

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com

Ryan T. Kuhn [CSB No. 324538]
ryan@sullivanlawgroupapc.com

SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff JAMES PACKES, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JAMES PACKES, in a Representative
capacity only, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

v.

SCHOOL OF ROCK LLC, a Delaware
Limited Liability Company; and DOES 1-10,
inclusive

Defendants

CASE NO. 30-2021-01217507-CU-OE-CXC

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL
APPROVAL OF (1) CLASS ACTION
SETTLEMENT; (2) ATTORNEYS' FEES
AND COSTS; and (3) CLASS
REPRESENTATIVE AWARD**

Date: May 5, 2023

Time: 10:00 a.m.

Dept.: CX105

Judge: Hon. Randall J. Sherman

Reservation Number:

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

- 2 1. I am an attorney licensed to practice law before this Court and am an employed at the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for Plaintiff JAMES PACKES,
4 in a Representative capacity only, and on behalf of other members of the general public
5 similarly situated in the above-captioned matter. I make this declaration regarding Plaintiff's
6 **Unopposed** Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs,
7 and Class Representative Award.
- 8 2. I have personal knowledge of the facts set forth in this declaration and, if called to testify as
9 a witness, I could and would do so.

10 **Experience of Counsel**

- 11 3. Lead trial counsel, Mr. William Sullivan, has been a California-licensed attorney for 29 years.
12 He has approximately 28 years of experience in "class action" litigation, both as plaintiff and
13 defense counsel.
- 14 4. I have over 12 years of experience as an attorney. I have spent my entire practice engaged in
15 prosecuting class and representative actions. I became a partner in the firm in 2020.
- 16 5. Our office are the attorneys of record in a matter very recently (and favorably) decided before
17 the California Supreme Court titled *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021).
18 The *Donohue* matter is a certified class and PAGA action.
- 19 6. Our office is lead counsel on approximately 30 employment "wage and hour" claims with class
20 action, or representative action, allegations. These cases are set within the California Superior
21 Court and Federal District Courts in California. Our office is currently lead counsel on claims
22 that have been certified by both Court Order and by stipulation of the parties. In the last three
23 years, the Sullivan Law Group has settled at least 15 employment "wage and hour" claims on
24 behalf of a Certified Class.
- 25 7. Our firm has the requisite experience knowledge of California law and the Federal Rules of
26 Civil Procedure required to act on behalf of the Class. I consider the Settlement Agreement in
27 this matter to represent a fair, adequate and reasonable settlement that is well within the
28 accepted range of recoveries for similar wage and hour class actions. I also believe the

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 12 years experience in the prosecution of PAGA allegations, including (successful) Trial experience.

9. In the last seven years, the Sullivan & Yaeckel Law Group has tried three "Wage and Hour" Representative (PAGA). In a recent successful PAGA trial, tried before Hon. Katherine 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 # 31 at § III 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 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 \$240,000.00 settlement represents a fair and – more than – reasonable settlement. Additionally, I submit that the payment of \$18,000.00 to the LWDA for the PAGA claims (75% share of \$24,000.00 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

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

the settlement class.

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

12. 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

13. 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

14. My office was retained by each of the Plaintiffs on a contingency basis. A percentage fee of 33 1/3% (thirty-three and one third percent) of any total recovery, was freely negotiated. As part of the agreement, Plaintiffs' Counsel was required to continue the prosecution of the matter regardless of the outcome of the preliminary motions (i.e. arbitration, class certification, etc).

The Continuing Obligation to Devote Time and Effort to the Litigation

15. Since the tentative agreement, my office has had to devote considerable time to maintain the litigation, achieve Court approval for the proposed settlement, and assist the proposed Class Members with questions about the Class Notice, Potential Release and all available options. As is detailed in paragraph 21(d) below, and based on my experience acting as class counsel, I also estimate at least another 5-10 hours by my office will be devoted to this case answering any inquiries from class members and working to ensure the settlement is correctly distributed

1 following approval from the Court.

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

- 3 16. I, along with the other attorneys who assisted in the matter, Plaintiff's counsel was precluded
4 from accepting other employment due to the necessity of maintaining the prosecution of the
5 instant matter. In addition, Mr. Sullivan is the individual primarily responsible for bringing
6 clients to the firm, and was precluded from doing so to the extent previously possible, due to
7 the instant litigation.

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

- 9 17. This is not a "coupon" class action case. As is detailed in the Settlement Administrator's
10 declaration, the Class is set to receive significant monetary benefits. They would not have
11 received these amounts if Class Counsel did not act.

12 **The Lodestar Analysis**

- 13 18. Plaintiff's seek attorneys fees in the amount of one third of the total settlement amount, which
14 is **\$80,000.00**. For purposes of a lodestar cross-check the firms' attorneys' fees incurred (to
15 date) are estimated to amount to approximately **\$72,822.00**. The Attorney's fees are broken
16 down as follows:

- 17 a. Mr. William Sullivan served as lead investigator and trial counsel, per the specific
18 request of Plaintiff. The billing rate for Mr. William Sullivan is \$660.00 per hour.
19 Over the course of the investigation (including pre-filing), Mr. Sullivan has currently
20 expended approximately **25.2** hours in the service of this action. **25.2** hours times
21 **\$660.00** equals **\$16,632.00**. The work includes nearly all preliminary investigation and
22 some client interaction/meetings. The preliminary investigation includes the review and
23 analysis of several hundred documents. During this time, Mr. Sullivan also investigated
24 Defendant, its business practices, financial viability and any variations in employees
25 duties and rates of pay.
- 26 b. I was the partner primarily assigned to oversee the "day to day" activity of the primary
27 associates assigned to this case. My billing rate is \$540.00 per hour. I have currently
28 expended approximately **71.1** hours in the service of this action. **71.1** hours times

1 **\$540.00** equals **\$38,394.00**. Aside from supervising the Associates, this work includes
2 attending hearings and most of the day to day communication with opposing counsel.
3 I also primarily handled the numerous exchanges between the mediator and Defense
4 counsel to negotiate and finalize the settlement. I also undertook the review and
5 drafting of all settlement documents and the preliminary and final approval motions.

