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Attorneys for Plaintiff ARATH RODRIGUEZ, Individually, and on behalf of other members of the
general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ARATH RODRIGUEZ, Individually, and
on behalf of other members of the general
public similarly situated

Plaintiff

v.

ANV INVESTMENTS, INC., a California
Corporation and DOES 1-10, inclusive.

Defendants.

CASE NO. 37-2022-00006121-CU-OE-CTL

**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: January 12, 2024

Time: 9:00 a.m.

Judge: Hon. Eddie C. Sturgeon

Dept.: C-67

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

2 1. I am an attorney licensed to practice law before this Court and am employed with the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for ARATH RODRIGUEZ.
4 (hereinafter "Plaintiff.") I make this declaration in support of Plaintiff's Unopposed Motion
5 for Final Approval of Class Action Settlement.

6 2. I am personally familiar with the facts set forth in this declaration, and if called to testify as a
7 witness I could and would do so.

8 **Experience of Counsel**

9 3. Lead trial counsel, Mr. William Sullivan, has been a California-licensed attorney for 28 years.
10 He has approximately 28 years of experience in "class action" litigation, both as plaintiff and
11 defense counsel.

12 4. I have over 12 years of experience as an attorney. I've spent my entire practice engaged in
13 prosecuting class and representative actions. I became a partner in the firm in 2020. Mr. Ryan
14 Kuhn (the primary associate on this matter) has 5 years of experience as an attorney who is
15 primarily engaged in prosecuting class and representative actions.

16 5. Our office are the attorneys of record in a matter recently (and favorably) decided before the
17 California Supreme Court titled *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). The
18 *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, Sullivan & Yaeckel Law Group has settled at least 15 employment "wage and hour"
24 claims on behalf of a Certified Class.

25 7. In the last five years, Sullivan & Yaeckel Law Group has tried three "Wage and Hour"
26 Representative (PAGA). In a recent successful PAGA trial, tried before Judge Bacal of the San
27 Diego Superior Court, our office was awarded our full requested attorneys fees and was
28 approved at the requested hourly rates (which are similar to the fees/rates billed here). 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.

8. Our firm has the requisite experience knowledge of California law and the Federal Rules of Civil Procedure required to act on behalf of the Class. I consider the Settlement Agreement in this matter to represent a fair, adequate and reasonable settlement that is well within the 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 defending similar wage and hour class actions.

9. Based on the above experience, it is this firm's opinion that this settlement represents a fair and adequate payment to the class.

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.

11. As part of the mediation, Plaintiff provided Defendant with detailed "scope of liability" calculations based on Defendant's own verified records and policies.. Based on these considerations, and the risks involved in continuing litigation, I submit the \$ 250,000.00 settlement represents a fair and more than reasonable settlement.

12. 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 the settlement class.

13. While Plaintiff maintained the claims were all viable, Plaintiff (and his counsel) recognize there were substantial risks to proceeding on behalf of a class and representative group. Defendant presented several potentially valid defenses to certification, liability and mitigation

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

of damages.

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

14. 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

15. The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties believe the \$18,000.00 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

16. My office was retained by Plaintiff on a contingency basis. A percentage fee of 35% (thirty five percent) of any total recovery, was freely negotiated. As part of the agreement, Plaintiff's Counsel was required to continue the prosecution of the matter regardless of the outcome of the preliminary motions (*i.e.*, arbitration, class certification, etc.). Here, however, Plaintiff's Counsel has agreed to a 33 and 1/3 % share of the recovery in order to maximize the recovery on behalf of the class.

The Continuing Obligation to Devote Time and Effort to the Litigation

17. 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 7.5 hours by my office will be devoted to this case.

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

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

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

- 7 19. This is not a “coupon” class action case. As is detailed in the Settlement Administrator’s
8 declaration, the Class is set to receive significant monetary benefits. They would not have
9 received these amounts if Class Counsel did not act.

10 **The Lodestar Analysis**

- 11 20. Plaintiff’s seek attorneys fees in the amount of one third of the total settlement amount, which
12 is **\$83,333.33**. For purposes of a lodestar cross-check the firms’ attorneys’ fees incurred (to
13 date) are estimated to amount to approximately **\$93,150.00**.

