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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 SANTA BARBARA

EDUARDO AQUINO RODRIGUEZ,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiff,

v.

EAT SWEET FARMS, LLC, a California
Limited Liability Company; JDB PRO, INC.,
a California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 22CV00203
*[Assigned to Hon. Patricia L. Kelly, Dept SM
1, for all purposes]*

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

Hearing
Date: July 24, 2024
Time: 8:30 a.m.
Dept.: SM1

Complaint filed: 1/18/2022

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 Lauby, Mankin & Lauby, LLP, as attorneys of record for Plaintiff Eduardo Aquino Rodriguez (“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 to further evaluate his wage and hour claims.

4. On January 18, 2022, Plaintiff filed a class and representative PAGA action complaint in the Court alleging the following class action and PAGA claims against Defendants: failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay final wages; failure to provide accurate itemized wage statements; and unfair and unlawful competition.

5. Defendants retained counsel and immediately began to defend the case. Defendants retained counsel and immediately began to defend the case, including arguing that Plaintiff entered into a binding arbitration agreement that required the dismissal of all class and PAGA claims. Initially, on February 24, 2022, the Parties met and conferred to discuss the (at the time) pending United States Supreme Court case and the potential impact it might have on the issues presented in this case. To that end, the Parties agreed to stay all proceedings pending the Supreme Court’s decision. The parties further met and conferred and discussed staying formal discovery and pursuing informal discovery in connection with mediation. The Parties then scheduled mediation with Michael Strauss, Esq. on March 13, 2024.

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

1 into the claims. Additionally, during this process, Plaintiff and counsel analyzed, researched, and
2 investigated the potential issues, including matters related to calculating damages, trial, and
3 appellate issues and risks.

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

5 7. The settlement amount reached in this case provides significant recovery to
6 participating class members and easily falls within the reasonableness range.

7 8. Plaintiff's counsel obtained a Settlement Amount of \$2,150,000. Class Counsel
8 considers this an excellent settlement for Class Members when considering all issues and risks
9 related to liability and class certification and the case law regarding fair, reasonable, and adequate
10 settlements. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 ["Compromise is
11 inherent and necessary in the settlement process ... even if the relief afforded by the proposed
12 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
13 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
14 settlement in which each side gives ground in the interest of avoiding litigation."]; *Officers for
15 Justice v. Civil Service Comm'n*, 688 F.2d 615, 62 (9th Cir. 1982) 8 ["It is well-settled law that a
16 cash settlement amounting to only a fraction of the potential recovery does not ... render the
17 settlement inadequate or unfair."].

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

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

23 10. Subject to Court approval, Plaintiff will receive a Class Representative Service
24 Payment in the amount of \$10,000. The Service Payment will be paid in addition to Plaintiff's
25 individual Settlement Share. Plaintiff spent considerable time and effort to produce relevant documents
26 and past employment records and provide the facts and evidence necessary to support the allegations.
27 Plaintiff was available whenever class counsel needed her and tried to obtain documents and
28 information that would benefit the Class.

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

2 11. The Settlement provides for Class Counsel to apply for attorney's fees in the amount of
3 \$716,666.67, which represents one-third of the settlement amount. Class Counsel will apply for
4 attorneys' fees when seeking final approval of the proposed Settlement.

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

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

24 14. The Court should preliminarily approve the requested Class Counsel Award which
25 are justified by the outstanding results achieved, the complexity of the issues, the difficulty of the
26 case, and the great risk undertaken by Class Counsel. The requested payments will not be opposed
27 by Defendants and are well within established guidelines.
28

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

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

7 17. I was selected as a “Super Lawyer Rising Star” in Employment Litigation during the
8 years 2017 through 2022, and in 2023, I was selected as a “Super Lawyer”, a distinction that is
9 reserved for the top 2.5% of lawyers in the practice area.

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

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

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

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

20 21. The Settlement that has been reached, subject to this Court’s approval, is the product
21 of substantial effort by the parties and their counsel. The settlement was reached after extensive
22 factual and legal investigation and research, numerous discussions, exchanges of documents and
23 information, correspondences, a full day session of mediation, review of pleadings, evidence, and
24 rulings in similar actions litigated elsewhere in the state, and a review of similar cases in the same
25 industry elsewhere in the country. The Settlement amount is, of course, a compromise figure. It
26 considered the risks related to liability, damages, and all the defenses asserted by Defendants.

27 22. Plaintiff asserts that the wage and hour claims and the PAGA claims for resulting
28 penalties would be certified. Plaintiff’s counsel reviewed documents produced by Defendants,

1 including but not limited to employee handbooks, time and payroll records for Class Members, etc.,
2 and based thereon reasonably believed that Plaintiff would have a significant chance of certifying
3 the Class.

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

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

17 25. Plaintiff and Defendants have very strong positions on liability in this case.
18 Defendants strongly deny any liability or wrongdoing associated with the claims alleged in
19 Plaintiff's operative complaint and further deny that, for any purpose other than settling this lawsuit,
20 this action is appropriate for class treatment. Considering the sharply contested legal and factual
21 issues, the risks of continued litigation, and substantial benefits to Class Members under the
22 Settlement, the terms and conditions of this class settlement are fair and reasonable to all sides.

23 26. Class Counsel conducted a thorough investigation into the facts of the case, including,
24 *inter alia*, interviews with Plaintiff and multiple Class Members, and diligently investigated the
25 allegations in this lawsuit. Class Counsel reviewed a large volume of pages of documents and data
26 produced by Defendants and obtained through other sources, including and not limited to, Plaintiff and
27 other Class Members, employment records (including, *inter alia*, time and payroll data, timecards,
28 earning statements, and personnel records), as well as excerpts of Defendants' employee handbook

(such as excerpts pertaining to Defendants’ meal and rest break policies), class-wide data, various documents regarding Defendants’ wage-and-hour policies, various internal memoranda various agreements, various training and onboarding material, and various forms, among other information and documents.

27. The parties exchanged information and documents formally and informally. The parties also met and conferred on numerous occasions over issues relating to the pleadings, jurisdiction, vigorous motion practice, and discovery. The parties reached the Settlement after reviewing all available evidence, arms-length bargaining, and participating in mediation conducted by Tagore Subramanian, Esq., a well-respected mediator experienced in handling complex wage-and-hour matters. During the mediation, the parties exchanged information and discussed various aspects of the case, including, and not limited to, Plaintiff’s claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to rounding 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.

28. The parties reached the Settlement after reviewing all available evidence, arm’s-length bargaining, and participating in mediation conducted by a well-respected mediator experienced in handling complex wage-and-hour matters. During the mediation, the parties exchanged information and discussed various aspects of the case, including, and not limited to, Plaintiff’s claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to regular rate 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 negotiated 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 for the mediation to determine the value and strength of the claims.

30. The mediator’s evaluations helped the parties agree that the Action was well-suited for settlement given the legal issues relating to the claims and the costs and risks to both sides that would

1 attend further litigation. The Settlement considers the strengths and weaknesses of each side's position
2 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.

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

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

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

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

20 35. In compliance with California Rules of Professional Conduct, Plaintiff signed a fee
21 split agreement that allocates fees between Class Counsel.

22 36. Pursuant to California Rules of Court Rule 3.769(b), Plaintiff can provide the Court
23 a copy of the fee split agreement that has been entered into with respect to the payment of attorney's
24 fees for this matter.

25 I declare under penalty of perjury under the laws of California that the foregoing is true and
26 correct this 19th day of June 2024, at Los Angeles, California.

27
28 */s/ Mehrdad Bokhour*

Mehrdad Bokhour