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Attorneys for Plaintiff JESSICA MALDONADO, individually, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JESSICA MALDONADO, individually, and
on behalf of other members of the general
public similarly situated

Plaintiff

v.

RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC., a
California Corporation; RADY
CHILDREN'S HOSPITAL-SAN DIEGO, a
California Corporation; RADY
CHILDREN'S HOSPITAL AND HEALTH
CENTER, a California Corporation; and
DOES 1-10, inclusive.

Defendants

CASE NO. 37-2021-00014090-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 2, 2022

Time: 9:00 a.m.

Dept: C-73

Judge: Hon. Joel R. Wohlfeil

1 I, Eric K. Yaeckel, hereby declare as follows:

2 1. I am an attorney licensed to practice law before this Court and am employed with the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for Plaintiff Jessica Maldonado,
4 individually, and on behalf of other members of the general public similarly situated and
5 Claimant Valencia Plooy (collectively “ Plaintiffs.”) I make this declaration in support of
6 Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement.

7 2. I am personally familiar with the facts set forth in this declaration, and if called to testify as a
8 witness I could and would do so.

9 **Experience of Counsel**

10 3. Lead trial counsel, Mr. William Sullivan, has been a California-licensed attorney for 28 years.
11 He has approximately 27 years of experience in “class action” litigation, both as plaintiff and
12 defense counsel.

13 4. I have over 11 years of experience as an attorney. I have spent my entire practice engaged in
14 prosecuting class and representative actions. I became a partner in the firm in 2020.

15 5. Our office are the attorneys of record in a matter very recently (and favorably) decided before
16 the California Supreme Court titled *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021).
17 The *Donohue* matter is a certified class and PAGA action.

18 6. Our office is lead counsel on approximately 30 employment “wage and hour” claims with class
19 action, or representative action, allegations. These cases are set within the California Superior
20 Court and Federal District Courts in California. Our office is currently lead counsel on claims
21 that have been certified by both Court Order and by stipulation of the parties. In the last three
22 years, the Sullivan Law Group has settled at least 15 employment “wage and hour” claims on
23 behalf of a Certified Class.

24 7. Our firm has the requisite experience knowledge of California law and the Federal Rules of
25 Civil Procedure required to act on behalf of the Class. I consider the Settlement Agreement in
26 this matter to represent a fair, adequate and reasonable settlement that is well within the
27 accepted range of recoveries for similar wage and hour class actions. I also believe the
28 Agreement is in the best interests of the Settlement Class Members. I am also aware that

Defendants' counsel (both the firm, and individual attorneys working on this case) have extensive experience defending¹⁷ similar wage and hour class actions.

8. I have approximately 11 years experience in the prosecution of PAGA allegations, including (successful) Trial experience.

9. In the last five years, the Sullivan Law Group has tried three "Wage and Hour" Representative (PAGA). In a recent successful PAGA trial, tried before Judge Bacal, our office was awarded our full requested attorneys fees, and was approved at the requested hourly rates. Please See *Carrington v. Starbucks Corp.* San Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and published appellate opinion 30 Cal.App.5th 504.

Strengths of Plaintiff's Case and The Amount Offered in Settlement

10. My office has met and conferred with Defendant's counsel, and we agree the amounts payable to Plaintiff and each Class member are within the "ballpark range" of proportional liability as set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499. A detailed breakdown of the valuation of each claim was previously detailed this Court at the preliminary approval stage. (See ROA # 354 at § IV and the declaration of Eric Yaeckel in Support of Preliminary Approval.)

11. As part of the mediation, Plaintiffs were able also to provide Defendants with a detailed "scope of liability" calculations based on Defendants own verified records and policies. Throughout the litigation Defendants presented potentially valid defenses to class certification, liability and damages. Based on these considerations, and the risks involved in continuing litigation, I submit the \$3,980,000.00 settlement represents a fair and – more than – reasonable settlement. Additionally, I submit that the payment of \$150,000.00 to the LWDA for the PAGA claims (75% share of \$200,000.00 allocation), even though the LWDA declined to prosecute the claims itself, is a fair, reasonable and adequate allocation.¹ The settlement is in the best interests of the settlement class.

¹ The LWDA was also served with copies of the Settlement Agreement and Preliminary Approval Motion and has not objected or responded to date.

12. It should be noted that the majority of the investigation and discovery phase in this case was conducted during the height of the Covid-19 pandemic. This made discovery and investigation much more labor intensive. As *one* example, the bulk of evidence regarding the challenged policies and practices is usually gathered from a "PMK" deponent. However, in this case, Plaintiff was required to obtain this information through numerous sets of written discovery. As a *second* example, prior to Covid, Mr. Sullivan (Plaintiff's Trial counsel) would regularly hold "group" interviews with putative class members, which would "streamline" the process. Due to Covid, Mr. Sullivan was required to set individual meetings, which lead to numerous additional hours being expended on investigation. These factors required more time-intensive "individual analysis" and led to more attorney billable time.

