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

LISA LEFANTY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS;
DOES 1 to 20, inclusive,

Defendants.

Case No.: CV-21-004330

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

Date: August 12, 2025
Time: 8:30 a.m.
Dept.: 24

Action Filed: August 13, 2021
Trial Date: None Set

1 I, Kristen Agnew, declare as follows:

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

6 **FIARNESS OF THE SETTLEMENT**

7 2. The Class and Representative Action Settlement Agreement (“Agreement” or
8 “Settlement Agreement”) was the product of negotiations between highly able and experienced
9 attorneys on both sides who possessed the relevant data and extensive legal research which they
10 had carefully analyzed. The Parties engaged in arm’s length negotiations, including a full day of
11 private mediation

12 3. Class Counsel engaged in extensive factual investigation before settling.
13 Defendant provided fulsome and substantive responses to three sets of written discovery and
14 provided documents and information relevant to class certification, such as the job titles and
15 duties of putative class members, documents related to the classification of Assistant Nurse
16 Managers as exempt, documents that reflect the number of hours worked by Assistant Nurse
17 Managers, and Defendant’s applicable wage and hour policies, including those pertaining to
18 meal and rest periods, overtime and prohibition of off-the-clock work. Plaintiff also sought the
19 names and contact information of putative class members.

20 4. The Parties also stipulated to the production of the contact information of putative
21 class members, subject to a protective order. Class Counsel expended a significant amount of
22 time interviewing putative class members and obtained over one hundred declarations from
23 Assistant Nurse Managers. Additionally, Defendant deposed Plaintiff for two days.

24 5. In preparation for mediation, the Parties agreed to the informal exchange of
25 information leading up to mediation. Defendant provided data points regarding the size of the
26 putative class and value of the claims, including, the number of putative class members, the
27 number of putative class members who terminated employment, the aggregate number of pay
28 periods worked by putative class members, the number of pay periods worked during the PAGA

1 liability period, and the average salary of putative class members.

2 6. Based on the information provided by Defendant, Class Counsel conducted a full
3 damages analysis. Class Counsel estimate that the total exposure for the class and PAGA claims
4 amount to \$52,442,754.25. The Gross Settlement is \$11,000,000.00, and thus amounts to
5 approximately 20.97% of Defendant's maximum exposure. However, this figure assumes that
6 the Court would award \$10,944,300 in civil PAGA penalties (which in turn presumes that the
7 Court would award \$100 per pay period at issue). In the alternative, if the Court uses *Carrington*
8 as a benchmark and assesses PAGA penalties of approximately 10% of the total maximum, a
9 more realistic estimate of Defendant's maximum exposure is \$42,592,884.25. In this case, the
10 Gross Settlement Amount is approximately 25.82% of the total estimated liability.

11 7. I have spent significant time researching and pursuing the claims that have been
12 alleged in this action. I believe that Plaintiff and the Class could prevail at trial. However, I also
13 believe in the fairness of the settlement, which is based on factoring in the uncertainty and risks
14 attendant to litigation. I carefully considered the prospect of potential class certification issues as
15 well as the uncertainty of class certification, the difficulties of complex litigation, and the lengthy
16 process of establishing specific damages and various possible delays and appeals in agreeing to
17 the proposed settlement. I further considered the fact that penalties under the PAGA could be
18 substantially cut at the discretion of the Court even if Plaintiff was successful on proving those
19 claims. Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now
20 rather than to proceed with litigation and potentially obtain zero funds to the class due to legal or
21 factual issues with the case.

22 8. The core dispute in this Action is whether Defendant misclassified Assistant
23 Nurse Managers as exempt employees under the executive exemption. The executive exemption
24 applies to employees who spend more than one-half of their work time engaged in managerial
25 work, such as supervising multiple employees, participating in personnel decisions and employee
26 development.

