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15 Attorneys for Plaintiffs and the Putative class

16
17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF ALAMEDA**
19 **(UNLIMITED JURISDICTION)**
20

21 ALFREDO GARCIA; individually and
22 on behalf of others similarly situated,
23 APOLONIO PICENO PEREZ;
24 individually and on behalf of others
25 similarly situated, ROSALIA ARCE;
26 individually and on behalf of others
27 similarly situated,
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Plaintiffs,

vs.

21 UNIVERSAL BUILDING SERVICES
22 AND SUPPLY CO., a California
23 corporation, GRACE BRUSSEAU, an
24 individual, LEONARD BRUSSEAU, an
25 individual, and DOES 1 to 20, Inclusive,
26

Defendants.

CASE NO. RG17887036

CLASS ACTION

RESERVATION NO. 219822981001

**DECLARATION OF IKE KALUDI IN
SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 4, 2023
Time: 10:00 A.M.
Dept: 21
Judge: Honorable Evelio Grillo

Filed: December 22, 2017

1 I, Ike M. Kaludi, Jr., declare as follows:

2 1. I am an attorney duly licensed to practice law before all courts of the State of
3 California and the United States District Court for the Northern District of California. I am the
4 founding member of California Trial Law Group, PC (“CTLG”). My firm is co-counsel and
5 attorneys of record for Plaintiffs Alfredo Garcia, Apolonio Piceño Perez, and Rosalia Arce,
6 (“Plaintiffs”) and the putative class. The facts set for in this declaration are within my personal
7 knowledge, and, if called as a witness, I could and would competently testify thereto.

8 2. I submit this declaration in addition to co-counsel Virginia Villegas’s Declaration
9 in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement
10 with Defendant Universal Building Services and Supply Co. (“UBS”), Grace Brusseau, and
11 Leonard Brusseau (“Defendants”).

12 3. I am an experienced bi-lingual trial attorney, with class action experience in
13 litigating similar wage and hour class cases. I consistently take and defend well over 100
14 depositions per year.

15 **EDUCATION AND EXPERIENCE**

16 4. I am the founder and principal at CTLG. My staff of 7 assistants, an associate
17 attorney, consultants, and I handle labor and employment litigation on behalf of aggrieved
18 employees, including wage and hour claims, workers’ compensation, and wrongful termination. I
19 have arbitrated and litigated civil matters throughout northern, central, and southern California,
20 with jury trials in San Francisco, Santa Clara, San Mateo, and Riverside counties. I have
21 represented hundreds of workers in individual actions and served as class counsel on class
22 actions, which have included PAGA claims.

23 5. In 2016, I developed and co-taught 10 separate CLE’s for new lawyers through the
24 Bar Association of San Francisco, entitled the “Walk the Talk” Series. I have published
25 litigation-related articles with the Daily Journal and San Francisco Trial Lawyers Association
26 publication, “The Trial Lawyer.” I have served in the section leadership for the Bar Association of
27 San Francisco and San Francisco Trial Lawyers Association, including co-chair to the Charlene
28 Caldwell Scholarship Mock Trial. I am recipient of the Super Lawyers award from 2015-2021.

1 6. Prior to law school, I worked four years as a civil litigation paralegal in Southern
2 California. I graduated from the University of California, Los Angeles with a double major in
3 political science and international developmental studies. While at UCLA, I interned for U.S.
4 Senator Dianne Feinstein and worked as a paid research assistant for various political science
5 authors. Prior to returning to school, I enjoyed a career working for Southwest Airlines at the Los
6 Angeles and Ontario International Airports beginning in 1997.

7 7. I graduated from the University of California, Hastings College of Law in 2012
8 with a certificate in civil litigation and dispute resolution concentration. While at Hastings, I
9 externed at the Supreme Court of California with Justice Carlos R. Moreno, U.S. District Court
10 Chief Magistrate Judge Maria-Elena James, the San Francisco District Attorney's Office as a
11 Certified Law Student, and worked as a law fellow with the San Francisco Trial Lawyer
12 Association Trial Advocacy Fellowship.

