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16 MIGUEL VEGA, on behalf of himself
17 and all similarly aggrieved employees
18

19 **SUPERIOR COURT OF CALIFORNIA**

20 **COUNTY OF SAN BENITO**

21 MIGUEL VEGA, on behalf of himself
22 and all similarly aggrieved employees,

23 Plaintiff,

24 v.

25 TRICAL, INC.; and DOES 1 through 50,
26 inclusive,

27 Defendants.

Case No. CU-25-00181

**DECLARATION OF B. JAMES
FITZPATRICK IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: November 12, 2026

Time: 1:30 p.m.

Dept.: 1

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

2 1. I am an attorney duly admitted to practice in the State of California and am the
3 owner of the law firm of Fitzpatrick & Swanston, counsel of record for Plaintiff Miguel Vega
4 (“Plaintiff”). I have personal knowledge of the facts set forth below, and if called to testify, I
5 could and would do so competently.

6 2. Based on their own independent investigation and evaluation, the Parties and
7 their respective counsel are of the opinion that settlement for the consideration and on the
8 terms set forth in the Memorandum of Understanding of Class Action Settlement (“Settlement
9 Agreement”) is fair, reasonable, and adequate and is in the best interests of the Class and
10 Defendant in light of all known facts and circumstances and the expenses and risks inherent in
11 litigation.

12 3. I have spent significant time researching and pursuing the claims that have been
13 alleged in this action. From the inception of the case, Class Counsel have zealously
14 represented the interests of the Class. Class Counsel have engaged in significant meet and
15 confer discussions with opposing counsel to obtain informal data and documents and to
16 discuss the merits of the claims on behalf of the Class. This settlement was obtained for the
17 benefit of the Class, as opposed to the individual Class Representative. Based on my review of
18 all the documents and information, and based on my experience in class action litigation, I
19 believe this settlement to be fair, adequate, and reasonable.

20 4. **Procedural History:** On or about May 2, 2025, Plaintiff’s counsel sent a letter
21 to the California Labor and Workforce Development Agency pursuant to Labor Code §
22 2699.3(a)-(c) seeking to exhaust Plaintiff’s administrative remedies under the Labor Code
23 Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698, et seq., and
24 specifically identifying violations of Labor Code §§ 201, 202, 203, 204, 208, 216, 221, 223,
25 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2698, et seq., 2699(f) and (g),
26 and 2802.

27 5. On June 10, 2025, Plaintiff commenced this Action in Superior Court for the
28 State of California, County of San Benito, alleging seven causes of action: (1) failure to

1 provide off-duty meal periods or pay premiums at the regular rate of pay, in violation of Labor
2 Code §§ 226.7 and 512; (2) failure to provide off-duty rest periods or pay premiums at the
3 regular rate of pay, in violation of Labor Code § 226.7; (3) failure to pay overtime wages for
4 all hours worked at the correct regular rate of pay, in violation of Labor Code §§ 1194 and
5 1198; (4) failure to provide accurate itemized wage statements and keep accurate records, in
6 violation of Labor Code §§ 226, 1174, and 1175; (5) failure to timely pay wages when due and
7 upon separation of employment, in violation of Labor Code §§ 201-203; (6) failure to
8 reimburse work-related expenses, in violation of Labor Code § 2802; and (7) unfair business
9 practices, in violation of Business and Professions Code § 17200, et seq.

10 6. On September 5, 2025, Plaintiff filed a first amended complaint (“FAC” or
11 “Complaint”), adding a cause of action for violation of the Labor Code § 2698, et seq., the
12 Private Attorney Generals Act (the “PAGA”). The FAC is the operative complaint.

13 7. During litigation of the action against Defendant, the Parties agreed to exchange
14 information informally to evaluate their respective claims and defenses. The Parties
15 subsequently engaged in informal discovery for Plaintiff to assess the claims, as well as the
16 maximum exposure of damages and penalties. Defendant provided Plaintiff’s counsel with
17 informal data and information pertaining to the putative class size and number of pay periods,
18 a sample of time and pay records of the employees, and information concerning the extent of
19 Defendant’s wage and hour policies and practices.

