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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

GENNINE MERRITT, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

DMA CLAIMS, INC., a California
Corporation; DMA CLAIMS
MANAGEMENT, INC., an Illinois
Corporation; VENBROOK GROUP, LLC, a
Delaware Limited Liability Company;
VENBROOK INSURANCE SERVICES, LLC,
a California Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: 21STCV31200

*[Assigned to Hon. Judge Stuart M. Rice,
Dept 1, for all purposes]*

**DECLARATION OF MEHRDAD
BOKHOUR IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: December 12, 2022
Time: 10:00 a.m.
Dept.: 1

Complaint filed: August 24, 2021

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DECLARATION OF MEHRDAD BOKHOUR

I, Mehrdad Bokhour, say and declare, as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am the principal of Bokhour Law Group, P.C., co-counsel with Brian J. Mankin and Peter J. Carlson of Lauby, Mankin & Lauby, LLP as attorneys of record for Plaintiff Gennine Merritt (“Plaintiff”) and the Class.

2. As such, I am familiar with the file in this matter and if called as a witness I could and would competently testify to the following facts of my own personal knowledge.

Procedural History

3. Plaintiff submitted a letter to the Labor Workforce Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), and simultaneously sent a letter to Defendants requesting the production of personnel and timekeeping records in order to further evaluate her wage and hour claims.

4. On August 23, 2021, Plaintiff filed a class and representative PAGA action complaint in the Court alleging claims for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims under PAGA.

5. Defendants retained counsel and immediately began to defend the case, including alleging that Plaintiff executed an arbitration agreement that prevented her from bringing the class and PAGA claims alleged in the complaint. Plaintiff challenged the agreement, arguing that it was not binding or enforceable. Then, after early discussions among counsel, the Parties agreed to attend private mediation with Jeffrey Krivis on June 29, 2022.

6. In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including policies and procedures pertaining to each claim alleged, and statistics relating to the

number of current and former employees, number of shifts, pay periods worked and other things. Defendants also provided their written policies and practices and a robust sampling of payroll and timekeeping records for Class Members. This information enabled both parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and her counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. Plaintiff also retained an expert to perform a statistical analysis of the claims and violations

The Settlement Is Within the Range of Possible Approval

7. The Settlement amount reached in this case provides significant recovery to Participating Class Members and easily falls within the range of reasonableness.

8. Plaintiff's counsel obtained a Settlement Amount of \$750,000. Class Counsel considers this to be an excellent settlement for Class Members, when taking into account all issues and risks related to liability and class certification and considering the case law regarding fair, reasonable, and adequate settlements. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 ["Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."]; *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 62 (9th Cir. 1982) 8 ["It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not ... render the settlement inadequate or unfair."].

9. The proposed settlement reflects approximately 42% of the estimated recovery the Class could reasonably expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts.

The Allocation for Enhancement Awards Is Reasonable

10. Subject to Court approval, Plaintiff will receive a Class Representative Service Payment in the amounts of \$10,000. The Service Payment will be paid in addition to Plaintiff's

1 individual Settlement Share. Plaintiff spent considerable time and effort to produce relevant
2 documents and past employment records and provide the facts and evidence necessary to support the
3 allegations. Plaintiff was available whenever class counsel needed her and tried to obtain documents
4 and information that would benefit the Class.

5 **The Allocation for Attorneys' Fees and Costs Are Reasonable**

6 11. The Settlement provides for Class Counsel to apply for attorneys' fees in an amount
7 of \$250,000 which represents one third of the settlement amount. Class Counsel will apply for
8 attorneys' fees at the time of seeking final approval of the proposed Settlement.

9 12. The Class Counsel Fees Payment provided for by the Settlement is reasonable,
10 particularly in light of the time and effort expended by Class Counsel. Class Counsel litigated this
11 case for over a year, with the possibility of an unsuccessful outcome and no fee recovery of any kind.
12 The ongoing work has been demanding and ultimately successful in achieving a substantial
13 Settlement. Given the strengths and weaknesses of the claims and the risk and expense of further
14 litigation, Plaintiff believes that his counsel achieved an excellent result on behalf of the Class.
15 Considering the amount of the fees to be requested, the work performed, and the risks incurred, the
16 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment provided for by the
17 Settlement are reasonable and should be awarded.

