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Attorneys for Plaintiffs, Jamie Thomas,
Ellen Williams, and Alicia Breton Individually,
and on behalf of all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JAMIE THOMAS, individually and on
behalf of all other aggrieved employees,

Plaintiff,

v.

SAN DIEGO YOUTH SERVICES, a
California corporation; WALTER
PHILLIPS, ANTHONY PARHAM,
KAYLA KELLY and STEVEN JELLA,
individuals, and; DOES 1-100 inclusive,

Defendants.

Case Number: 37-2021-00006092-CU-OE-CTL
(Consolidated with Case No.: 37-2021-
00040945-CU-OE-CTL)

**DECLARATION OF THOMAS M.
DIACHENKO IN SUPPORT OF JOINT
STIPULATION TO APPROVE THE PAGA
SETTLEMENT**

Complaint Filed: February 9, 2021
Judge: Hon. James Mangione
Department: C-75
Trial Date: March 29, 2024

AND CONSOLIDATED ACTION

I, Thomas M. Diachenko, declare as follows:

1. I am an attorney licensed to practice law in the State of California and represent the Plaintiffs, Jamie Thomas, Ellen Williams, and Alicia Breton in this matter. The following facts are within my personal knowledge and if called to testify I could and would testify to the following:

**DECLARATION OF THOMAS M. DIACHENKO IN SUPPORT OF JOINT STIPULATION TO
APPROVE THE PAGA SETTLEMENT**

1 2. I received my Bachelor of Science in Nursing from Boston University in 1981,
2 thereafter worked as a pediatric ICU nurse prior to and during law school. I received my Juris
3 Doctorate from the University of San Diego and passed the Bar in 1989.

4 3. I have been in practice (civil litigation and trials) for 35 years, tried dozens of cases
5 for both the defense and plaintiff in three practice areas: medical malpractice, general liability
6 personal injury and wage/employment/PAGA claims. I have litigated and settled over 60 cases
7 which have included PAGA claims approved by the Court. I have taken nine wage cases to trial.
8 One of those cases was a defense case which resulted in a Plaintiff's judgment. I tried eight of
9 those nine cases on behalf of the Plaintiff for which favorable judgments were obtained in all
10 eight of those trials.

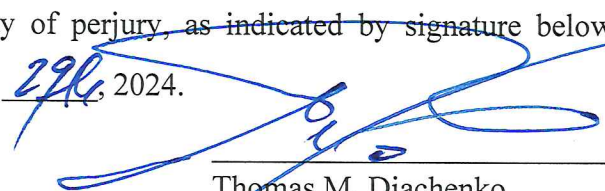
11 4. Of the nine wage and hour cases which I have taken to trial, four included PAGA
12 Claims, and are as follows: (i) PAGA Trial #1: *Marco Atempa and Keilyn Reyes v. Paolo*
13 *Pedrazzani and PAMA Inc.*, SDSC Case No. 37-2013-00058208-CU-OE-CTL ("Atempa Trial"),
14 rendered a judgment in plaintiffs' favor including an allocation for the PAGA claims followed by
15 a favorable published appellate opinion for the plaintiff in *Atempa v. Pedrazzani* (2018) 27
16 Cal.App.5th 809. (ii) PAGA Trial #2: *Horton v. SCI Direct*, SDSC Case No. 37-2016-00039356-
17 CU-OE-CTL, the Court found in favor of the plaintiff on liability on her individual wage,
18 indemnification, sexual harassment and PAGA claims. (iii) PAGA Trial #3: *Cubias, et al. v.*
19 *Protein for Pets, et.al.*, SDSC Case No. 37-2026-00045232-CU-OE-CTL. The case settled on the
20 first day of trial in the middle of the cross-examination of the individual owner defendant who
21 was called as plaintiff's first witness pursuant to Evidence Code section 776. The Court approved
22 the PAGA amounts stipulated to by the parties. (iv) The fourth trial asserting PAGA claims is
23 currently pending before this Court, in *Barragan v. LNG Logistics, et al.*, SDSC Case No. 37-
24 2017-00033292-CU-OE-CTL.

25 5. My current hourly rate for 2024 is \$900 per hour. I have typically received 95-
26 100% of my requested lodestar fee in the eight plaintiff judgments I have obtained over the years.
27 I have written over a dozen articles on wage and PAGA claims. I have been invited to speak about
28 PAGA claims on both a state and national level. I believe that the above hourly rate is fair and

1 reasonable based upon my comparative experience in this practice area and my understanding of
2 the billing rates for other attorneys of similar experience level. My time spent *exclusively* on the
3 PAGA claims asserted against the Defendants, I did the following: prepare the PAGA notice letter
4 submitted to LWDA which took ~ 4 hours of my time; prepare the First Amended Complaint
5 filed adding the PAGA cause of action (taking me ~1 hour), and; over 5 hours preparing the
6 PAGA settlement and release, distribution letter, stipulation, this declaration and the proposed
7 order. This totals 10 hours. At \$900 per hour, this would amount to lodestar of at least \$9,000,
8 which alone exceeds the \$5,000 apportioned to attorney fees. This time does not include to time
9 spent on individual non-PAGA penalty claims, some of which are necessary to establish liability
10 and standing for the PAGA claims, while others involved individual claims with no relationship
11 to the PAGA. Although there is no known jurisdictional basis for the court to approve any
12 associated attorney fee allotment to my knowledge, I have chosen to do so for informational
13 purposes and to the extent that the Court may deem it relevant to its PAGA approval criteria.

14 6. Should this case proceed to trial, attorney fees exclusively on representative
15 PAGA claims could be exponentially more for all counsel involved without any guarantee that
16 liability will be established for the other alleged “aggrieved employee”. Based upon the above
17 experience in this practice area, I believe that the amount of PAGA penalties under these
18 circumstances is not “unjust arbitrary and oppressive, or confiscatory.”

19 7. The above is true and accurate, based upon personal knowledge and belief and
20 asserted under penalty of perjury, as indicated by signature below, executed in San Diego,
21 California on January 29th, 2024.

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23 _____
24 Thomas M. Diachenko
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