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Attorneys for Plaintiffs, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

LORENA RAMIREZ, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

COVENANT SURGICAL PARTNERS,
INC.; SALINAS ENDOSCOPY CENTER,
LLC; AND DOES 1 through 50, inclusive,

Defendants.

Case No.: 22CV000081

(Assigned to the Honorable Thomas W. Wills,
Dept. 15)

**DECLARATION OF B. JAMES
FITZPATRICK IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 8, 2023
Time: 8:30 a.m.
Dept.: 15

Complaint Filed: January 10, 2022
Trial Date: None

1 I, B. James Fitzpatrick, declare as follows:

2 1. I am an attorney duly licensed to practice before all courts in the State of
3 California, and I am a partner in law firm of Fitzpatrick & Swanston, counsel of record for
4 Plaintiffs Lorena Ramirez and Teresa Martinez ("Plaintiffs").

5 2. I am familiar with all aspects of this case and all tasks undertaken by the various
6 members of this firm in litigating this case. I have spent significant time researching and
7 pursuing the claims that have been alleged in this action.

8 3. Class Counsel's application for an award of attorneys' fees in the amount of
9 \$583,333.33 and reimbursement of litigation costs in the amount of \$19,650.70 is reasonable and
10 fair. These amounts are well within what is reasonable and customary in both wage and hour
11 settlements and class action settlements in general and is based on the skill displayed by Class
12 Counsel, the effort and resources invested in this case by Class Counsel, the factual and legal
13 complexities of this case, the importance of the interests which are the subject of this litigation,
14 the risks undertaken by Class Counsel, and the degree of success achieved by Class Counsel.

15 4. Without reiterating the Parties' showing that the Settlement Agreement and the
16 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
17 Preliminary Approval of Class Action Settlement, this Settlement Agreement was the product of
18 negotiation between highly able and experienced attorneys on both sides who possessed the
19 relevant data and extensive legal research which they had carefully analyzed.

20 5. Based on Class Counsel's independent investigations and evaluations, I am of the
21 opinion that settlement is fair, reasonable, and adequate and is in the best interest of the Class
22 and Defendant in light of all known facts and circumstances and the expenses and risks inherent
23 in litigation.

24 6. I am familiar with most aspects of this case and tasks undertaken by the various
25 members of this firm in litigating this case. I have been assisted by attorney Laura L. Franklin
26 and several paralegals in my office. As a result of my firm's diligence in pursuing the factual and
27 legal issues presented by this case, we were able to realistically assess the Class Members'
28

1 claims, evaluate their damages, and Defendant's exposure. All work performed by our office is
2 done on a contingency basis. Our firm has received no compensation for our time invested or
3 expenses incurred in litigating this case. We have prosecuted this litigation up to this point,
4 taking the risk that we ultimately would be faced with not receiving any compensation for our
5 work. Since the start of this case, counsel conducted extensive factual investigation before
6 reaching a settlement. My office will have invested 357.8 hours on this case, which includes
7 anticipated future time attending the hearing, responding to inquiries from the employees,
8 preparing reports to the court, and any other issues that may arise during the settlement payout
9 period. Attached hereto as **Exhibit A** is a detailed summary of tasks and hours spent by this firm
10 in litigating this case.

11 7. The hourly rate for attorneys in this firm is \$800.00 and the hourly rate for
12 paralegals is \$185.00. Since at least 2020, I have been approved at hourly rates of \$750.00 and
13 \$800.00 per hour by various Courts, in several matters, including, in the matters entitled: *Jose*
14 *Antonio Ortiz Arrellano v. Rocha Brothers Farms, LLC*, Santa Cruz County Superior Court,
15 Case No. 21CV01286; *Sione Fuapau v. LHOIST North America of Arizona, Inc.*, United States
16 District Court, Northern District of California, Case No. 20-CV-04404-VKD; *Sandra Lopez v.*
17 *Motel 6 Operating, L.P.*, Ventura County Superior Court Case No. 56-2020-00542312-CU-OE-
18 VTA; *Christina Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa Clara Superior Court,
19 Case No. 18CV329544; *Javier Mendoza v. National Vision, Inc.*, United States District Court,
20 Northern District of California, Case No. 19-CV-01485-SVK; *Valarie Murray v. Granite*
21 *Wellness Centers*, Nevada County Superior Court, Case No. CU20-084680; and *Nicolas Serafica*
22 *v. HGST, Inc.*, Santa Clara County Superior Court Case No. 21CV386574.

24 8. In this motion, I request a reduced attorney hourly rate of \$595.00. Accordingly,
25 the total lodestar for my hours will be approximately \$173,145.00 based on an hourly rate of
26 \$595.00 per hour [291 hours x \$595.00].

