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Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

TONY CATELLI, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

INNOVATIVE CONSTRUCTION
SOLUTIONS, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: MSC21-01257

(Assigned for all purposes to the Honorable
Charles S. Treat, Dept. 12)

**DECLARATION OF KWANPORN “MAI”
TULYATHAN IN SUPPORT OF
PLAINTIFF’S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 8, 2023

Time: 9:00 a.m.

Dept.: 12

Complaint Filed: June 1, 2021

Trial Date: None Set

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I, Mai Tulyathan, 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 Tony Catelli (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

CASE SUMMARY

2. On June 1, 2021, Plaintiff filed his Complaint against Defendant Innovative Construction Solutions (“Defendant”) in the Superior Court of California for the County of Contra Costa. The complaint alleges class and Private Attorneys General Act (the “PAGA”) claims for (1) violation of Labor Code § 226; and (2) violation of the PAGA, Labor Code § 2698, *et seq.* (“Complaint” or “Action”). Specifically, the Complaint alleges that Defendant failed to issue wage statements that identify the inclusive dates of the payroll period.

3. Since the filing of this case, the Parties conducted informal discovery, and engaged in an extensive meet and confer process and the production of class payroll data and information pertaining to Defendant's wage statement practices. Thereafter, the parties engaged in settlement discussions before agreeing to the terms of this arm's-length Settlement.

4. Following the hearing of Plaintiff’s Preliminary Approval Motion on January 19, 2023, the Court issued its Order After Hearing Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), preliminarily approving this settlement, directing distribution of the class notice, and scheduling the hearing for final approval of the settlement. As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix Settlement Administrators—distributed the Class Notice to all Class Members. Class Counsel believes that the positive results after mailing of the Class Notice support confirmation of the Court’s preliminary approval of the settlement with final approval of the settlement. The settlement has a significantly high participation rate of 98.89 percent. In light of this positive response from Class Members, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Settlement Agreement is fair

1 and reasonable.

2 5. There were no objections to the amount of attorneys' fees or litigation costs that
3 Class Counsel seeks in this case and for which Plaintiff asks the Court for final approval.

4 6. The proposed settlement meets the criteria for this Court to grant final approval of
5 this matter on a class-wide basis, as the settlement is fair, adequate, and reasonable.

6 **DISCOVERY AND INVESTIGATION CONDUCTED SHOWS THAT THE**
7 **SETTLEMENT IS FAIR, REASONABLE, ADEQUATE, AND IN THE BEST**
8 **INTERESTS OF THE CLASS**

9 7. During the course of this litigation, the Parties thoroughly investigated the facts
10 relating to the claims alleged in the Complaint and engaged in a thorough study of the legal
11 principles applicable to the claims asserted against Defendant.

12 8. In the present case, Plaintiff's Labor Code § 226 claim arises from Plaintiff's
13 allegations that Defendant's wage statements failed to list the inclusive dates of the payroll
14 period on wage statements provided to Class Members. Defendant provided data relating to the
15 number of allegedly deficient wage statements issued to putative class members, which allowed
16 Plaintiff to conduct an exposure analysis for the class and PAGA claims.

17 9. Specifically, during the investigation process, it was discovered that the alleged
18 wage statement violation only appeared on the very first (initial) physical wage statements the
19 employer issued to its employees, and that all subsequent wage statements did not contain any of
20 the alleged violations. Thereafter, the Parties engaged in settlement discussions over several
21 months and ultimately reached the current settlement.

22 10. As explained in Plaintiff's preliminary approval motion, Plaintiff calculated
23 maximum exposure for Labor Code § 226 penalties to be \$6,450.00 and derivative PAGA
24 penalties of \$32,250.00 for a total of \$38,700.00. Based thereon, the \$30,000.00 settlement
25 comprises approximately 77.5% of the realistic exposure, which is consistent with settlements
26 approved by numerous courts.

27 11. After taking into account sharply disputed factual and legal issues involved in this
28 litigation, the risks attending further prosecution, and the substantial benefits to be received

1 pursuant to the compromise and settlement of the litigation, I am of the opinion that settlement
2 on the terms hereinafter set forth is appropriate and in the best interests of the Parties, and that
3 this settlement is fair and reasonable.

4 **CLASS LIST**

5 12. Pursuant to the Settlement, Defendant provided the Settlement Administrator with
6 information necessary to send the Notice of Class Action and PAGA Settlement (“Class Notice”)
7 to the Class Members.