The Risk, Expense, Complexity and Likely Duration of Further Litigation

13. If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees and costs and expert witnesses fees would be incurred. Given the numerous claims being litigated, the parties may be required to hire multiple experts each (as many as three per side). This would result in not only the production of six expert reports, but six depositions as well. And, based on previous discussions between counsel regarding the remaining claims (including the PAGA claims), the parties anticipated (at the very least) that there would be least two dueling motions for summary judgment / adjudication (one from each side).

The Presence of a Governmental Actor

14. The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties believe this is a fair, reasonable, and adequate allocation. The LWDA was also served with copies of the preliminary approval papers and proposed settlement and has not objected or responded to date.

The Contingent Nature of the Fee Agreement, and Inherent Risk Therein, Supports Awarding a Percentage of the Recovery

15. My office was retained by each of the Plaintiffs on a contingency basis. A percentage fee of 35% (thirty-five percent) of any total recovery, was freely negotiated. As part of the agreement, Plaintiffs' Counsel was required to continue the prosecution of the matter

1 regardless of the outcome of the preliminary motions (i.e. arbitration, class certification, etc.

2 **The Continuing Obligation to Devote Time and Effort to the Litigation**

- 3 16. Since the tentative agreement, my office has had to devote considerable time to maintain the
4 litigation, achieve Court approval for the proposed settlement, and assist the proposed Class
5 Members with questions about the Class Notice, Potential Release and all available options.
6 As is detailed in paragraph 21(d) below, and based on my experience acting as class counsel,
7 I also estimate at least another 15 hours by my office will be devoted to this case.

8 **The Extent to which the Litigation Precluded Other Employment**

- 9 17. I, along with the other attorneys who assisted in the matter, was precluded from accepting other
10 employment due to the necessity of maintaining the prosecution of the instant matter. In
11 addition, Mr. Sullivan is the individual primarily responsible for bringing clients to the firm,
12 and was precluded from doing so to the extent previously possible, due to the instant litigation.

13 **The Amount Involved and the Results Obtained on Behalf of the Class**

- 14 18. This is not a “coupon” class action case. As is detailed in the Settlement Administrator’s
15 declaration, the Class is set to receive significant monetary benefits. They would not have
16 received these amounts if Class Counsel did not act.

17 **The Lodestar Analysis**

- 18 19. Plaintiff’s seek attorneys fees in the amount of one third of the total settlement amount, which
19 is **\$1,326,666.67**. For purposes of a lodestar cross-check the firms’ attorneys’ fees incurred (to
20 date) are estimated to amount to approximately **\$678,666.00**. The Attorney’s fees are broken
21 down as follows:

- 22 a. Mr. Sullivan served as lead investigator and trial counsel, per the specific request of
23 Plaintiffs. Over the course of the investigation (including pre-filing), Mr. William
24 Sullivan has currently expended approximately **565.2** hours in the service of this
25 action. **565.2** hours times **\$720.00** equals **\$406,944.00**. The work includes nearly all
26 preliminary investigation, nearly all client and Class interaction/meetings, and almost
27 all pre-settlement work, including the preparation of Plaintiff’s Mediation Brief and
28 damages analysis. This time also includes traveling to at least 36 interviews with

1 proposed Class Members residing across various parts of California. The preliminary
2 investigation included the review and analysis of several thousand documents, as well
3 as additional phone interviews with at least 22 other Class Members. Mr. Sullivan
4 undertook a significant (approximately 80 hours of) pre-filing investigation, wherein
5 many of the Class Member interviews took place. During this time, Mr. Sullivan also
6 investigated Defendant, its business practices, and any variations in Class Members'
7 job duties and rates of pay.

8 b. I was the partner primarily assigned to oversee the “day to day” activity of the primary
9 associates assigned to this case. My billing rate is \$600.00 per hour. I have currently
10 expended approximately **246.5** hours in the service of this action. **246.5** hours times
11 **\$600.00** equals **\$147,900.00**. Aside from supervising the Associates, this work
12 includes attending hearings and most of the day to day communication with opposing
13 counsel. I also primarily handled the numerous exchanges between the mediator and
14 Defense counsel to negotiate and finalize the settlement following the progress made
15 at mediation. I also undertook the review and drafting of all settlement documents and
16 the preliminary and final approval motions.