27 9. Having represented both employees and employers during my practice, I am
28 familiar with the contingent fee market throughout Northern California, where I primarily

1 practice law, and in other areas of the state in which my firm regularly litigates. Considering our
2 experience and my knowledge of the market, I believe that the hourly rates charged by my firm,
3 and previously approved by this Court, are fair and reasonable and less than those charged by my
4 colleagues in other areas of California and the national market for prosecuting class actions.

5 10. Counsel risked not only a great deal of time, but also significant expense to ensure
6 the successful litigation of this action on behalf of all employees. In addition to the supporting
7 documentation and legal authority presented in Plaintiffs' moving papers, Plaintiffs' counsel
8 submits that the attorneys' fees proposed are not just fair and reasonable; they are necessary in
9 order to incentivize attorneys to take on the risk of time and expense associated with Class
10 actions. Indeed, many times counsel expend enormous amounts of work and out of pocket costs
11 in the interest of aggrieved employees and/or the State of California, only to end up without any
12 recovery whatsoever. For example, Plaintiffs' counsel expended significant time and expenses
13 in a wage/hour class and PAGA action, only to have the District Court grant summary judgment
14 in its entirety against plaintiff. See *Guynn-Neupane*, 2021 WL 4481661 (N.D. Cal. Sep. 30,
15 2021). There are actual risks that Plaintiffs request this Court take into account when
16 considering the requested attorneys' fees, including any multiplier to be accounted into
17 Plaintiffs' lodestar.
18

19 11. To date, my firm has incurred \$9,845.43 in litigation costs. The costs are all
20 litigation-related costs. All costs were reasonable and necessary to the effective prosecution of
21 this matter. Class Counsel advanced costs without guarantee that any of the advanced costs
22 would be recovered. *Berkeley Cement, Inc. v. Regents of the University of California*, (2019) 30
23 Cal. App. 5th 1133, explains that mediation-related expenses are recoverable under the
24 circumstances of this case. Attached hereto as **Exhibit B** is a copy of the costs my firm has
25 incurred in connection with prosecution of this lawsuit.

26 12. Qualifications: I received my bachelor's degree from the University of California,
27 Santa Barbara and my Juris Doctor degree from the University of Santa Clara School of Law. I
28 have practiced law since 1987. The primary emphasis of my practice is employment litigation. I

1 have represented both employers and employees. Approximately 15 years ago, my office
2 commenced handling plaintiff class action wage and hour cases. Since then, my office has
3 handled hundreds of wage and hour cases to conclusion and has been class counsel and/or co-
4 counsel in over 100 class actions. Currently, we have multiple ongoing wage and hour class
5 actions in Alameda County Superior Court, Monterey County Superior Court, Nevada County
6 Superior Court, Santa Clara Superior Court, San Benito Superior Court, Santa Cruz Superior
7 Court, Ventura County Superior Court, and the United States District Court, Northern District of
8 California, where we will seek class certification by way of a settlement or a class certification
9 motion.

10 13. I do not have a conflict of interest with Plaintiffs or the Class Members. My co-
11 counsel and I will adequately represent the Class Members in this action. Plaintiffs' Counsel
12 have and will zealously represent Plaintiffs and the Class and pursue this lawsuit to its
13 conclusion.

14 14. Neither counsel nor their respective firms have any relationship with the proposed
15 *cy pres* recipients that would create an actual or potential conflict of interest. Plaintiffs' counsel
16 and defense counsel further agree that the Legal Aid at Work and California Rural Legal
17 Assistance, Inc., satisfy the legislative intent set out in Code of Civil Procedure § 384(a), in that
18 the organizations help further the purposes of the underlying action and promote justice for all
19 Californians.
20

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct and if called as a witness I could and would competently testify to
23 each of the matters stated herein, and I state that these matters are based upon my own personal
24 knowledge acquired through first-hand observation, except where stated otherwise. This
25 declaration was executed by me on November 10, 2023, in Salinas, California.

26
27
28


B. James Fitzpatrick

EXHIBIT A

TASKS AND HOURS

The tasks referenced below involved work by attorneys and paralegals. The amount of time spent by each is detailed below.

I. INVESTIGATION

Task

- Meetings with clients regarding their employment and alleged violations;
- Meetings with other employees regarding their employment and alleged violations
- Review of documents provided by clients and current/former employees;
- Prepare and serve requests for personnel files;
- Prepare and serve LWDA notice;
- Review personnel files;
- Numerous intra-office meetings regarding planning, results and details of investigations;
- Court research for other lawsuits against defendant;
- Research regarding the entities to be named in the Superior Court complaint;
- Legal research regarding IWC Wage Orders; and
- Legal research regarding claims;

Attorney Hours: 100

Paralegal Hours: 20

II. PLEADINGS

Task

- Prepare and file Complaint, Civil Cover Sheet, Summons;
- Prepare and file First Amended Complaint
- Prepare and file Proof of Service of Summons;
- Receive and review Answer;
- Receive and review Answer to FAC
- Receive and review defendant's pro hac application

