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Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ERIC CHAVEZ, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

CONVERSE, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 15-cv-03746-NC

**DECLARATION OF LARRY W. LEE
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 8, 2020

Time: 1:00 p.m.

Courtroom: 5, 4th Floor

Judge: Hon. Nathanael Cousins

DECLARATION OF LARRY W. LEE

I, LARRY W. LEE, hereby declare and state as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Eric Chavez ("Plaintiff"), in the above entitled action.

2. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

INVESTIGATION AND DISCOVERY

3. Plaintiff's counsel conducted a very extensive investigation of the facts surrounding the claims in this action before filing suit, as well as conducted extensive discovery during the course of litigating and prosecuting this case. This included propounding and responding to multiple rounds of written discovery, including multiple sets of interrogatories and requests for production of documents. In connection with written discovery, Plaintiff's counsel also obtained and reviewed Defendant's document production, including policy documents, class contact information, and class time and payroll data. In addition, Plaintiff's counsel extensively researched and litigated the substantive issues in this case from class certification up to summary judgment stage and readied the case for trial.

4. Plaintiff's counsel also took numerous depositions of parties and witnesses. This included depositions of Defendant's FRCP 30(b)(6) Corporate Representatives on various topics that impacted class certification and liability. Furthermore, over the course of the litigation, Plaintiff took the depositions of over 25 current and former employees of Defendant located throughout the State of California, as well as numerous expert depositions.

5. Plaintiff was provided with the class time and payroll data and class list for the entire class. Plaintiff then retained an expert, Brian Kriegler, Ph.D. for purposes of liability and damages. Dr. Kriegler also processed and analyzed deposition data, and calculated maximum exposure of damages and penalties that is extrapolated and applicable to the entire class for the entire class period. Similarly, Defendant also retained its own expert, Dr. Robert Crandall.

6. In connection with expert discovery, the Parties submitted and reviewed expert and rebuttal expert reports detailing the amount of potential penalties and damages. On September 11, 2017,

1 Plaintiff's counsel defended the deposition of Dr. Kriegler. Plaintiff's counsel also deposed the
2 observers to Defendant's time and motion study.

3 7. Based on all the evidence and class data, Dr. Kriegler calculated the maximum exposure
4 of damages and penalties in the case. For unpaid wages, Dr. Kriegler calculated the maximum exposure
5 of class-wide damages that Defendant could face as approximately \$91,523, assuming a conservative
6 one minute per shift of unpaid work time, plus interest. In addition, Defendant also faces liability for rest
7 period penalties arising from the off-the-clock security check process. Dr. Kriegler estimated that the
8 maximum exposure of class-wide rest period penalties totaled approximately \$3,745,500.

9 8. For potential PAGA penalties, Dr. Kriegler calculated that Defendant faces penalties as
10 high as \$20,597,950. However, that amount is subject to any good faith defenses that Defendant may
11 raise, including those similar to the defenses on which Defendant sought and won summary judgement.
12 (Dkt. No. 202.) Moreover, PAGA penalties are discretionary and subject to reduction by this Court
13 pursuant to Labor Code § 2699(f)(2). If the Court reduced the potential PAGA penalties by 90 percent as
14 in *Carrington*, total exposure would be only \$2,059,795.

15 9. In sum, Plaintiff's counsel conducted extensive investigation and discovery, including
16 formal written discovery; taking and defending numerous depositions; reviewing class time and payroll
17 data and documents produced by Defendant; and conducting expert discovery.

18 **FAIRNESS OF THE SETTLEMENT**

19 10. On April 15, 2020, the Parties attended a virtual, face-to-face mediation with experienced
20 professional mediator Michael Loeb. After a full day of negotiations, the Parties were able to reach an
21 agreement for settlement and the key terms. At all times, the negotiations leading to the Settlement
22 Agreement have been adversarial, non-collusive, and at arm's length. Attached hereto as Exhibit A is a
23 true and correct copy of the Class Action Settlement.

24 11. The Settlement Class Members include all individuals employed by Converse, Inc. as
25 non-exempt/hourly employees in California who worked at any time during the period of July 10, 2011
26 through and including November 19, 2019 (Settlement Class Period). Based on Defendant's records,
27 there are approximately 2,700 Settlement Class Members. Thus, the Settlement Class is ascertainable
28 based on Defendant's payroll records.