20 8. Plaintiff’s class and PAGA claims as pled in the operative Complaint are
21 predicated upon the following allegations.

22 9. With respect to the failure to pay wages claim, Plaintiff contends that employees
23 were required to work “off the clock” and were not compensated for said time spent working
24 off the clock.

25 10. With respect to the meal and rest period claim, Plaintiff contends that employees
26 did not receive proper meal and rest breaks during their shifts. Defendant failed to pay
27 premiums for missed, late, or interrupted breaks. To date, Plaintiff has yet to receive payment
28 of all wages owed.

1 11. With respect to the business reimbursement claim, Plaintiff contends that
2 Defendant failed to reimburse employees for costs incurred when using personal cell phones.

3 12. With respect to the wage statement claims, Plaintiff contends that Defendant
4 issued deficient wage statements, as said wage statements do not correctly identify all
5 applicable rates of pay and the number of hours worked at each rate, total hours worked, and
6 gross and net wages earned as a result of the nonpayment of wages and meal and rest period
7 premiums.

8 13. As a result of the alleged violations above, Plaintiff seeks damages and penalties
9 under the California Labor Code, the California Business & Professions Code, and the PAGA,
10 as well as attorneys' fees and costs.

11 14. Defendant has at all times denied Plaintiff's collective allegations and has
12 asserted factual and legal defenses to the above claims, including that Defendant maintained
13 procedures that comply with California law, that individualized issues predominate, and that
14 trial on a class or representative basis would be unmanageable.

15 15. **Mediation:** On March 26, 2026, the Parties attended mediation with the
16 Honorable Peter H. Kirwan (Ret.).

17 16. After thorough investigation and evaluation of the facts and claims at issue, and
18 arm's length negotiations facilitated by the mediator, the Parties reached a global settlement of
19 the Action. The Parties memorialized the terms of their settlement in the Joint Stipulation of
20 Class Action and PAGA Settlement and Release. Attached hereto as Exhibit A is a true and
21 correct copy of the Joint Stipulation of Class Action and PAGA Settlement and Release.

22 17. **Summary of Allegations:** Prior to the mediation, Plaintiff engaged in informal
23 discovery. Plaintiff was provided with data pertaining to putative class members during the
24 relevant class period, as well as a sample of time and payroll records.

25 18. From this data, Plaintiff was able to investigate the claims asserted and conduct
26 an exposure analysis that informed Plaintiff's position at the mediation.

1 19. Plaintiff analyzed the sample time and payroll records and extrapolated. *Id.*
2 Based on the data provided by Defendant, Plaintiff analyzed Defendant's potential exposure,
3 as adjusted for risk, as follows:

4 Unpaid Wages: \$260,383.75, based on 33,533 total workweeks and an
5 average hourly rate of \$31.06, which estimates approximately 15 minutes
6 of unpaid wages each work week, inclusive of the alleged regular rate
7 violations.

8 Meal Period Violations: ~\$1.3 million, based on 33,533 total workweeks
9 and an average hourly rate of \$31.06, and an estimated realistic exposure
10 of a 25% violation rate.

11 Rest Period Violations: \$1.3 million, based on 33,533 total workweeks
12 and an average hourly rate of \$31.06, and an estimated realistic exposure
13 of a 25% violation rate.

14 Unreimbursed Business Expenses: \$335,330.00, assuming \$10 per
15 workweek per employee in unreimbursed cell phone.

16 Wage Statement Penalties: \$720,450, based on approximately 221
17 employees during the 1-year Labor Code § 226 statute of limitations
18 period, calculated under Labor Code § 226(e). This does not factor in
19 whether employees would achieve the \$4,000 cap, which could reduce
20 the potentially available penalties.

21 Waiting Time Penalties: \$842,347.20, based on approximately * former
22 employees during the 3-year Labor Code § 203 statute of limitations
23 period, based on 30 days, 8 hours a day, and an average rate of pay of
24 \$31.06.