Attorney Hours: 9

Paralegal Hours: 1.5

III. CASE MANAGEMENT CONFERENCES

Task

- Prepare, file and serve CMC statement; prepare for and attend 5/17/22 CMC;
- Prepare, file and serve CMC statement; prepare for and attend 10/11/22 CMC;
- Prepare, file and serve CMC statement; prepare for and attend 3/28/23 CMC;

Attorney Hours: 2

Paralegal Hours: 0.3

IV. DISCOVERY/DEPOSITIONS/DOCUMENT ANALYSIS

Task

- Numerous intra-office meetings/conferences;
- Serve interrogatories and request for production of documents;
- Receive and review discovery responses;
- Meet and confer with counsel;
- Receive and review mediation data;
- Prepare and serve PMQ deposition notice;
- Prepare for and attend PMQ deposition;

Attorney Hours: 85

Paralegal Hours: 25

V. MEDIATION

Task

- Multiple follow up meetings with client and current/former employees to prepare for mediation;
- Multiple communications with defense counsel regarding mediation;
- Legal research;
- Analysis and revision of damage models calculating damages, interest and penalties;
- Follow up intra-office meetings/conferences regarding claims, damages, and settlement;
- Finalize and serve mediation brief; and
- Prepare for and attend mediation session
- Review and revise MOU
- Meeting with clients regarding MOU

Attorney Hours: 60

Paralegal Hours: 12

VI. MATTERS RELATING TO MOTION FOR PRELIMINARY APPROVAL

Task

- Multiple meetings/conferences with defense counsel regarding the stipulation for settlement; notice materials and motion for preliminary approval;
- Numerous intra-office meetings/conferences regarding the stipulation for settlement, notice materials and motion for preliminary approval;
- Prepare settlement stipulation;
- Finalize the settlement stipulation;
- Meet with Plaintiffs to review the settlement stipulation;
- Prepare drafts of the notice materials;
- Finalize the notice materials;
- Prepare drafts of the motion for preliminary approval;
- Prepare for and attend hearing;
- Receive and review Order;
- Provide Claims Administrator with the Order;
- Review and approve the Notice Materials from the Claims Administrator;
- Work with defense counsel to provide the claims administrator with the names and addresses of the employees for timely distribution of Notice Packets; and
- Multiple communications with the claims administrator regarding the progress of distribution of Notice Packets and responses;

Attorney Hours: 20

Paralegal Hours: 5.5

VII. MATTERS RELATING TO MOTION FOR FINAL APPROVAL

Task

- Prepare drafts of motion for final approval;
- Multiple communications with the case manager regarding the declaration of the administration of the settlement for final approval;
- Preparation for and attendance at hearing; and
- Anticipated multiple communications regarding the status of the final approval hearing and distribution of payment.

Attorney Hours: 15

Paralegal Hours: 2.5

Total Attorney Hours: 291

Total Paralegal Hours: 66.8

Total Attorney and Paralegal Hours: 357.8

EXHIBIT B

Cost/Expense Detail

Date	Code	Check #	Type	Units	Amount	Description	Date Billed	Amount Billed
R0101 Ramirez, Lorena Aparicio								
600 Labor & Employment								
6/18/21	16	60012	Exp.		14.16	General Logistics Systems US, Inc. Delivery Service on 05/04/21		
6/18/21	16	60012	Exp.		14.16	General Logistics Systems US, Inc. Delivery Service on 05/04/21		
1/10/22	102		Cost		1,478.06	Odyssey Efile - Complaint; Complex Fees		
1/10/22	102		Cost		75.00	Odyssey Efile - LWDA		
3/18/22	01	60280	Exp.		138.30	Sayler Legal Service, Inc. Court Messenger Service - Covenant Surgical Partners, Inc. at 330 N Brand Blvd #700, Glendale, CA 91203		
3/18/22	01	60280	Exp.		65.80	Sayler Legal Service, Inc. Court Messenger Service - Salinas Endoscopy Center, LLC at 330 N Brand Blvd #700, Glendale, CA 91203		
3/22/22	102		Cost		3.60	Odyssey Efile		
4/7/22	102		Cost		3.60	Odyssey Efile		
8/4/22	102		Cost		24.15	Odyssey Efile - Stipulation		
8/30/22	102		Cost		3.60	Odyssey Efile		
1/5/23	15	0135	Exp.		7,975.00	JAMS Mediation Fee		
5/1/23	14	1202	Exp.		50.00	Monterey County Superior Court Sanctions		
Matter Total					9,845.43			.00
Client Total					9,845.43			.00
Report Total:								
Total					9,845.43			.00

Types: Unbilled Costs, Unbilled Expenses, Billed Costs, Billed Expenses

Selection criteria: Client: R0101 Matter: 600

Sorted by: Client Number / Matter Number