12. Due to a change in Defendant's policy, the Settlement Class is different than the previously certified class. Effective November 19, 2019, Defendant changed its policies to no longer mandate exit inspections. (Dkt. No. 201.) As it is undisputed that the litigation class does not have claims after that date, the Court granted summary judgment as to all claims after November 19, 2019. (*Id.*) Thus, Plaintiff's counsel believes that the Settlement Class period cut-off of November 19, 2019 is appropriate.

13. Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount (after deduction of attorneys' fees in the amount of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00), costs up to Two Hundred Thousand Dollars (\$200,000.00), the Service Award in the amount of up to Ten Thousand Dollars (\$10,000.00), PAGA payment in the amount of Seventy-Five Thousand Dollars (\$75,000.00) to the LWDA, or 75% of \$100,000.00, and costs of settlement administration in the amount of approximately Twenty-Five Thousand (\$25,000.00) is approximately \$940,000.

14. Based on the approximately 2,700 Settlement Class Members, each Settlement Class Member will receive a raw average pro-rata share of approximately \$348.15 after deduction for attorneys' fees, class representative enhancement payment, payment to the LWDA, settlement administration costs, and litigation costs. Because this is a non-reversionary settlement, the entire settlement fund will be paid out without any reversion to Defendant. The amounts for each person could increase or decrease depending on a number of factors, including for any opt-outs, the amount of hours each person worked, the amount awarded for fees, costs, and enhancement payments. Moreover, the remaining monies from uncashed checks will be redistributed to those Settlement Class Members who cashed their checks from the first distribution, and any remaining funds thereafter shall be paid to the *pres* beneficiary of the Settlement, Legal Aid at Work. The approximate amount each person will be entitled to will not be known until the class data is transferred to the claims administrator for processing.

15. The gross settlement amount of \$1,875,000 would account for about 7.67 percent of the total exposure that includes the maximum class-wide damages and penalties of \$3,837,023 and the maximum PAGA penalties of \$20,597,950. Although Plaintiff believes that he can prevail on liability at trial, given the uncertainty and risks associated with trial and appeals, Plaintiff submits that this

1 settlement is fair, adequate and reasonable.

2 16. Legal Aid at Work is a non-profit legal services organization that provides legal
3 assistance to low-income individuals for issues related to employment, including any wage and hour
4 issues, like those presented in this case. Plaintiff's counsel does not have any relationship with Legal
5 Aid at Work.

6 17. Based on my own independent investigation and evaluation, I am of the opinion that
7 settlement for the consideration and on the terms set forth in their Settlement Agreement is fair,
8 reasonable, and adequate and is in the best interests of the class and the Defendant in light of all known
9 facts and circumstances and the expenses and risks inherent in litigation. I also believe in the fairness of
10 the settlement based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on
11 his certified class claims at trial and the possibility of appeals.

12 **SETTLEMENT ADMINISTRATION**

13 18. My office obtained quotes from Phoenix Settlement Administrators, Simpluris, and JND
14 Legal Administration. Given that Phoenix Settlement Administrators provided the lowest quote, the
15 Parties subsequently agreed to use Phoenix Settlement Administrators. Further, notice by U.S. mail
16 along with the National Change of Address search and skip trace for undeliverable mail has been
17 approved by numerous courts and, therefore, the Parties agreed to notice by U.S. mail. Pursuant to the
18 quote Plaintiff's counsel received from Phoenix Settlement Administrators, settlement administration
19 costs are estimated not to exceed \$25,000. Plaintiff's counsel believes that this amount is reasonable in
20 relation to the value of the settlement, as the administration costs account for only 1.3% of the Total
21 Settlement Amount. A list of the ten most recent cases over the last two years in which Phoenix
22 Settlement Administrators was appointed as the settlement administrator in cases involving my firm are
23 as follows:

- 24 A. *Ser Lao v. H & M Hennes & Mauritz, L.P.*, Case No. 5:16-cv-333 EJD (United
- 25 States District Court for the Northern District of California)
- 26 B. *Javier Mendoza v. National Vision, Inc.* Case No. 19-cv-01485-SVK United
- 27 States District Court for the Northern District of California)
- 28 C. *Sarahi Lopez v. King Taco Restaurant, Inc.*, Case No. BC664175 (Los Angeles
- County)
- D. *Estella Hughes v. Lincare Inc.*, Case No. M124764 (Monterey County)

- E. *Peterson v. Redwood Memorial Hospital of Fortuna, et al.*, Case No. DR170615 (Humboldt county)
- F. *Servando Perez v. Standard Drywall Inc.*, Case No. RG15761142 (Alameda County)
- G. *Ramon Singley v. BLS Limousine Service of Los Angeles, Inc.*, Case No. BC619822 (Los Angeles County)
- H. *Alvillar v. DUA Medical*, Case No. BC673735 (Los Angeles County)
- I. *William Mankin v. Taste Catering*, Case No. 17-CIV-03497 (San Mateo County)
- J. *Manning v. The LASIK Vision Institute, LLC*, Case No. CU-17-00061 (San Benito County)

ATTORNEY QUALIFICATIONS AND EXPERIENCE

19. Plaintiff and Plaintiff's counsel are adequate representatives in that they have no conflicts with the class and will adequately represent the class.

