing Services LLC*, San Bernardino Superior Court Case No.: CIVDS1803229, *Logachev v. Cerna Healthcare, LLC, et al.* Orange County Superior Court Case Number: 30-2020-01126240-CU-OE-CXC (J. Claster), any many others).

51. I have attended dozens of lectures presented by legal professionals on the topic of prosecuting class action litigation in the last 15 years, I have tried wage and hour cases in the Superior Court of California, I have appeared before the Labor Commissioner on scores of wage claims, and I have handled the representation of parties in dozens of mediations before well-known mediators, such as Messrs. Mark Rudy, Jeff Ross, Mike Dickstein, Robert Kaplan, and Judge Herbert B. Hoffman (Ret.).

REASONS THE SETTLEMENT IS FAIR AND REASONABLE

52. Your undersigned believes the settlement amount represents a fair compromise of the claims.

53. Defendant presented well-reasoned defenses to Plaintiff's claims, such that the opportunity to negotiate this settlement presented greater benefits to the aggrieved employees than continuing to litigate further and expend more time and resources in doing so.

54. Furthermore, the threat of having the PAGA claim eviscerated by the U.S. Supreme Court's recent decision in *Viking River Cruises v. Moriana* was an additional impetus for agreeing to the settlement, as Plaintiff's employment was governed by an arbitration agreement.

55. In light of the *Viking River Cruises* decision, hindsight certainly supports this analysis.

1 56. Based on the experience of your undersigned, having litigated dozens of
2 representative actions, your undersigned believes counsel the settlement here is fair
3 and reasonable and warrants approval by the Court.

4 57. Should the Court grant approval of the settlement, the net settlement
5 fund will be \$81,519.30, calculated as follows:

6 \$150,000

7 -\$52,500 (for attorneys' fees)

8 -\$11,630.70 (for Plaintiffs' counsel costs)

9 -\$4,350 (for settlement administration)

9 -----

10 **Net Settlement Amount=\$81,519.30**

11 58. Of the net settlement amount, 75%, equaling \$61,139.47, will be paid to
12 the LWDA, and 25%, equaling \$20,379.83, will be paid to the aggrieved employees.

13 59. The payment to each aggrieved employee shall be determined on a pro-
14 rata basis based on the number of pay periods that each aggrieved employee worked
15 during the Settlement Period divided by the total number of pay periods worked by
16 all aggrieved employees during the Settlement Period.

17 60. The payment per employee, to be divided between the employees and
18 the LWDA, shall be on average about \$220.91 apiece, which is a pretty good payout,
19 and the LWDA will receive its share despite neither having to wait for trial or endure
20 any further litigation.

21 **ATTORNEYS' FEES SOUGHT ARE REASONABLE**

22 61. The attorneys' fees sought are reasonable and well below Plaintiffs'
23 Counsel's collective lodestar.

24 62. My hourly rate is normally \$914 in employment class action litigation.

25 63. Because most plaintiffs cannot pay for my services on an hourly basis, I
26 represent virtually all my wage and hour employment law clients (plaintiffs) on a
27 contingency fee basis.

1 64. Pursuant to this arrangement, I am uncompensated for my time unless
2 and until I prevail at trial or successfully settle my client's case.

3 65. Because I am taking the risk that I will not be reimbursed for my time
4 and expenses incurred unless my client settles or wins his or her case, I cannot afford
5 to represent clients for less than my hourly rate.

6 66. Indeed, given the risk of litigation, it is important that I obtain a
7 multiplier to my regular hourly rate to offset those cases where no recovery is
8 obtained.

9 67. I undertook the representation of the Plaintiffs in this litigation at great
10 financial risk, such as winning nothing at all and not being able to accept the many
11 other cases I had to turn down, because I believed their rights under the wage and
12 hour laws of this state were violated.

13 68. Because of my experience, I am aware of the prevailing hourly rates that
14 have been charged by knowledgeable and experienced attorneys in the field of
15 employment law in San Diego County and California and my office's hourly rates,
16 which are between \$355 and \$914, are in line with rate typically approved in wage
17 and hour class action litigation which rates have been approved by various Superior
18 Courts in California, such as Los Angeles, Sacramento, San Francisco, Orange, and
19 San Diego Counties.

20 69. The rates generally range from approximately \$600 per hour at the low
21 end of the scale to approximately \$950 per hour at the high end of the scale for an
22 attorney of my skill experience.

23 70. The regular hourly rate I have charged for my services in this litigation
24 is on reasonable and justified by my knowledge and years of experience.