25 PAGA Penalties: \$731,500, based on approximately 7,315 pay periods.

26 20. While the total theoretical exposure of Plaintiff's class and PAGA claims based
27 on the above amounts to as high as approximately \$5.49 million, this analysis does not take
28 into account Defendant's arguments to liability and to class certification as further explained
below.

29 21. Most importantly, Defendant presented evidence that at least 155 putative class
members signed arbitration agreements. If Defendant was successful in enforcing these
arbitration agreements, it would cut the potential exposure on the putative class action
damages by a little bit more than half to approximately \$2.5 million. While plaintiff
maintained that he had arguments against the enforceability of the arbitration agreements,
realistically the potential exposure here must be reduced to account for this risk factor.

1 22. Defendant also has raised several legal and factual defenses that present
2 substantial risks to Plaintiff's prevailing on his theories of liability. For example, Defendant
3 contends that any alleged off-the-clock work was irregular and not capable of class resolution
4 because it was a function of employee personal choice if it occurred at all. Plaintiff estimated
5 approximately 15 minutes per work week of uncompensated off-the-clock time, which resulted
6 in a maximum exposure of approximately \$260,383.75. Defendant disputes the prevalence of
7 this practice and whether such time is compensable, raising individualized issues that create
8 risk for class certification and trial. Plaintiff also asserted claims based on Defendant's failure
9 to properly calculate the regular rate of pay for purposes of overtime and sick pay, which
10 could arguably increase the estimated exposure on the unpaid wage claim incrementally.
11 However, the bulk of the exposure for the regular rate claims lies with the penalties, discussed
12 further below.

13 23. On the meal period claim, Plaintiff contends that Defendant maintained a
14 uniform practice of failing to provide timely, duty-free meal periods. Plaintiff investigated
15 Defendant's meal period policies and practices through a review of Defendant's employee
16 handbooks, time records, and other information produced before mediation. That investigation
17 revealed that, before revising its policies in September 2025 following the filing of this action,
18 Defendant maintained a policy requiring the automatic deduction of a 30-minute meal period
19 whenever an employee's time records did not reflect a compliant meal period. Under *Donohue*
20 *v. AMN Services, LLC*, 11 Cal. 5th 58 (2021), noncompliant time records raise a rebuttable
21 presumption of meal period violations that a written policy cannot rebut. Defendant argued
22 that employees were provided breaks as demonstrated on the timesheets, which would
23 undermine the presumption because it routinely identified the start and stop of breaks within
24 the confines of the law. Plaintiff also argued that Defendant failed to provide a second meal
25 period for shifts of greater than 10 hours. Plaintiff estimated a reasonable risk-adjusted meal
26 period exposure of approximately \$1.3 million.

27 24. On the rest period claim, Defendant contended that whether any individual
28 employee was denied a rest break on any given shift is an individualized inquiry that cannot be

1 proved through common evidence because it came down to employee choice as to whether
2 they actually took the breaks provided to them. Plaintiff estimated a reasonable risk-adjusted
3 rest period exposure of approximately \$1.3 million, although this may overestimate the
4 exposure given that no records were maintained for rest periods.

5 25. With respect to the Labor Code § 2802 claim, Defendant argued that it
6 maintained a compliant reimbursement practice, and that it did not require employees to use
7 their personal cellular telephones for work purposes. Defendant further contended that any
8 alleged failure to reimburse resulted from individual employees' failure to submit
9 reimbursement requests, rather than from a uniform practice of non-reimbursement. If
10 successful in proving this claim, the exposure could be as high as \$335,330, if Plaintiff proved
11 employees were entitled to a \$10 reimbursement per workweek associated with using cellular
12 phones. However, this likely overestimates the exposure given the risks and defenses
13 associated with this claim.

14 26. With respect to Plaintiff's claim under the PAGA, Plaintiff estimated that
15 Defendant could face civil penalties of at least \$731,500.00 (based on 7,315 pay periods at
16 issue during the PAGA Period).