18 13. Class Counsel have borne, and continue to bear, the entire risk and cost of
19 litigation associated with this class action on a pure contingency basis. The factual and legal
20 issues posed in this case were evolving and difficult. Based on Class Counsels' past experience
21 in wage and hour class action litigation, it is safe to state that Class Counsel is very likely to be
22 called upon, after the Class Notice has been sent, to expend substantial amounts of additional time
23 to help Class Members understand the terms of the proposed settlement, and to assist Class
24 Members in the preparation and documentation of their claims. It is also likely that, even after
25 final approval of the settlement has been granted, Class Counsel will be called upon to expend
26 additional amounts of time in the presentation and resolution of contests and disputes relating to
27 Class Members' claims under the terms of the proposed settlement, as to the amounts of
28 individual claims and perhaps other individual issues.

1 14. The Court should preliminarily approve the requested Class Counsel Fees
2 Payment and Class Counsel Litigation Expenses Payment which are justified by the outstanding
3 results achieved, the complexity of the issues, the difficulty of the case, and the great risk
4 undertaken by Class Counsel. The requested payments will not be opposed by Defendants and
5 are well within established guidelines.

6 15. I graduated with a Bachelor of Arts with a major in Political Science from the
7 University of California, Berkeley in 2007. I received my Juris Doctorate from Loyola Law
8 School–Los Angeles in 2012 and became a member of the California State Bar in December
9 2012.

10 16. I opened my law firm in 2014 with a concentration in representation of employees
11 against employers to recover unpaid wages and vindicate harassment, discrimination and
12 retaliation claims in various contexts.

13 17. I was selected as a “Super Lawyer Rising Star” in Employment Litigation during
14 the years 2017, 2018, 2019, 2020, and 2021, and in 2022, I was selected as a “Super Lawyer”, a
15 distinction that is reserved for the top 2.5% of lawyers in the practice area.

16 18. I have also been recognized by TopVerdicts.com for achieving several of the top
17 wage and hour class and PAGA action settlements in California.

18 19. I am also an active member of the California Employment Lawyers’ Association
19 and have attended various Continuing Legal Education courses pertaining to advocacy on behalf
20 of employees.

21 20. My firm has the experience, resources, and means necessary to allow us to provide
22 adequate representation as Class Counsel to all Class Members in this litigation. Currently, my
23 firm is acting as counsel in at least twenty wage-and-hour class actions and co-counsel in at least
24 twenty-five other wage-and-hour class actions.

25 **The Settlement Resulted From Serious, Informed Negotiations**

26 21. The Settlement that has been reached, subject to this Court’s approval, is the
27 product of substantial effort by the parties and their counsel. The settlement was reached after
28 extensive factual and legal investigation and research, numerous discussions, exchanges of

documents and information, correspondences, a full day session of mediation, review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state, and review of similar cases in the same industry elsewhere in the country. The Settlement amount is, of course, a compromise figure. It considered the risks related to liability, damages, and all the defenses asserted by Defendant.

22. Plaintiff asserts that the wage and hour claims and the PAGA claims for resulting penalties would be certified. Plaintiff's counsel reviewed documents produced by Defendant, including but not limited to employee handbooks, time and payroll records for Class Members, etc., and based thereon reasonably believed that Plaintiff would have a significant chance of certifying the Class.

23. On the other hand, Defendants argued that Plaintiff cannot meet the requirements of class certification. Defendants believe that compliant meal and rest periods were provided, and Defendants did not deter employees from taking compliant meal and rest periods, and Defendants' meal and rest period policies were likewise compliant. Defendants further contended that class certification would not be warranted because individual liability issues predominate Plaintiff's claims.

24. While Plaintiff believes in his chance of success of certifying the claims, Plaintiff recognized the potential risk, expense, and complexity posed by further litigation. Litigating Plaintiff's claims in this litigation—claims that involve numerous Class Members during the Class Period—would require substantial additional preparation and discovery and ultimately would involve the deposition and presentation of numerous witnesses (including expert witnesses), as well as the consideration, preparation, and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side.

25. Plaintiff and Defendants have very strong positions on liability in this case. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in Plaintiff's operative complaint, and further denies that, for any purpose other than that of settling this lawsuit, this action is appropriate for class treatment. Considering the sharply contested legal and factual issues, the risks of continued litigation, and substantial benefits to Class Members

1 under the Settlement, the terms and conditions of this class settlement are fair and reasonable to
2 all sides.