17 c. Mr. Ryan Kuhn and Mr. Jason Baluarte also served as Associate Attorneys assigned
18 to the case. The billing rate for the Associate Attorneys is **\$420.00** per hour. The
19 associates expended approximately **259.1** hours in the service of this action. **259.1**
20 hours times **\$420.00** equals **\$108,822.00**. The work performed by the associates
21 consisted of, for the most part, analysis of Defendants’ documents and records, in
22 preparation for mediation and a class certification motion. The associates were also
23 assigned to discovery creation/review, the preparation of “meet and confer” letters and
24 other contact with defense counsel, and the drafting and filing of numerous separate
25 motions, including pleadings challenges and numerous different motions to compel
26 discovery. The associates also provided an analysis of employment records to
27 determine “commonality” and damages.

28 d. Based on past experience, I estimate that I will incur an additional 25 hours in

1 assisting Class Members on questions and issues regarding the settlement, meeting
2 with Class Members (including on any late submissions), and preparing for and
3 attending the Final Approval hearing in this matter. 25 times \$600.00 equals
4 **\$15,000.00.**

5 20. Class Counsel's total costs expended in this matter will be \$15,943.39. These costs are broken
6 down as follows:

- 7 a. Filing and appearance fees (including the Complaint, numerous motions, and
8 all other pleadings, all e-file charges, court calls, LWDA filing fees and
9 attorney messenger (service and delivery) fees) totaled \$4,111.69.
- 10 b. Mediation fees totaled \$8,000.00.
- 11 c. Fees related to third party consultation services (involving expert forensic
12 analysis of time and wage records) amounted to \$1,850.
- 13 f. I approximate my office has expended approximately \$1,200.00 in legal
14 research fees in connection with this case.
- 15 g. I approximate my office has expended \$453.05 in copies and postage fees in
16 this matter.
- 17 h. My office has expended approximately \$328.65 in travel fees including meals
18 while traveling, mileage, and parking fees in connection with this case.

19 21. The parties' Agreement permits Plaintiffs (without Opposition) to seek up to \$20,000.00 in
20 costs. Plaintiffs submits their request for the specific \$15,943.39 amount set forth above.

21 **The Lodestar Multiplier**

22 22. Based upon my experience, I submit that the multiplier requested is within the range of what
23 California and federal courts often apply in class action cases. Moreover, the results obtained
24 here, versus the risk of a zero recovery, given the numerous asserted defenses, support this
25 modest multiplier request.

26 23. Given fees incurred here, a lodestar multiplier of 1.95 is necessary.

27 **Class Representative Enhancement**

28 24. Both Plaintiffs contributed extensive time and resources in the prosecution of this case, as is

1 detailed further in their declarations. Plaintiffs were both able to provide information
2 instrumental to the prosecution of this matter including identifying numerous witnesses that
3 could corroborate the claims. Each Plaintiff also assisted with reviewing and providing insight
4 on Defendant's documents produced. Both Plaintiffs brought to our attention numerous Labor
5 Code violations that formed the basis of the litigation.

6 25. Ms. Plooy was not named in the Complaint in this matter. However, she has been actively
7 assisting in prosecuting the litigation. Early in the litigation, Defendants raised a "standing
8 defense" as to Ms. Maldonado's ability to represent the Rady Children's Hospital workers, as
9 Ms. Maldonado worked in an administrative position. Ms. Plooy was a nurse in the actual
10 Hospital. She was able to provide valuable insight and information on the day to day practices
11 of the Hospital. Moreover, it was not until Ms. Plooy joined the case that Defendants finally
12 agreed to a mediation.

13 26. I know (from experience) that any company who does a detailed background check, will be
14 able to determine that Plaintiffs are serving as class representatives in a lawsuit against their
15 former employer.

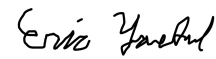
16 27. An entire industry exists that allows employers to run extensive background searches on
17 potential employees. Companies who provide these services specifically highlight the fact that
18 their services allows employers to weed out litigious employment candidates. One such service
19 outlines ways that employers can "get a sense of whether a prospective employee is likely to
20 sue" the employer, through background checks and other means, to screen out these employees.
21 www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-employees. Onicra
22 Credit Rating Agency of India states: "Background screening has become a necessity in today's
23 litigious society." Back Track Screening also represents: "In today's litigious culture, employers
24 simply cannot afford to hire employees who will put their company at risk."
25 <http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf>.

26 28. Finally, any employer may simply check the various Superior Court of California websites and
27 conduct a party name search to uncover whether an applicant has previously filed litigation
28 against their employer.

1 29. Plaintiffs also risked personally owing a large cost award, which I estimate would be well into
2 the tens of thousands of dollars, had the claims been unsuccessful.

3 30. Despite all the risks Plaintiffs, at all times remained committed to securing a monetary
4 recovery on behalf of the entire class.
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7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed this 7th day of November, 2022 at San Diego, California.

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11 Eric K. Yaeckel
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