17 27. Defendant contended that the imposition of multiple penalties for separate
18 violations during the same pay period is not permitted under the PAGA, and that only a single
19 \$100 penalty per pay period may be awarded. While Plaintiff disputes this interpretation,
20 some courts have exercised discretion under Labor Code § 2699(e)(2) to avoid stacking
21 penalties for multiple violations within the same pay period. Plaintiff's analysis is also based
22 on the initial violation penalty amount, which does not account for the imposition of the
23 increased subsequent violation penalty amount given recent authority indicating this increased
24 penalty is only available where there is a prior citation for a Labor Code violation. *See*
25 *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144 (holding no heightened
26 penalty because the Labor Commissioner nor any court warned the defendant that it was
27 subject to the Labor Code until the court handling the case at issue). Courts are also hesitant to
28 award the subsequent amount where there has not been a prior violation of the Labor Code.

1 *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord Amalgamated*
2 *Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal.
3 Aug. 10, 2009) (“[u]nder California law, courts have held that employers are not subject to
4 heightened penalties for subsequent violations unless and until a court or commissioner
5 notifies the employer that it is in violation of the Labor Code”). Defendant argued that no such
6 prior violation occurred here, warranting only the initial penalty, if any penalty at all.
7 Moreover, in this case there is no indication that Defendant had received a prior notice or
8 citation from the Labor Commissioner regarding the alleged violations at issue.

9 28. Although Plaintiff believes in the merits of the alleged claims and maintains that
10 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant has raised
11 defenses to the claims and further with respect to the reduction of PAGA penalties and that
12 those defenses could persuade the Court. Thus, even if Plaintiff were to successfully prove his
13 claims at trial, there is a possibility that the Court may only award a small percentage of
14 PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
15 premised with this risk in mind, associated with the possibility of the Court significantly
16 reducing PAGA penalties.

17 29. Here, based on the above, the *adjusted* total amount of class and PAGA
18 penalties amount to between approximately **\$2.5 to 5.49 million**. The Gross Settlement
19 Amount is \$350,000.00, which ranges between approximately **6-14%** of the class and PAGA
20 penalties. Thus, the settlement was negotiated at arm’s length and the settlement percentage-
21 to-recovery further supports that the settlement is fair and reasonable.

22 30. **Summary of the Settlement:** The Settlement Agreement provides for
23 \$350,000.00 as the Gross Settlement Amount. SAR ¶ III.B.1. The Net Settlement Amount
24 [calculated after deduction of attorneys’ fees (up to \$122,500.00, which includes out-of-pocket
25 costs and expenses up to \$25,000.00 for reimbursement of actual litigation costs), Class
26 Representative Service Award to Plaintiff (up to \$15,000.00), payment of PAGA penalties
27 (\$35,000.00), and settlement administration costs (up to \$7,690.00)] is estimated to be
28 approximately \$169,810.00.

1 31. Pursuant to the Settlement Agreement, the Net Settlement Amount will be
2 apportioned among the Class Members on a pro rata basis, based on the number of
3 Workweeks worked by each Class Member during the Class Period, as compared to the total
4 number of Workweeks worked by all Class Members during the Class Period. SAR ¶ III.B.10.

5 32. **Class Member Payment:** Based thereon, on a raw average, each Class Member
6 may recover approximately \$619.74 ($\$169,810.00 \div 274$ Class Members). Based on the
7 number of Workweeks, the per Workweek value of the Net Settlement Amount is
8 approximately \$5.06 ($\$169,810.00 \div 33,533$ Workweeks), whereas the per Workweek value of
9 the Gross Settlement Amount is approximately \$10.44 ($\$350,000.00 \div 33,533$ Workweeks).
10 The amount actually paid to each Class Member will increase or decrease depending on the
11 number of Workweeks he or she worked during the Class Period.

12 33. **PAGA Member Payment:** Additionally, as part of the payment of PAGA
13 penalties, 35% of the PAGA Penalties Fund, or \$12,250.00, shall be paid to PAGA Members
14 on a pro rata basis, based on the number of pay periods worked by each PAGA Member
15 during the PAGA Period as compared to the total number of pay periods worked by all PAGA
16 Members during the PAGA Period. SAR ¶¶ III.B.8.