8 13. The Court preliminarily approved a settlement class of 129 individuals. However,
9 upon compilation of the Class List, Defendant discovered 39 individuals who were properly
10 included as PAGA Employees but inadvertently included as Class Members because they
11 received their Initial Physical Wage Statement either before or after the Class Period, and thus
12 did not actually belong to the settlement class. After correcting the Class List to remove these
13 individuals who were erroneously included, Defendant represented that there are 90 individuals
14 identified as Class Members and 128 individuals identified as Aggrieved Employees.

15 14. The net result is that the Individual PAGA Payments remained substantially the
16 same, but that Individual Class Payments were marginally higher than anticipated in the Motion
17 for Preliminary Approval.

18 15. The estimated individual settlement payment to each participating Class Member
19 increased from approximately \$48.45 per person (the estimated amount at preliminary approval),
20 to approximately \$83.56 per person, in light of the decrease in the number of individuals in the
21 settlement class.

22 **ATTORNEY EXPERIENCE**

23 16. I am one of the primary attorneys on this matter. My qualifications are as follows:
24 I received my J.D. from Loyola Law School in 2017. I received the First Honors Award in Legal
25 Research and Writing, First Honors Award in Appellate Advocacy, and First Honors Award in
26 Civil Litigation Practicum I for achieving the highest grade in those classes. During law school, I
27 was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District Court,
28 Central District of California, for the Honorable Christina A. Snyder, and a certified law clerk at

1 the San Diego County District Attorney's Office, Collaborative Courts Division, and the Los
2 Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes
3 Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I
4 placed Top 16 and was the awarded the Top Ten Brief Award. In 2017, I participated in the
5 Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created
6 to investigate retaliation complaints. Upon graduation from law school, I was admitted to the
7 California Bar in December 2017.

8 17. I am currently an associate at the law firm Diversity Law Group, P.C., an
9 employment law firm that has handled numerous wage and hour class and individual actions, on
10 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including
11 the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San
12 Diego County Superior Court, Monterey County Superior Court, as well as the United States
13 District Courts for the Central, Northern, Southern, and Eastern Districts of California.

14 18. I am currently handling and/or have handled numerous wage and hour class action
15 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-
16 cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-
17 MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao v. H & M*
18 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper Company* (Case
19 Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial
20 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723).

21 19. In 2018, I argued before the California Court of Appeal, Second Appellate
22 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case
23 Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*
24 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In
25 that same year, I also assisted the firm in successfully obtaining class certification and partial
26 summary judgment by the United States District Court, Central District of California in the case
27 of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the
28 bench trial in that same case in December 2018.

1 20. I have also been certified and/or approved as class counsel in numerous other
2 wage/hour class actions. Most recently, I was certified as class counsel in the cases *Garcia v.*
3 *Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan,*
4 *LLC, et al.* (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-
5 cv-965-JLS (DFM)), *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-
6 299319), and *Sims v. QG Printing II, LLC, et al.* (Case No. ED CV 20-1632-DMG (KKx)), as
7 part of the courts’ orders granting class certification pursuant to Rule 23 of the FRCP and
8 California Code of Civil Procedure § 382.

9 21. Moreover, I was granted final approval as class counsel in *Lao v. H & M Hennes*
10 *& Mauritz, L.P.* (Case No. 5:16:cv-333 EJD), *Abarca v. El Estero Car Wash, Inc. et al* (Case No.
11 18CV003398), *Valles v. Community Hospital of the Monterey Peninsula* (Case No.
12 17CV003452), *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644), *Hernandez v. Wells*
13 *Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319); *Baker v. California Forensic*
14 *Medical Group, Inc., et al.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No.
15 17CV003723); *Mendez v. Falcon Trading Company* (Case No. 19CV004512); *Truong v. DS*
16 *Services of America, Inc.* (Case No. FCS054399).

17 22. To date, I have incurred approximately 82.7 hours in connection with the
18 litigation of this lawsuit. Attached hereto as **Exhibit A** is a chart summarizing the amount of
19 work I have incurred to date on this matter.

20 23. I also anticipate spending an additional 8 hours on post-final approval matters,
21 including conferring and reviewing e-mails and other written communications with counsel for
22 Defendant, the Settlement Administrator, and Class Members regarding payments and any
23 related issues.

