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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: January 10, 2023
Time: 8:300 a.m.
Dept.: 23

Complaint filed: August 5, 2021

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 Scott Klimek (“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.

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 Defendant requesting the production of personnel and timekeeping records in order to further evaluate his wage and hour claims.

4. On August 5, 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 pay vested vacation, (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. Defendant retained counsel and immediately began to defend the case. Plaintiff then propounded class certification discovery. However, before Defendant's responses were due, counsel for the parties met and conferred and discussed staying formal discovery and pursuing informal discovery in connection with mediation. The Parties then scheduled mediation with Lynn Frank on July 28, 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.

1 Defendant also provided its written policies and practices and a robust sampling of payroll and
2 timekeeping records for Class Members covering nearly 15,000 shifts worked. This information
3 enabled both parties to take a deep dive into the claims. Additionally, during this process, Plaintiff
4 and his counsel analyzed, researched, and investigated the potential issues, including matters
5 related to the calculation of damages, trial, and appellate issues and risks

6 **The Settlement Is Within the Range of Possible Approval**

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

9 8. Plaintiff's counsel obtained a Settlement Amount of \$\$876,036. Class Counsel
10 considers this to be an excellent settlement for Class Members, when taking into account all issues
11 and risks related to liability and class certification and considering the case law regarding fair,
12 reasonable, and adequate settlements. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117,
13 1139 ["Compromise is inherent and necessary in the settlement process ... even if the relief
14 afforded by the proposed settlement is substantially narrower than it would be if the suits were to
15 be successfully litigated, this is no bar to a class settlement because the public interest may indeed
16 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
17 litigation."]; *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 62 (9th Cir. 1982) 8 ["It
18 is well-settled law that a cash settlement amounting to only a fraction of the potential recovery
19 does not ... render the settlement inadequate or unfair."].

20 9. The proposed settlement reflects approximately 36.6% of the estimated recovery
21 the Class could reasonably expect in light of the significant litigation risks, and will provide
22 tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability
23 exposure recovered in this case exceeds percentages routinely approved by courts.

24 **The Allocation for Enhancement Awards Is Reasonable**

25 10. Subject to Court approval, Plaintiff will receive a Class Representative Service
26 Payment in the amounts of \$10,000. The Service Payment will be paid in addition to Plaintiff's
27 individual Settlement Share. Plaintiff spent considerable time and effort to produce relevant
28 documents and past employment records and provide the facts and evidence necessary to support the

1 allegations. Plaintiff was available whenever class counsel needed her and tried to obtain documents
2 and information that would benefit the Class.

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

4 11. The Settlement provides for Class Counsel to apply for attorneys' fees in an amount
5 of \$292,012.00 which represents one third of the settlement amount. Class Counsel will apply for
6 attorneys' fees at the time of seeking final approval of the proposed Settlement.

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

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

27
28 14. The Court should preliminarily approve the requested Class Counsel Fees

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

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

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

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

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

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

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

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

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

1 pleadings, evidence and rulings in similar actions litigated elsewhere in the state, and review of
2 similar cases in the same industry elsewhere in the country. The Settlement amount is, of course,
3 a compromise figure. It considered the risks related to liability, damages, and all the defenses
4 asserted by Defendant.

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

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

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

23 25. Plaintiff and Defendant have very strong positions on liability in this case.
24 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in
25 Plaintiff's operative complaint, and further denies that, for any purpose other than that of settling
26 this lawsuit, this action is appropriate for class treatment. Considering the sharply contested legal
27 and factual issues, the risks of continued litigation, and substantial benefits to Class Members
28 under the Settlement, the terms and conditions of this class settlement are fair and reasonable to

1 all sides.

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

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

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

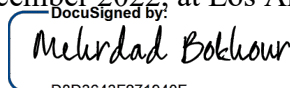
33. The proposed Class Notice provides the best notice practicable and is adequate because Defendant is in possession of the contact information for Class Members. While Class Counsel considered alternative methods such as publication or notice via the web or social media, it ultimately determined that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

34. Plaintiff has concurrently submitted the settlement to the LWDA in accordance

1 with Labor Code Section 2699(1)(2).

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

4 I declare under penalty of perjury under the laws of the state of California that the
5 foregoing is true and correct this 7th day of December 2022, at Los Angeles, California.

6 
7 DocuSigned by:
D8D3643F271940F...
8 Mehrdad Bokhour