25 71. If requested, I have available for court *in camera* inspection
26 contemporaneous billing records for the time I worked on this case.

27 72. My contemporaneous billing records show my time performing the
28

1 following tasks.

2 73. Prelitigation Work: In preparation for the filing of the complaint, I
3 conducted research regarding the potential claims we could assert in this case.

4 74. I inspected the electronic court records throughout California and the
5 U.S. federal courts using PACER and county court record systems to see if there
6 were any previously filed competing cases.

7 75. I examined my clients' records they had available.

8 76. Altogether, I spent about five hours performing the foregoing tasks.

9 77. Drafting of the Complaint: I reviewed the draft the complaint, including
10 researching all the claims, ensuring compliance with the exhaustion of administrative
11 remedies requirement by sending notice to the California LWDA, monitoring the
12 filing of the Complaint, making sure the Complaint was served properly, reviewing
13 the draft First Amended Complaint, monitoring the filing and service of the First
14 Amended Complaint, and researching the finer points of Plaintiffs' claims.

15 78. During the foregoing process, I maintained communications with my co-
16 counsel and client regarding my input and redline comments.

17 79. In addition, I monitored the correspondence with the LWDA and
18 reminded by co-counsel to send the employer certified letters to exhaust Plaintiffs'
19 administrative remedies under the Labor Code pursuant to the PAGA.

20 80. Altogether, I spent approximately 10 hours performing the foregoing
21 tasks.

22 81. Discovery (formal and informal): I spent approximately 6 hours
23 monitoring the preparation of written formal and informal discovery requests,
24 reviewing and evaluating documents and information provided by Defendants.

25 82. Pre-mediation Preparation: Before private mediation, Defendants sent
26 informal discovery to Plaintiffs in the form of mostly records, hundreds of pages that
27 me and my co-counsel reviewed.

1 83. My co-counsel and I co-authored portions of the private mediation brief,
2 a document that became the platform for negotiations and mapped-out our litigation.

3 84. My office and staff examined hundreds of pages of payroll records to
4 formulate the number of average Labor Code violations and to measure damages.

5 85. Altogether, I spent approximately 35 hours performing the above tasks
6 in the preparation of the mediation brief and preparing for mediation, including
7 attending the mediation, conducting follow-up settlement discussions with opposing
8 counsel, among other things.

9 86. Post-Mediation and Settlement Discussions/Litigation: The private
10 mediation initially was unsuccessful.

11 87. With the use of our private mediator, the Defendant eventually agreed to
12 accept the mediator's proposal.

13 88. It took months and another 20 working hours before the parties finalized
14 the terms of settlement in what is now the Court approved Class Settlement
15 Agreement.

16 89. Ex Parte Application for Court Approval: I spent approximately four
17 hours reviewing and redlining these moving papers, work my co-counsel performed
18 mostly, but which I closely monitored.

19 90. Post-Ex Parte Application Paperwork: I expect to spend another two
20 hours on post ex parte application paperwork.

21 91. Thus, my reasonable attorney's fees are as follows: \$914 X 82 hours =
22 \$74,948, yet the amount Plaintiffs' Counsel seeks is only \$52,500 (me and my co-
23 counsel).

24 92. My fees are consistent with noted sources, such as the 2020-2021 Laffey
25 Matrix (see <http://www.laffeymatrix.com>) and this Honorable Court's ruling in
26 *Prieto v. CHM Hotels Inc. Properties* (SDSC Case Number 37-2018-00060899-CU-
27 OE-CTL) (J. Bacal granting my fee request at the lodestar rate of \$914 per hour).

THE NAMED PLAINTIFF'S RELEASE OF CLAIMS

93. In addition to the resolution reached on the PAGA claims, the Parties reached a resolution concerning Plaintiff's individual claims, in consideration for which Plaintiff has signed a confidential settlement agreement with a general release.

94. The release of individual claims signed by Plaintiff is contingent on the Court's approval of the PAGA settlement.

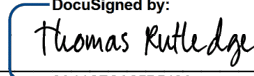
95. The release of individual claims also provides that Plaintiff may not disclose anything further absent an inquiry from the Court or the LWDA.

SUBMISSION TO THE LWDA

96. Concurrent with the filing of this Stipulation, I am informed that my co-counsel, Ian Pancer, submitted or will submit the Settlement Agreement and these papers to the LWDA in compliance with Labor Code § 2699(1)(2).

I, Thomas D. Rutledge, declare under penalty of perjury of the laws of the State of California and the U.S. that the foregoing is true and correct.

Executed on September 7, 2022

By 
Thomas D. Rutledge
Declarant