24 24. Thus, the total amount of my fees incurred in this case to be approximately
25 \$54,420.00, based on at an hourly rate of \$600.00 per hour. In 2019 and 2020, I was approved at
26 an hourly rate of \$450.00 per hour by various Courts in a number of matters, including but not
27 limited to, *Lao v. H & M Hennes & Mauritz, L.P.* (Case No. 5:16:cv-333 EJD), *Hernandez v.*
28 *Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319), and *Abarca v. El Estero Car*

1 *Wash, Inc. et al* (Case No. 18CV003398). In 2021, I was approved at the hourly rate of \$500.00
2 in various cases, including *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial
3 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon*
4 *Trading Company* (Case No. 19CV004512); and *Truong v. DS Services of America, Inc.* (Case
5 No. FCS054399). As of January 1, 2023, my hourly rate increased to \$600.00 per hour. I was
6 approved at the hourly rate of \$600.00 in *Moen v. Genentech, Inc.* (San Diego Superior Court
7 Case No. 37-2021-00008619-CU-OE-CTL) and *Murray v. Granite Wellness Centers et al.*
8 (Nevada County Superior Court Case No. CU20-084680).

9 **LITIGATION COSTS**

10 25. My firm has incurred costs in the amount of \$3,468.02. The costs are all litigation
11 related costs, including filing fees, service fees, and CourtCall fees. Attached hereto as **Exhibit**
12 **B** is my firm's cost sheet for this matter.

13 **NOTICE TO THE LWDA**

14 26. Concurrent with the filing of this Motion, Plaintiff uploaded this motion and
15 proposed order to the LWDA's website. A true and correct copy of the LWDA confirmation is
16 attached hereto as **Exhibit C**.

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

19 Executed on this 16th day of May 2023, at Los Angeles, California.

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21 /s/ Kwanporn "Mai" Tulyathan
22 Kwanporn "Mai" Tulyathan
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EXHIBIT A

Catelli v. Innovative Construction Solutions
Kwanporn Tulyathan Time and Task Chart

Hours	Description of Work
6.5	Factual investigation, review of file and client documents, review PAGA letter, confer with co-counsel regarding the case upon assignment to case
4.6	Draft complaint; further review and revise complaint
0.3	Review Notice of Assignment, E-Filing Order and OSC
1.0	Review Defendant's Answer
2.7	Meet and confer with opposing counsel for case management conferences (telephonic and e-mail), draft, review and revise several CMC statements in connection therewith
3.4	Meet and confer with opposing counsel regarding arbitration agreement, review arbitration agreement in connection with same, confer with co-counsel and client regarding same
0.1	Correspondence re responsive pleading deadline
1.8	Several telephonic and e-mail discussions re mediation and potential stay case pending arbitration and settlement negotiations
1.5	Prepare for and attend 9/1/21 case management conference
2.0	Draft and prepare informal discovery request in connection with mediation, confer with opposing counsel re same
1.5	Prepare for and attend 1/26/22 case management conference
6.2	Review informal data and document production for settlement purposes, conduct exposure analyses
5.8	Numerous email and telephonic correspondence with opposing counsel re data production and informal settlement negotiations
1.0	Prepare for and attend 4/26/22 case management conference
0.4	Draft joint stipulation to continue CMC, confer with opposing counsel regarding same
1.0	Prepare for and attend 6/13/22 case management conference
8.7	Review and revise long-form settlement agreement; confer with opposing counsel regarding terms therein; confer with client regarding same
12.3	Draft motion for preliminary approval of settlement, proposed order, and supporting documents; further revise same
3.8	Review and revise class notice to be sent to class members; confer with opposing counsel regarding same

1.0	Correspondence with settlement administrator regarding administration matters and admin timeline
2.4	Review weekly mailing reports from settlement administrator; confer with settlement administrator regarding final approval; review admin declaration
14.7	Draft motion for final approval of settlement, proposed order, and supporting documents; further revise same
<u>82.7</u>	<u>TOTAL HOURS</u>

