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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE**

JOEL ZELAYA, an Individual; DEMETRIO
MONTES, an Individual,

Plaintiff,

v.

COMMERCIAL LUMBER & PALLET CO.,
INC., a California Corporation; RAYMOND
GUTIERREZ, an Individual; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 22PSCV00340
[Related to Case No. 22STCV03643]

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

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: August 18, 2023
TIME: 10.30 a.m.
DEPT: 1 (Spring Street)

Complaint Filed: April 6, 2022
Trial Date: Not yet set

1 abroad for one year at Tokyo University in Tokyo, Japan. I received my Juris Doctor from
2 Notre Dame Law School in 2008.

3 6. My practice is focused on advocating for the rights of consumers and
4 employees in class action litigation and appellate litigation. I am currently the primary
5 attorney in charge of litigating several class action cases in state and federal courts across the
6 United States.

7 7. I have received numerous awards for my legal work. From 2017 to 2020, Super
8 Lawyers selected me as a “Southern California Rising Star,” and in 2022, I was selected as a
9 “Southern California Super Lawyer.” I was selected as one of the “Best Lawyers in America”
10 in 2023. In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40”
11 attorney. I am also rated 10.0 (“Superb”) by Avvo.com.

12 8. I am on the California Employment Lawyers Association (“CELA”)’s Wage
13 and Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019
14 Advanced Wage & Hour Seminar on the topic of manageability of class actions. Since 2013,
15 I have actively mentored young attorneys through CELA’s mentorship program.

16 9. I am also a past member of the Consumer Attorneys of California (“CAOC”).
17 In 2020, I was selected for a position on CAOC’s Board of Directors. I am also a past member
18 of CAOC’s Diversity Committee, and I helped assist the CAOC in defeating bills that harm
19 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for
20 CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability
21 of California Labor Code § 226.

22 10. As the attorney responsible for day-to-day management of this matter at the
23 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and
24 hour class actions. Over the last thirteen years, I have managed and assisted with the litigation
25 and settlement of several wage and hour class actions. In those class actions, I performed
26 similar tasks as those performed in the course of prosecuting this action. My litigation
27 experience includes:

28 a. I served as lead or co-lead in negotiating class action settlements worth over

\$10 million in gross recovery to class members for each year since 2020, including over \$30 million in 2022.

- b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a data breach class action holding that consumer plaintiffs adequately alleged injury in fact under the benefit of the bargain theory and monitoring-costs theory.
- c. In 2022, *Top Verdict* recognized Wilshire Law Firm and myself for having one case in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6 million settlement in *Moreno v. Pretium Packaging, L.L.C.*) and four additional cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).
- d. To my knowledge, I am the only attorney to appear on each of the following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- f. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court's order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018)). The decision certifying the class in *Frausto* is also discussed in *Class Certification Under*

Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules, 35 A.L.R. Fed. 3d Art. 8.

g. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)¹ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.² Considering that leading

¹ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

² <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

- i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)
- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- k. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- l. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:
 - 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and

granting plaintiff's motion to strike defendant's affirmative defenses based on *Twombly/Iqbal*).

2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).

3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge's discovery ruling which held that "evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA").

4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because "an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations").

m. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

11. Christina M. Le is a Senior Associate Attorney at Wilshire Law Firm. She is admitted to practice in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. She graduated from Loyola Law School, Los Angeles and attended the University of California, Berkeley for her undergraduate studies, where she obtained a Bachelor of Arts in History. She has over 15 years of litigation experience, which includes the successful handling of numerous employment, wage and hour, and class and representative action matters during the latter half of her career in state and federal court through inception through case resolution. Prior to joining Wilshire Law Firm in November 2021, Ms. Le gained invaluable litigation experience working at various plaintiff and defense firms, including Kristensen Weisberg PLC, Jones Bell LLP, Archer Norris PLC, and Lewis Brisbois Bisgaard & Smith

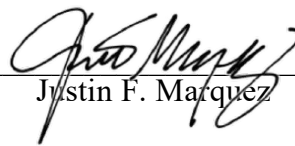
1 LLP, which is a large firm with a national practice. Ms. Le is a member of NELA, CELA,
2 CAALA, LACBA, and the Vietnamese Bar Association of Southern California. Her current
3 contingency billing rate for this case is \$750.00 per hour, a rate which has been recently
4 approved for Ms. Le in both state and federal court and is commensurate with Ms. Le's years
5 of experience and work in this practice area.

6 12. Zachary D. Greenberg is a fourth-year associate at Wilshire Law Firm, PLC.
7 Zachary was admitted to the State Bar of California in 2020 and has since been admitted to
8 the United States District Court for the Central, Southern and Eastern Districts of California
9 and the United States Court of Appeals for the Ninth Circuit. Zachary received a Bachelor of
10 Arts in International Business and a Minor in Economics from Western Washington
11 University. He received his Juris Doctor from Loyola Law School. Zachary's practice has been
12 primarily focused on complex class and representative action litigation. His current contingent
13 billing rate for this case is \$450 per hour.

14 13. I do not believe that I have any conflicts of interest with the Class or with the
15 Class Representatives. I am not related to the Class Representative. I respectfully submit that
16 I and Wilshire Law Firm are well suited to act as Class Counsel in this action, and we have
17 and will continue to vigorously represent the interests of the Class.

18 I declare under penalty of perjury, under the laws of the State of California and the United
19 States of America, that the foregoing is true and correct.

20 Executed on August 23, 2023 at Los Angeles, California.

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