3 26. Class Counsel conducted a thorough investigation into the facts of the case, including,
4 *inter alia*, interviews with Plaintiff and multiple Class Members, and diligently investigated the
5 allegations in this lawsuit. Class Counsel reviewed a large volume of pages of documents and data
6 produced by Defendants and obtained through other sources, including and not limited to, Plaintiff
7 and other Class Members, employment records (including, *inter alia*, time and payroll data,
8 timecards, earning statements, and personnel records), as well as excerpts of Defendant's employee
9 handbook (such as excerpts pertaining to Defendant's meal and rest break policies), class-wide data,
10 various documents regarding Defendant's wage-and-hour policies, various internal memoranda
11 various agreements, various training and on-boarding material, and various forms, among other
12 information and documents.

13 27. The parties exchanged information and documents formally and informally. The
14 parties also met and conferred on numerous occasions over issues relating to the pleadings,
15 jurisdiction, vigorous motion practice, and discovery. The parties reached the Settlement after
16 reviewing all available evidence, arm's-length bargaining, and participating in mediation conducted
17 by Jeffrey Krivis, Esq., a well-respected mediator experienced in handling complex wage-and-hour
18 matters. During the mediation, the parties exchanged information and discussed various aspects of
19 the case, including, and not limited to, Plaintiff's claims, the risks and delays of further litigation and
20 of proceeding with certification and/or representative adjudication, the law relating to rounding
21 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, the
22 evidence produced and analyzed, and the possibility of appeals, among other things.

23 28. The parties reached the Settlement after reviewing all available evidence, arm's-
24 length bargaining, and participating in mediation conducted by Jeffrey Krivis, Esq., a well-respected
25 mediator experienced in handling complex wage-and-hour matters. During the mediation, the parties
26 exchanged information and discussed various aspects of the case, including and not limited to,
27 Plaintiff's claims, the risks and delays of further litigation and of proceeding with certification and/or
28 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-

hour enforcement, and PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things.

29. During all settlement discussions, the parties conducted their negotiations at arm's length from an adversarial position. Arriving at a settlement that was acceptable to both parties was not easy. The data and documents produced and obtained in this case enabled Class Counsel to prepare damages/valuation models in preparation for the mediation, to determine the value and strength of the claims.

30. With the aid of the mediator's evaluations, the parties agreed that the Action was well-suited for settlement given the legal issues relating to the claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.

31. The Settlement is based on this large volume of facts, evidence, and investigation, and the parties' negotiations during the mediation. While the parties disagree over the merits and certifiability of Plaintiff's claims, Plaintiff and Class Counsel agree that the Settlement is fair, reasonable, adequate, and in the best interest of the Class, in light of all known facts and circumstances.

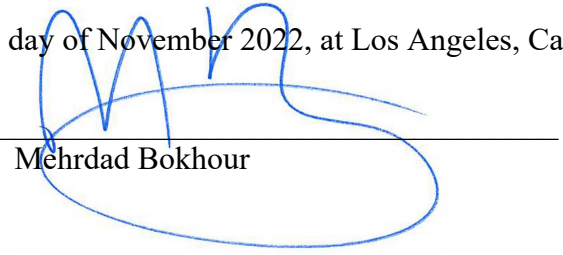
32. I am not aware of any class representative or other collective action in any other court in this or any other jurisdiction that asserts claims like those asserted in this action on behalf of a class or group of individuals who would also be members of the class defined in this action. Before making this determination, I made a reasonable inquiry of other members of my firm and any associated law firm to determine whether those individuals are aware of any such similar actions. They were likewise unaware of any other action.

33. The proposed Class Notice provides the best notice practicable and is adequate because Defendants is in possession of the addresses for Class Members. While Class Counsel considered alternative methods such as publication or notice via the web or social media, it ultimately determined that first class mail was the best choice given that the identities of the Class Members are known and readily identifiable from Defendant's records.

1 34. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
2 with Labor Code Section 2699(1)(2).

3 35. In compliance with California Rules of Professional Conduct, Plaintiff signed a
4 retainer agreement that includes a fee sharing

5 I declare under penalty of perjury under the laws of the state of California that the
6 foregoing is true and correct this 15th day of November 2022, at Los Angeles, California.

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Mehrdad Bokhour