6 c. Mr. Ryan Kuhn, Katherine Dishongh and (briefly) Ms. Karoline Kitlowski also served
7 as Associate Attorneys assigned to the case. The billing rate for the Associate
8 Attorneys is **\$360.00** per hour. The associates expended approximately **42.3** hours in
9 the service of this action. **42.3** hours times **\$360.00** equals **\$15,228.00**. The work
10 performed by the associates consisted of, for the most part, analysis of Defendants'
11 documents and records, in preparation for mediation and a class certification motion.
12 The associates were also assigned to discovery creation/review, the preparation of
13 "meet and confer" letters and other contact with defense counsel, and the drafting and
14 filing of numerous separate motions, including pleadings challenges and numerous
15 different motions to compel discovery. The associates also provided an analysis of
16 employment records to determine "commonality" and damages.

17 d. Based on past experience, I estimate that I will incur an additional 5.0 hours in assisting
18 Class Members on questions and issues regarding the settlement, meeting with Class
19 Members (including on any late submissions), preparing for and attending the Final
20 Approval hearing in this matter, and coordinating with the settlement administrator. **5.0**
21 times **\$540.00** equals **\$2,700.00**.

22 19. I printed a copy of the Updated Laffey Matrix from the following website:
23 www.laffeymatrix.com. A true and correct copy is attached as **Exhibit A**.

24 20. The referenced "Laffey" chart states that for the time periods in this case, an attorney with 20
25 + years of experience is entitled to a fee of between \$919 and \$997 per hour. Mr. Sullivan has
26 over 27 years working on class action litigation and only bills at the rate of \$660 per hour.

27 21. For an attorney with 11-19 years experience, the matrix states a reasonable fee is between \$829
28 - \$764 per hour. I have over 12 years experience working on class action litigation and only

- 1 bill at the rate of \$540 per hour.
- 2 22. For an attorney with 1-3 years experience, the matrix states a reasonable fee is between \$81
- 3 - \$418 per hour. The associates working on this matter all had 1-3 years experience and only
- 4 bill at the rate of \$360 per hour.
- 5 23. Given the attorneys fees incurred – in the approximate amount of **\$72,822.00**– a multiplier of
- 6 approximately **1.1** is necessary for the full award requested by Plaintiff. I submit that the results
- 7 obtained here, versus the uncertainty of a recovery, given the numerous asserted defenses,
- 8 support this modest multiplier request.
- 9 24. Additionally, based upon my experience, I submit that the multiplier requested is within the
- 10 range of what California and federal courts often apply in class action cases. Moreover, the
- 11 results obtained here, versus the risk of a zero recovery, given the numerous asserted defenses,
- 12 support this modest multiplier request.
- 13 25. Class Counsel’s total costs expended in this matter will be \$9,165.17. These costs are broken
- 14 down as follows:
- 15 a. Filing and appearance fees (including the Complaint, numerous motions, and
- 16 all other pleadings, all e-file charges, court calls, LWDA filing fees and
- 17 attorney messenger (service and delivery) fees) totaled \$2,134.27.
- 18 b. Mediation fees totaled \$6,250.00.
- 19 c. I approximate my office has expended approximately \$535.00 in legal research
- 20 fees in connection with this case.
- 21 g. I approximate my office has expended \$146.40 in copies and postage fees in
- 22 this matter.
- 23 h. My office has expended approximately \$99.55 in travel fees including meals
- 24 while traveling, mileage, and parking fees in connection with this case.
- 25 26. The parties’ Agreement permits Plaintiffs (without Opposition) to seek up to \$10,000.00 in
- 26 costs. Plaintiffs submits their request for the specific \$9,165.17 amount set forth above.
- 27 **Class Representative Enhancement**
- 28 27. Plaintiff contributed extensive time and resources in the prosecution of this case, as is detailed

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

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

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

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

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

24 32. Despite all the risks Plaintiffs, at all times remained committed to securing a monetary
25 recovery on behalf of the entire class.

26 33. When the parties originally sought a bid from the settlement administrator in this case,
27 it was estimated that there were only approximately 60 class members. As noted in this
28 motion there are actually 126 members (1 opted out) within the settlement class

1 definition. Plaintiff was in possession of the correct workweek and pay period data all
2 along, so this discrepancy does not change Plaintiff's valuation of the claims. However,
3 it did cause the settlement administrators costs and fees to exceed the original estimate
4 of \$3,000 provided at the time of preliminary approval.
5

6 I declare under penalty of perjury under the laws of the State of California that the foregoing
7 is true and correct. Executed this 13th day of April, 2023, in San Diego, California.
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10 _____
11 Eric K. Yaeckel
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EXHIBIT A

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $i_{\frac{1}{2}}$ Years Out of Law School $i_{\frac{1}{2}}$ is calculated from June 1 of each year, when most law students graduate. $i_{\frac{1}{2}}1-3$ " includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $i_{\frac{1}{2}}4-7$ " applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $i_{\frac{1}{2}}1-3$ " from June 1, 1996 until May 31, 1999, would move into tier $i_{\frac{1}{2}}4-7$ " on June 1, 1999, and tier $i_{\frac{1}{2}}8-10$ " on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.