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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 STANISLAUS**

SCOTT KLIMEK, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

KINGSPAN INSULATED PANELS, INC., a
Florida Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CV-21-004201

*[Assigned to Hon. Judge John D. Freeland,
Dept 23, for all purposes]*

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

Hearing

Date: June 9, 2023
Time: 8:300 a.m.
Dept.: 23

Complaint filed: August 5, 2021

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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 Lauby Mankin & Lauby LLP, as attorney of record for Plaintiff Scott Klimek (“Plaintiff”) and the Putative Class.
2. 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.
3. I submit this declaration in support of Plaintiff’s Motion for Final Approval of this Class Action Settlement.

4. I have been a member, in good standing, of the State Bar of California since 2012. I am admitted to practice in the Ninth Circuit Court of Appeal, United States District Courts for the Central, Northern, Eastern, and Southern Districts of California and the and have litigated cases in various courts in California.
5. I have handled approximately 100 employment litigation matters during my nearly eleven years in practice. My practice has exclusively consisted of representing employees, the majority of which has included class action and representative action wage and hour matters. I have been appointed by various court as class counsel and have received final court approval and judgment in numerous class actions to date and anticipate receiving final approval in many more of in the future.
6. As part of these settlements and judgments, I have recovered at least 50 million dollars in damages for my clients and the class members (who often work as essential workers, nurses, ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional occupations, and countless other trades).
7. I was selected as a “Super Lawyer Rising Star” in Employment Litigation during the years 2017, 2018, 2019, 2020, 2021, 2022, and “Super Lawyer” in 2023, a distinction that is reserved for the top 2.5% of lawyers in the practice area.
8. I have also been recognized by TopVerdicts.com for achieving several of the top wage and hour class and PAGA action settlements in California.

1 **II. ADEQUACY OF THE SETTLEMENT**

2 9. As discussed at length in Plaintiff's motion for preliminary approval, as well as in the
3 Motion for Final Approval, this Settlement is favorable to the Class and the release is narrowly limited
4 to the claims alleged.

5 10. Sufficient information existed to allow Class Counsel to intelligently value this case.
6 Given the parties' arms' length bargaining facilitated by a reputable and experienced wage and hour
7 mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that only one
8 class member elected not to participate, and no objections were submitted, the presumption of fairness
9 is justified.

10 11. I believe that it is fair, reasonable and adequate, and in the best interests of the Class,
11 given the litigation risks and delay inherent in further litigation and possible appeals.

12 12. As set forth in Plaintiff's motion for preliminary approval and the declarations
13 submitted in support thereof, Defendants vigorously contested Plaintiff's claims, and Plaintiff faced
14 real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
15 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that
16 it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions
17 set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction,
18 to dispose of burdensome and protracted litigation, and to permit the operation of Defendants' business
19 without further expensive litigation and the distraction and diversion of its personnel with respect to
20 matters at issue.

21 13. All parties took into account the uncertainty of risks inherent in any litigation, especially
22 in complex cases such as this case. The parties determined that it is desirable and beneficial to both the
23 Class and Defendants that this case be settled. Risks on both sides were considered in reaching the
24 Settlement Agreement.

25 14. The recoveries contemplated by the Settlement represent a good result for the Class,
26 fairly proportioned to the likely risk-adjusted recovery in litigation.

1 **III. ADEQUACY OF COUNSEL AND REASONABLENESS OF REQUESTED FEE AND**
2 **COST AWARDS**

3 15. As set forth above, I have handled upwards of 100 class and representative actions, have
4 been appointed as class counsel and have successfully resolved over half of those class actions, and
5 many others remain pending and will successfully resolve in the future while recovering many, many
6 dozens of millions of dollars for my clients and Class Members. This is substantially better than
7 average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class Actions,
8 cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only
9 one-third of class actions are successful, compared to two-thirds that are defeated and result in no
10 payment to the class members.

11 16. When this case was taken on a contingency fee basis, with my firm and my co-counsel
12 agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the
13 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research fees,
14 and mediation costs. There was never a guarantee that we would recoup those expenditures.

15 17. It has been my experience that the benchmark for attorney fee awards in California state
16 cases is one-third of a common settlement fund, which the California Supreme Court recently upheld
17 in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class Counsel are
18 collectively seeking a fee of one-third of the Settlement Amount.