13 8. During my San Francisco Trial Lawyers Fellowship, I worked on motion practice
14 related to a class action lawsuit *Fraley v. Facebook, Inc.* (California Northern District Court No.
15 CV-11-01726). While employed by Chavez & Gertler, LLP, I worked on various class action
16 lawsuits, including *Naranjo v. General Nutrition Corp.* (Alameda County Superior Court No.
17 RG12619626), *Guevara v. Collective Brands, Inc.* (Alameda County Superior Court No.
18 RG11598376), *Vasquez v. Neal C. Tenen, Law Corp.* (Sacramento County Superior Court No. 34-
19 2012-00118707), *Freeman v. On Assignment Staffing Services, Inc.* (Alameda County Superior
20 Court No. RG 12652237), and *Ponce v. SIMS Group USA Corp.* (California Northern District
21 Court No. 3:14-cv-00903).

22 9. I served as lead class co-counsel representing telecommunications employees in
23 *McGrath, et al. v. Marketstar, et al.* (Alameda County Superior Court No. JCCP004820) in a
24 wage-and-hour class action in which the court granted final approval of the class action
25 settlement. I have also acted as lead class co- counsel representing construction workers in
26 *Chavez et al. v. RWR Construction, Inc.* (San Francisco County Superior Case No. CGC-17-
27 561618) in wage-and-hour class action in which the court granted final approval on a class action
28 case for failure to pay regular and overtime wages, and failure to provide meal and rest breaks. In

1 addition to working on various class action lawsuits, I have litigated employment-related cases on
2 behalf of individual employees, and I am currently co-counsel on a PAGA action lawsuit
3 involving wage and hour claims.

4 10. Nearly four years ago, on December 27, 2018, the Honorable Judge Curtis E.A.
5 Karnow approved my previous hourly rate of \$500 for work performed in the class action *Chavez*
6 *et al. v. RWR Construction, Inc.* (San Francisco County Superior Case No. CGC-17-561618) as
7 co-class counsel.

8 **MEDIATIONS, DIRECT NEGOTIATIONS AND SETTLEMENT.**

9 11. In August 2021, the parties began to meet and confer about depositions and
10 ultimately, after multiple exchanges of correspondence, Plaintiffs' depositions began in January
11 2022 and continued through March 2022 with all three Plaintiffs sitting for two days of
12 depositions each. Plaintiffs deposed 7 of Defendants' management employees, plus the PMK that
13 was deposed prior to the first mediation in this matter for a total of 11 days of depositions.

14 12. Counsel for Plaintiffs and Defendants had significant discussions about settlement,
15 exchanged extensive information regarding the facts of the case and the parties' respective
16 positions on the applicable law, conducted extensive and hard-fought discovery to inform the
17 parties' understanding of the claims and risks involved, attended two mediations and continued
18 direct negotiations following the failed second mediation. As result of those continued
19 negotiations over several months via telephone and email, the parties were able to reach an
20 agreement to resolve their disputes which is embodied in the Stipulation of Settlement that was
21 ultimately executed by the parties on December 7, 2022, and later amended and executed on
22 February 5, 2023.

23 13. The investigation, discovery, and analysis Plaintiffs' counsel conducted allowed
24 them to make a realistic assessment of the merits and defenses of the Class claims and risks. The
25 terms of the Settlement are premised on objective evidence that has been weighed in light of the
26 risks and expense of continued litigation.
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1 14. Plaintiffs' counsel devoted a significant amount of time and resources towards
2 investigation and discovery and performed an analysis of the time and payroll data, and other
3 records pertaining to the claims asserted by Plaintiffs as they pertain to them and approximately
4 2000 other putative class members. The parties engaged in significant written discovery,
5 including form and special interrogatories, and request for production of documents and obtained
6 significant deposition testimony.

7 15. The Parties also engaged in thorough research and analysis of the applicable law
8 and potential defenses, and carefully assessed the risks of costs of further litigation.

9 16. As a result of this, counsel throughout the negotiations factored in the various risks
10 to Plaintiffs and the putative class members and the numbers exchanged reflected these
11 considerations.

12 17. While Plaintiffs' counsel is confident that Plaintiffs would succeed on liability,
13 continued litigation would be even more costly and more time-consuming than it already has
14 been, with no guarantee of a successful outcome.

15 18. If litigation were to proceed, Plaintiffs would be required to conduct further
16 discovery, move for class certification, establish class-wide liability, and then prove up various
17 issues regarding damages. Such efforts would also require expending even more resources,
18 would necessitate expert witness testimony and significant additional litigation. As to the PAGA
19 claims, the Court could exercise its discretion to reduce or eliminate PAGA penalties. By contrast,
20 the Settlement herein ensures timely relief and substantial recovery of the wages, premiums, and
21 penalties Plaintiffs contend are owed to the Settlement Class.