20. I am one of the primary attorneys on this matter. My qualifications are as follows: I received my JD from Arizona State University College of Law in 2003. During law school, I was a summer associate at the law firm of Brobeck, Phleger & Harrison. I graduated cum laude from Arizona State University College of Law in the top 10% of my class. While I was in law school, I was the Associate Managing Editor of the Arizona State University College of Law, Law Journal.

21. For more than one and one half years I practiced law as an associate at the Los Angeles County offices of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., a national employment defense law firm that represents a significant number of Fortune 50 companies, including many actions involving wage and hour matters.

22. My primary practice is employment law. I have handled a number of class actions and individual actions, on both plaintiff and defense sides. I have a practice that encompasses cases in the Los Angeles Superior courts, the Orange County Superior Courts, the Los Angeles County Superior Courts, the San Diego County Superior courts, and the United States District Courts for the Central, Northern and Eastern Districts of California.

23. I have been approved as Class Counsel in a number of class actions, including but not limited to *Chan-Lanier v. Citibank* (Case No. CGC-050445143); *Hernandez v. CVS Pharmacy, Inc.* (Judicial Council Coordination Proceeding No. 4539), *Tse v. Best Buy Co, Inc.* (Case Number BC 393717), *Orgeta v. AIG, Inc* (Case Number CV 06—196-RSWL (PJWx)), and *Castro v. UPS Freight*,

1 *Inc.* (Case Number CV 08-4898 ODW (CWx)) and by this Court in *Chavez v. PVH* (Case No. C 13-
2 01797 LHK).

3 24. In addition, I was certified as class counsel by the United States District Court, Central
4 District of California in the case of *Abdullah v. U.S. Security* (Case Number CV 09-09554 GHK), *Avilez*
5 *v. Pinkerton Government Services, Inc.* (Case Number SACV 11-0493-DOC), *Dynabursky v. Allied*
6 *Barton Security Services* (Case Number SACV 12-02210 JST); and *Pace v. Petsmart, Inc.* (Case
7 Number SACV 13-500-DOC); by the Northern District of California in the cases of *Harris v. Vector*
8 *Marketing Corp.*, (Case Number CV 08 5198 EMC), and *Lemus et al. v. H&R Block Enterprises, LLC*
9 (Case Number CV-09-03179-SI); and by the Superior Court of California, Orange County in the cases
10 of *De la Cruz v. Abercrombie & Fitch Co. et al.* (Case Number 30-2007-00036240) and *Wu v. General*
11 *Nutrition Corporation* (Case Number 30-2012-00593759), all as part of the Courts' orders granting class
12 certification pursuant to Rule 23 of the FRCP and California Code of Civil Procedure § 382.

13 25. May 29, 2020, I was preliminarily approved as class counsel by the United States District
14 Court, Northern District of California in a comparable class action settlement, *Ser Lao v. H & M*
15 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD). The *Lao* settlement similarly involved issues
16 relating to time spent waiting and undergoing security checks that were conducted off-the-clock, as well
17 as issues relating to the defendant's issuance of final wages via pay cards. The *Lao* settlement was also
18 non-reversionary, and did not require any claim forms. The following chart details the information
19 regarding the *Lao* settlement:

• Total settlement fund	\$3.8 million
• Total number of class members	13,500
• Method of notice distribution	First Class U.S. mail, postage prepaid
• Estimated Average recovery per class member	\$159.38
• Administrative costs	\$41,750.00

• Attorneys' fees	\$1,266,666.67
• Costs	\$250,000.00
• Class representative enhancement	\$15,000

26. To date, Class Counsel estimates that they have incurred at least 1,500 hours in the prosecution of this matter, with an average hourly rate of approximately \$600 per hour.

27. To date, Class Counsel has incurred costs in the approximate amount of \$200,000.00. These costs are all litigation-related costs, which include filing fees, deposition costs, mediation costs, class notice costs, expert fees, and travel expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 3, 2020, at Los Angeles, California.

/s/ Larry W. Lee

Larry W. Lee