27 9. Plaintiff contends that, on an individual and collective basis, ANMs spend only a
28 small percentage of time engaging in duties that are typically thought of as being managerial

1 tasks. Plaintiff further contends that ANMs spend more than fifty percent of their workday
2 performing direct patient care side-by-side with nurses and other hourly, non-exempt employees.
3 In support of this argument, Class Counsel obtained over 100 declarations from ANMs across a
4 wide range of departments within the Hospital. The declarants stated, among other things, that
5 ANMs frequently perform non-exempt tasks, such as: (1) providing meal and rest period
6 coverage for nurses; (2) providing coverage for absent nurses; (3) answering phones within the
7 department; (4) coordinating patient transportation and transporting patients within the Hospital;
8 (5) charting and documenting patient care; and (6) taking and recording patient vital signs.
9 Plaintiff contends that the experiences of the declarants are consistent with the tasks set forth in
10 the written job description of Assistant Nurse Manager.

11 10. Defendant maintains that the Hospital complied with the law, had lawful and
12 compliant practices, and properly classified ANMs as exempt employees. Defendant contends
13 that the primary function of an Assistant Nurse Manager is to supervise the delivery of nursing
14 services and patient care. Indeed, as argued by Defendant, the complexity of the work performed
15 by ANMs, coupled with the number of employees under their supervision, precludes an ANM
16 from primarily engaging in work related to direct patient care. Defendant further contends that,
17 to the extent that an individual ANM occasionally performs direct patient care, it is incidental to
18 managerial work, such as providing clinical supervision.

19 11. Class Counsel strongly believes that Plaintiff's claims are certifiable, but
20 appreciates the challenges presented at class certification. Actions asserting claims predicated on
21 misclassification typically involve both common and individualized issues. Here, Defendant
22 argues that the day-to-day experiences of ANM varied widely based on a variety of factors. By
23 way of example, Defendant argues that some ANMs worked in outpatient facilities. In this
24 setting, rarely, if ever, would there be an occasion for an ANM to provide direct patient care.
25 Relatedly, ANMs who have spent years working in an office setting may lack the clinical
26 competency to provide direct patient care. Even within the hospital setting, the experiences of
27 ANMs may vary depending on their department, the level of care required by their patients, and
28 influxes in staffing. Thus, as argued by Defendant, even if the evidence establishes that some

1 ANMs were misclassified, the evidence will also establish that other ANMs spent the majority of
2 their shifts performing managerial work. Defendant also disputes that the declarations obtained
3 by Class Counsel can be used to prove the existence of a common policy. Defendant argues that
4 most of the declarations were obtained from former employees, many of whom vastly overstated
5 their hours worked. Defendant also contends that many ANMs, including Plaintiff for part of her
6 employment, were scheduled to work less than 40 hours per week. Class Counsel anticipated
7 that, in opposition to class certification, Defendant will rely on counter declarations from
8 putative class members that highlight the individual experiences of ANMs.

9 12. Plaintiff's underlying claims also face unique challenges from Defendant. The
10 off-the-clock and meal period claims are particularly susceptible to arguments concerning
11 manageability. Defendant argues that any claim for unpaid wages is not suitable to be
12 adjudicated on a class-wide basis because the amount of overtime worked by ANMs will vary
13 widely and require mini-trials inquiring into the circumstances of each individual's experience.
14 Relatedly, with respect to meal periods, an employer's only obligation is to make the break
15 available to employees – not to police them. As argued by Defendant, an adjudication of the
16 alleged meal period violations would require individualized assessments as to the circumstances
17 of each missed, delayed or interrupted break.

18 13. Furthermore, as argued by Defendant, Plaintiff's derivative wage statement
19 violation is vulnerable to a motion for summary judgment based on the weaknesses of the
20 underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308
21 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage
22 statement cause of action was derived from an underlying wage and hour violation for overtime).
23 Additionally, Defendant maintains that any alleged omission of information from the wage
24 statements was not a "knowing and intentional failure" by Defendant to comply with Labor Code
25 section 226(a), nor did any omission result in any "injury" to Class Members, and penalties are
26 therefore unwarranted. *See Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056, 1087
27 (2024) (employer's failure to include meal and rest period premium pay on the wage statements
28 was not "knowing and intentional" because it had a good faith belief that it was not in violation

of Labor Code section 226).