17 34. **Uncashed Checks:** Finally, the funds from uncashed checks (upon the
18 expiration date of 180 calendar days after issuance) shall be sent to the designated *cy pres*
19 recipient: California Rural Legal Assistance, Inc. SAR ¶ III.E.2.

20 35. **Class Notice:** If Class Members need further information about the settlement
21 and/or the lawsuit, Class Counsel's contact information and the Settlement Administrator's
22 contact information are provided in the Notice Packet. The Class Notice will be provided to
23 Class Members in English and Spanish.

24 36. **Attorneys' Fees & Costs:** Here, the Parties have agreed to a payment of up to
25 thirty-five percent (35%) of the Gross Settlement Amount, equal to \$122,500.00, which
26 includes out-of-pocket costs and expenses up to \$25,000.00 for reimbursement of actual
27 litigation costs, subject to Court approval. SAR ¶ III.B.6. The Parties have agreed to a
28

1 payment of the foregoing attorneys' fees and, thus, this payment should be presumed to be
2 fair.

3 37. **Service Award:** Plaintiff and Class Representative requests a modest
4 enhancement of \$15,000.00. SAR ¶ III.B.5. The Class Representative met and conferred with
5 Class Counsel on a number of occasions to discuss the case, provided documents and
6 information to Class Counsel, and reviewed the pleadings and the Settlement Agreement. As
7 part of his duties as Class Representative, Plaintiff provided invaluable information, evidence,
8 and documents that resulted in this settlement.

9 38. **Settlement Administration Costs:** The Parties have agreed to an estimated
10 payment of \$7,690.00 to the Settlement Administrator, Apex, to send notices and to administer
11 this settlement. SA ¶ III.B.7. Apex is a well-recognized class action settlement administrator.
12 The Parties believe that the administration fee is reasonable and should be approved. Based on
13 the bid provided by the proposed administrator totaling (\$7,690.00), the estimated cost per
14 class member for administration is approximately \$28.07 (\$7,690.00 / 274 class members),
15 which is reasonable based on the experience of class counsel.

16 39. **Attorney Qualification:** I am one of the primary attorneys on this matter. My
17 qualifications are as follows: I received my bachelor's degree from the University of
18 California, Santa Barbara, and my Juris Doctor degree from the University of Santa Clara
19 School of Law. I have practiced law since 1987. The primary emphasis of my practice is
20 employment litigation. I have represented both employers and employees. Over 20 years ago,
21 my office commenced handling plaintiff class action wage and hour cases. Since then, my
22 office has handled hundreds of wage and hour cases to conclusion and has been class counsel
23 and/or co-counsel in over 100 class actions. My firm currently has wage and hour cases in
24 Alameda County Superior Court, Monterey County Superior Court, Nevada County Superior
25 Court, Santa Clara Superior Court, San Benito Superior Court, San Bernardino County
26 Superior Court, San Joaquin County Superior Court, Santa Cruz Superior Court, Ventura
27 County Superior Court, and the United States District Courts for the Eastern and Northern
28 District of California.

40. **Absence of Conflicts:** I do not have a conflict of interest with Plaintiff or the Class Members. My co-counsel and I will adequately represent the Class Members in this action. Co-Counsel and I have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

41. Neither counsel nor their respective firms have any relationship with the proposed cy pres recipient that would create an actual or potential conflict of interest. Defense counsel and I further agree that cy pres recipient satisfies the legislative intent set out in Code of Civil Procedure § 384(a).

42. **Notice of the LWDA:** As required by California Labor Code § 2699(s)(2), the proposed settlement has been submitted to the Labor and Workforce Development. Attached hereto as **Exhibit B** is a true and correct of the LWDA Submission Confirmation .

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and if called as a witness I could and would competently testify to each of the matters stated herein, and I state that these matters are based upon my own personal knowledge acquired through first-hand observation, except where stated otherwise. This declaration was executed by me on September 15, 2026, in Salinas, California.

B. James Fitzpatrick

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