19 18. Class Counsels' application for an award of Attorneys' Fees in an amount of
20 approximately 33.33% of the Settlement Amount on behalf of the Settlement Class is reasonable and
21 fair. The requested fee falls on the lower end of the Ninth Circuit's historical benchmark for
22 attorneys' fees of 20% to 40% of a common fund and is fair compensation for undertaking complex,
23 risky, expensive, and time-consuming litigation on a contingent basis.

24 19. For Class Counsel, the fees here were wholly contingent in nature and the case
25 presented far more risk than the usual contingent fee case. There was the prospect of the enormous
26 cost inherent in class action litigation, as well as a long battle with corporate Defendants. That
27 prospect has previously become reality, in both trial courts and the Court of Appeal in other wage
28 and hour class litigations. Class Counsel risked not only a great deal of time, but also a great deal of

1 expense to ensure the successful litigation of this action on behalf of all Settlement Class Members.
2 Based upon the foregoing, Class Counsel respectfully requests that the Court award Attorneys' Fees
3 in the amount of \$292,012.

4 20. My hourly rate in this case is \$600 per hour, which is comparable to those of other
5 attorneys with equal or similar experience. I have worked approximately 95 hours on this case to
6 date. I anticipate working an additional 10-15 hours to finalize and file the final approval motion,
7 and any future tasks associated with completion of the case. Thus, my total projected amount billed
8 to this case is \$66,000.

9 21. The fee is warranted because of the results achieved for the Class Members, both in
10 terms of the prompt monetary payment, as well as the fact that the Class Members resoundingly
11 supported the Settlement.

12 22. In prosecuting this action, Class counsel have incurred expenses that were incidental
13 and necessary to the effective representation of the Class. These expenses include filing fees, mediator
14 fee and expert fees associated with the review of the payroll records. Defendant does not oppose this
15 request for costs. Through final approval, my office incurred \$6,133 in litigation costs.

16 23. The following are my itemized litigation costs:

Bokhour Law Group, P.C. Costs	
Type	Charge
Mediation	\$4,500
Filing Fee	\$33
Expert Fees	\$1,600
Total	\$6,133

23
24 24. These costs were necessarily incurred in the course of this hard-fought litigation and
25 would have been charged to a fee-paying client. I believe that the amount sought in the Settlement
26 Agreement for this cost is reasonable and appropriate.

1 **IV. REASONABLENESS OF REQUESTED SERVICE AWARDS**

2 25. I also believe that the service award of \$10,000.00 to Plaintiff, Gennie Merritt, is fair
3 and warranted for the reasons outlined in each of their respective declarations and in the motion. She
4 came forward and worked directly with our offices in analyzing the claims and documents, providing
5 valuable information. (See Plaintiff's declarations for further supporting information.)

6 26. Indeed, her participation was an essential element of Defendants' desire to mediate and
7 of the pre and post mediation analysis that allowed Class Counsel to settle the case. Of course, she
8 also took on various risks, including the risk that she could have been ordered to pay Defendants' costs
9 if she lost and the risk of retaliation and being black balled in the industry. She also has provided a full
10 release of all claims. Defendants do not oppose the requested service award.

11 **V. SUBMISSION TO THE LWDA**

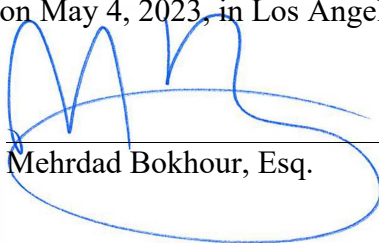
12 27. The Motion and supporting documents, including the Settlement Agreement, have been
13 submitted to the LWDA.

14 **VI. CONCLUSION**

15 28. For the foregoing reasons, it is respectfully requested that the Court grant final approval
16 of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested
17 attorney's fees, costs, and service award.

18 29. In compliance with California Rules of Professional Conduct, Plaintiff signed written
19 acknowledgment agreeing to the fee sharing agreement between Class Counsel.

20 I declare under penalty of perjury under the laws of the United States and the State of California
21 that the foregoing is true and correct. Executed on May 4, 2023, in Los Angeles, California.

22
23 By: 

24 Mehrdad Bokhour, Esq.
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