

Eric K. Yaeckel [CSB No. 274608]
yackel@sullivanlawgroupapc.com
Ryan T. Kuhn [CSB No. 324538]
ryan@sullivanlawgroupapc.com
Karoline D. Kitlowski [CSB No. 347692]
karoline@sullivanlawgroupapc.com

SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff JALEEN ROBERTS, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JALEEN ROBERTS, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

ENCONTRO NORTH PARK, LLC, a California Limited Liability Company; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00030477-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 19, 2024

Time: 1:30 p.m.

Judge: Hon. Marcella O. McLaughlin

Dept.: C-72

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 JALEEN ROBERTS.
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 27 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 have spent my entire time practicing
13 engaged in prosecuting class and representative actions. I became a partner in the firm in 2020.
14 Mr. Kuhn of our office has over 4 years of experience as an attorney who is primarily engaged
15 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. Throughout the litigation Defendant presented potentially valid defenses to class certification, liability, and damages. Based on these considerations, and the risks involved in continuing litigation, I submit the \$120,000.00 settlement represents a fair and more than reasonable settlement.

12. Additionally, I submit that the payment of \$7,500.00 to the LWDA for the PAGA claims (75% share of \$10,000.00 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.

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

13. While Plaintiff maintained the claims were all viable, Plaintiff (and her 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 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 this 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.

The Extent to which the Litigation Precluded Other Employment

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

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

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

The Lodestar Analysis

20. Plaintiff’s seek attorneys fees in the amount of one third of the total settlement amount, which is **\$40,000.00**. For purposes of a lodestar cross-check the firms’ attorneys’ fees incurred (to date) are estimated to amount to approximately **\$58,532.00**.

21. Plaintiff’s Counsel’s detailed breakdown of the hourly rates and task performed is set forth below:

- a. Mr. Sullivan served as lead investigator and trial counsel, per the specific request of Plaintiffs. Over the course of the investigation (including pre-filing), Mr. William Sullivan has currently expended approximately **22.8** hours in the service of this action. **22.8** hours times **\$720.00** equals **\$16,416.00**. The work includes nearly all preliminary investigation and supervising the preparation of Plaintiff’s Mediation Brief and damages analysis. Mr. Sullivan undertook a significant pre-filing investigation, wherein some Class Member interviews took place. During this time, Mr. Sullivan also investigated Defendant, its business practices, and any variations in Class Members’ job duties and rates of pay.

- b. I was the partner primarily assigned to oversee the “day to day” activity of the primary

1 associates assigned to this case. My billing rate is \$600.00 per hour. I expended
2 approximately **44.3** hours in the service of this action. **44.3** hours times **\$600.00** equals
3 **\$26,580.00**. This work included attending hearings and most of the day to day
4 communication with opposing counsel. I also handled numerous exchanges between
5 the mediator and Defense counsel to negotiate and finalize the settlement. I also
6 undertook the review and drafting of settlement documents and the preliminary
7 approval and final approval motions.

8 c. Ryan Kuhn was the primary associate assigned to this case. Mr. Kuhn's billing rate is
9 **\$420.00** per hour. He expended approximately **26.3** hours in preparing the motion. **26.3**
10 hours times **\$420.00** equals **\$11,046.00**. The work performed by Mr. Kuhn consisted
11 of, for the most part, analysis of Defendants' documents and records, in preparation for
12 mediation and a potential class certification motion. He was also assigned to discovery
13 creation and review, the preparation of "meet and confer" letters and other contact with
14 defense counsel, and analysis of employment records to determine "commonality" and
15 damages.

16 d. Based on past experience, this firm estimates Mr. Yaeckel will incur an additional **7.5**
17 hours in assisting Class Members on questions and issues regarding the settlement,
18 meeting with Class Members (including on any late submissions), and preparing for
19 and attending the Final Approval hearing in this matter. 7.5 times \$600.00 equals
20 **\$4,500.00**.

21 22. Class Counsel's total costs expended in this matter will be **\$5,494.40**. These costs are broken
22 down as follows:

- 23 a. Filing and appearance fees (including the Complaint, all other pleadings, all e-
24 file charges, court calls, LWDA filing fees and attorney messenger (service and
25 delivery) fees) totaled \$780.24.
- 26 b. Mediation fees totaled \$3,975.00.
- 27 c. I approximate my office has expended approximately \$492.00 in legal research
28 fees in connection with this case.

1 d. I approximate my office has expended \$144.61 in copies and postage fees in
2 this matter.

3 e. My office has expended approximately \$102.55 in transportation fees related
4 to mileage and parking fees in connection with this case.

5 23. The parties' Agreement permits Plaintiff (without Opposition) to seek up to \$11,000.00 in
6 costs. Plaintiff submits her request for the specific \$5,494.40 amount set forth above. **Please**
7 **Note:** Plaintiff's counsel believes there may have been an error in the fees associated with
8 filing the first amended complaint, which was filed as a class action. Typically, the "complex
9 fee" for filing a class action complaint is approximately \$1,000.00. It does not appear Plaintiff
10 was charged the complex fee. Should the Court wish to amend this discrepancy and require
11 payment, Plaintiff will happily pay the fee. However, Plaintiff would request that he be
12 permitted to add the additional fee as a recoverable cost in connection with this motion.

13 **The Lodestar Multiplier**

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

15 **Class Representative Enhancement**

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

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

25 27. An entire industry exists that allows employers to run extensive background searches on
26 potential employees. Companies who provide these services specifically highlight the fact that
27 their services allows employers to weed out litigious employment candidates. One such service
28 outlines ways that employers can "get a sense of whether a prospective employee is likely to

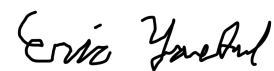
sue" the employer, through background checks and other means, to screen out these employees. www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-employees. Onicra Credit Rating Agency of India states: "Background screening has become a necessity in today's litigious society." Back 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.

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

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



Eric K. Yaeckel