14. Defendant also argued that Plaintiff could not establish that Defendant “willfully” failed to pay wages at separation of employment and/or that a good faith dispute exists as to whether the allegedly underpaid monies were wages due. This is a legal defense that, if successful, could potentially defeat Plaintiff’s Section 203 claim. *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020) (holding that an employer’s failure to pay is not willful where there is uncertainty in the law or a “good faith mistaken belief that wages are not owed”). In *Naranjo v. Spectrum Security Services, Inc.*, 88 Cal.App.5th 937, 948 (2023), the California Supreme Court upheld an employer’s good faith defense to the plaintiff’s claim for waiting time penalties, pursuant to Labor Code section 203. The employer argued that it had a viable legal defense, which precluded the imposition of waiting time penalties because its acts were not “willful” within the meaning of the statute. Even had Plaintiff ultimately prevailed on the merits, Defendant may have sought immediate appellate review through a writ or appeal. Thus, the maximum exposure estimated on this claim was discounted for purposes of analyzing a reasonable settlement value.

ATTORNEY EXPERIENCE

15. Class Counsel has a great deal of experience in wage and hour class action litigation. Diversity Law Group has been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience.

16. 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.

17. 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

1 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
2 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
3 companies in employment litigation in both state and federal courts, as well as before
4 government agencies, including the California Department of Labor. My practice included the
5 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
6 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
7 also handled a number of wage and hour class actions.

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

10 19. I served as the lead associate on a number of wage and hour class actions,
11 including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No.
12 BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior
13 Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County
14 Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court
15 Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case
16 No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara
17 County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a*
18 *Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632; *Warren v. Paychex,*
19 *Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No.
20 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing Company et al*,
21 C.D. Cal. Case No. 2:10-cv-05870.

22 20. I have been approved as class counsel in a number of class actions by the Superior
23 Courts of California and United States District Courts, including: *Antonio Becerra-Mata v. PSC*
24 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Andrew*
25 *Vasquez v. Earthbound Farm, LLC*, San Benito County Superior Court Case No. CU-17-00171;
26 *Francisco Pulido v. Westrock Services, Inc.*, San Benito County Superior Court Case No. CU-
27 18-00074; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior
28 Court Case No. BC608609; *John Obiols v. Lockheed Martin Corporation*, Santa Clara County

1 Superior Court Case No. 17CV314178; and *Eric Chavez v. Converse, Inc.*, N.D. Cal. Case No.
2 15-cv-03746-NC.

3 21. I also second chaired two jury trials where I represented the prevailing defendant.
4 Both cases involved employees who brought claims against their former employers pursuant to
5 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
6 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*
7 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909. More
8 recently, I was lead trial counsel on two bench trials, in which the plaintiffs were the prevailing
9 party. The cases are: *Esteban Palomino v. Northrop Grumman Systems Corporation*, Santa Clara
10 County Superior Court Case No. 19CV345534; and *Jose Delgado v. Taylor Farms California,*
11 *Inc.*, Monterey County Superior Court Case No. 18CV001381.

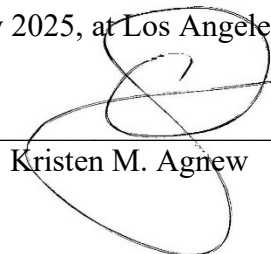
12 **NOTICE TO LWDA**

13 22. On March 18, 2025, my office uploaded the Court's Order Granting Preliminary
14 Approval to the LWDA's website. The LWDA has not responded or objected to this settlement.

15 23. On July 17, 2025, my office uploaded this Motion and Proposed Order to the
16 LWDA's website. In addition, my office shall submit to the LWDA a copy of the Court's
17 judgment and order approving the Settlement Agreement within ten (10) days after entry of
18 judgment or order.

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

21 Executed on this 12th day of January 2025, at Los Angeles, California.

22
23 
24 _____
25 Kristen M. Agnew
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