EXHIBIT B

5/9/2023
10:43 AM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip.Classification Open
Client (hand select) Include: Catelli, Tony v. Innovative
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
66930	EXP	Linda Lee	1	75.00	75.00
4/16/2021		Court fees			
WIP		Catelli, Tony v. Innovative			
LWDA					
67257	EXP	Olympia	1	6.96	6.96
4/30/2021		Postage			
WIP		Catelli, Tony v. Innovative			
Postage					
67778	EXP	Olympia	1	1683.63	1683.63
6/1/2021		Atty Service			
WIP		Catelli, Tony v. Innovative			
Attorney Service - Complaint					
68316	EXP	Olympia	1	2.75	2.75
6/1/2021		Atty Service			
WIP		Catelli, Tony v. Innovative			
Attorney Service - Complaint					
68353	EXP	Olympia	1	95.67	95.67
7/14/2021		Atty Service			
WIP		Catelli, Tony v. Innovative			
Attorney Service - Complaint Service					
68374	EXP	Olympia	1	105.13	105.13
7/23/2021		Atty Service			
WIP		Catelli, Tony v. Innovative			
Attorney Service - POS of Summons					
68926	EXP	Olympia	1	102.13	102.13
8/27/2021		Atty Service			
WIP		Catelli, Tony v. Innovative			
Attorney Service - Joint CMS					
68765	EXP	Olympia	7	0.25	1.75
8/31/2021		Photocopies			
WIP		Catelli, Tony v. Innovative			
Photocopies					

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DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
68766	EXP	Olympia	1	0.71	0.71
8/31/2021		Postage			
WIP		Catelli, Tony v. Innovative			
Postage					
68667	EXP	Mai Tulyathan	1	94.00	94.00
9/1/2021		Court fees			
WIP		Catelli, Tony v. Innovative			
Courtcall					
69242	EXP	Olympia	17	0.25	4.25
9/30/2021		Photocopies			
WIP		Catelli, Tony v. Innovative			
Photocopies					
69243	EXP	Olympia	1	0.93	0.93
9/30/2021		Postage			
WIP		Catelli, Tony v. Innovative			
Postage					
69107	EXP	Olympia	1	29.00	29.00
10/4/2021		Court fees			
WIP		Catelli, Tony v. Innovative			
File&ServeXpress					
70617	EXP	Olympia	1	109.92	109.92
1/21/2022		Atty Service			
WIP		Catelli, Tony v. Innovative			
Attorney Service - Joint CMS					
70488	EXP	Mai Tulyathan	1	94.00	94.00
1/26/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
Courtcall					
70821	EXP	Olympia	3	0.25	0.75
1/31/2022		Photocopies			
WIP		Catelli, Tony v. Innovative			
Photocopies					
70822	EXP	Olympia	1	0.53	0.53
1/31/2022		Postage			
WIP		Catelli, Tony v. Innovative			
Postage					
70644	EXP	Olympia	1	29.00	29.00
2/8/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
File & ServeXpress - Joint CMS					

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DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71570	EXP	Mai Tulyathan	1	94.00	94.00
4/26/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
Courtcall					
71724	EXP	Olympia	1	54.30	54.30
5/6/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
File & ServeXpress - Joint CMS					
72178	EXP	Mai Tulyathan	1	94.00	94.00
6/13/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
Courtcall					
72335	EXP	Olympia	1	74.40	74.40
7/5/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
File & ServeXpress - Joint Stip					
72916	EXP	Erika Mejia	1	3.60	3.60
9/9/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
Odyssey - Joint CMS					
73471	EXP	Erika Mejia	1	3.60	3.60
11/3/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
Odyssey - Joint CMS					
73808	EXP	Erika Mejia	1	131.96	131.96
11/3/2022		Atty Service			
WIP		Catelli, Tony v. Innovative			
Attorney Service - CMS Chamber Copy					
73873	EXP	Erika Mejia	1	65.25	65.25
12/15/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
Odyssey - MPA					
73921	EXP	Erika Mejia	1	3.60	3.60
12/21/2022		Court fees			
WIP		Catelli, Tony v. Innovative			
Odyssey - Amended Notice of MPA					
74250	EXP	Olympia	1	3.60	3.60
1/23/2023		Court fees			
WIP		Catelli, Tony v. Innovative			
Odyssey - OAH					

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DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
74270	EXP	Olympia	1	3.60	3.60
1/26/2023		Court fees			
WIP		Catelli, Tony v. Innovative			
Odyssey - NOE					
75095	EXP	Mai Tulyathan	1	500.00	500.00
5/9/2023		Court fees			
WIP		Catelli, Tony v. Innovative			
MFA and Post-approval filings					
Grand Total					
			Billable	0.00	3468.02
			Unbillable	0.00	0.00
			Total	0.00	3468.02

EXHIBIT C