- 14 21. Plaintiff’s Counsel’s detailed breakdown of the work performed is set forth below:

- 15 a. Mr. Sullivan served as lead investigator and trial counsel, per the specific request of
16 Plaintiff. Over the course of the investigation (including pre-filing), Mr. William
17 Sullivan has currently expended approximately **42.5** hours in the service of this action.
18 **42.5** hours times **\$720.00** equals **\$30,780.00**. The work includes nearly all preliminary
19 investigation, This time also includes interviews with proposed Class Members. The
20 preliminary investigation included the review and analysis of several thousand
21 documents, as well as additional phone interviews with other Class Members. During
22 this time, Mr. Sullivan also investigated Defendant, its business practices, and any
23 variations in Class Members’ job duties and rates of pay. Mr. Sullivan also supervised
24 and helped create the mediation brief and damage analysis used at mediation.
- 25 b. I was the partner primarily assigned to oversee the “day to day” activity of the primary
26 associates assigned to this case. My billing rate is \$600.00 per hour. I expended
27 approximately **68.1** hours in the service of this action. **68.1** hours times **\$600.00** equals
28 **\$40,860.00**. This work included attending hearings and most of the day to day
 communication with opposing counsel. I also attended mediation and had numerous

- exchanges between the mediator and Defense counsel to negotiate and finalize the settlement. I also undertook the review and drafting of settlement documents and the preliminary and final approval motions.
- c. Ryan Kuhn was the primary associate assigned to this case. Mr. Kuhn's billing rate is **\$420.00** per hour. He expended approximately **40.5** hours in preparing the motion. **40.5** hours times **\$420.00** equals **\$17,010.00**. The work performed by Mr. Kuhn consisted of, for the most part, analysis of Defendants' documents and records, in preparation for mediation and a potential class certification motion. The associates were also assigned to discovery creation and review, the preparation of "meet and confer" letters and other contact with defense counsel, and analysis of employment records to determine "commonality" and damages.
- d. Based on past experience, this firm estimates I (Mr. Yaeckel) will incur an additional 7.5 hours in assisting Class Members on questions and issues regarding the settlement, meeting with Class Members (including on any late submissions), and preparing for and attending the Final Approval hearing in this matter. **7.5** times **\$600.00** equals **\$4,500.00**.
22. Class Counsel's total costs expended in this matter will be **\$5,494.40**. These costs are broken down as follows:
- a. Filing and appearance fees (including the Complaint, all other pleadings, all e-file charges, court calls, LWDA filing fees and attorney messenger (service and delivery) fees) totaled \$780.24.
- b. Mediation fees totaled \$3,975.00.
- c. I approximate my office has expended approximately \$492.00 in legal research fees in connection with this case.
- d. I approximate my office has expended \$144.61 in copies and postage fees in this matter.
- e. My office has expended approximately \$102.55 in transportation fees related to mileage and parking fees in connection with this case.
23. The parties' Agreement permits Plaintiff (without Opposition) to seek up to \$11,000.00 in

costs. Plaintiff submits his request for the specific **\$5,494.40** amount set forth above.

The Lodestar Multiplier

24. Given fees incurred here, no lodestar multiplier is necessary.

Class Representative Enhancement

25. Plaintiff contributed extensive time and resources in the prosecution of this case, as is detailed further in his declaration. Plaintiff was able to provide information instrumental to the prosecution of this matter including identifying numerous witnesses that could corroborate the claims. Plaintiff also assisted with reviewing and providing insight on Defendant's documents produced. Plaintiff brought to our attention numerous Labor Code violations that formed the basis of the litigation.

26. I know (from experience) that any company who does a detailed background check, will be able to determine that Plaintiff is serving as class representative in a lawsuit against his former employer.

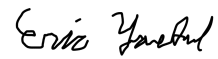
27. An entire industry exists that allows employers to run extensive background searches on potential employees. Companies who provide these services specifically highlight the fact that their services allows employers to weed out litigious employment candidates. One such service outlines ways that employers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

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

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

1 30. Despite all the risks, Plaintiff at all times remained committed to securing a monetary recovery
2 on behalf of the entire class.

3
4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct. Executed this 19th day of December, 2023 at San Diego, California.

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9 Eric K. Yaeckel
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