22 19. Based on Plaintiffs' counsel's experience as class action attorneys, the risks
23 associated with these issues make class certification uncertain. Accordingly, throughout the
24 negotiations, Plaintiffs and their counsel factored in the various risks to their claims and those of
25 the putative class; and the numbers exchanged throughout the mediations and negotiations
26 reflected these considerations. The final settlement amount takes into account the substantial
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1 risks inherent in any wage-and-hour class action, as well as the specific defenses asserted by
2 Defendants.

3 20. In summary, weighing all of these factors, Plaintiffs came to the following
4 conclusions as to each claim in deciding whether to accept the settlement:

5 i. Unpaid overtime premiums

6 Given the broader risks to class certification and success on the merits, delays, and
7 potential collection issues that could result from further litigation,— as well as Defendants’
8 specific arguments that Plaintiffs and the class were properly paid and that the time
9 records produced showing no unpaid wages were accurate, that Class Members were
10 afforded an opportunity to review and confirm the hours worked for each pay period,
11 some attested that they received overpayments from UBS for when they left a shift early,
12 and that the fact that Class Members worked different schedules and days and that
13 therefore their claims are not susceptible to class wide resolution – Plaintiffs still believe
14 this is their strongest claim, but nonetheless has substantial risks, and the potential offsets
15 for overpayments to Class Members, so decided it was fair and reasonable to only
16 discount this claim to approximately 50% of its “soaking wet” value, or about
17 \$1,517,517.26.
18

19 ii. Unpaid meal premiums

20 Given that some class members interviewed indicated they worked less than 8 hours and
21 that Defendants assert that each Plaintiff testified in their deposition that no one at UBS
22 prohibited them from taking their meal breaks, that they were unsupervised while
23 performing their work and that Class Members were required to review and sign
24 attestations stating they were afforded the opportunity to take their breaks or otherwise
25 report they were not, and there are broader risks to class certification and success on the
26 merits (particularly on meal and rest period claims), delays, and collection issues that
27 could result from further litigation, and that this claim falls or rises on whether or not
28 Plaintiffs are successful in proving that the time records produced are inaccurate and

1 unreliable – Plaintiffs decided it was reasonable to discount the meal period claim to
2 approximately 25% of its “soaking wet” value, or about \$1,083,940.90.

3 iii. Unpaid rest premiums

4 Given that rest periods are not required to be recorded and that some time records
5 produced by Defendants showed some class members working as little as two hours per
6 day, there are broader risks to class certification and success on the merits (particularly on
7 meal and rest period claims considering that Defendants assert that each Plaintiff testified
8 that they were not prohibited by anyone at UBS from taking their breaks and that it was
9 their own decision not to take breaks every shift, and that Class Members were required to
10 review and sign attestations stating they were afforded the opportunity to take their breaks
11 or otherwise report that they were not), delays, and collection issues that could result from
12 further litigation, and that this claim falls or rises on whether or not Plaintiffs are
13 successful in proving that the time records produced are inaccurate and unreliable as well
14 as specific arguments from Defendants that there is no duty to record rest periods, so class
15 members’ failure to clock in or out for all rest periods does not prove any violations –
16 Plaintiffs decided it was reasonable to discount the rest period claim to approximately
17 15% of its “soaking wet” value, or about \$390,218.72.

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19 iv. Labor Code Section 226 Wage Statement Penalties

20 Given the broader risks to class certification and success on the merits, delays, and
21 collection issues that could result from further litigation, and that success on this claim is
22 dependent on success of the underlying claims, Plaintiffs decided that this claim had a
23 value of 25% or approximately \$501,537.50.

24 v. Waiting Time Penalties

25 Given the broader risks to class certification and success on the merits, delays, and
26 collection issues that could result from further litigation, and that success on this claim is
27 dependent on success of the underlying claims, Plaintiffs decided that this claim had a
28 value of 25% or approximately \$745,500.60.

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21. As such, Plaintiffs decided that the reasonable value of the class claims at \$3,550,000 which is 16% of the soaking wet number and 78% of the reassessed value is an excellent result.

22. Recognizing the critical opportunity to resolve the matter for the benefit of both the putative class and Defendants, the settlement negotiations were non-collusive, adversarial, and at arm's length, as required for appropriate class action settlements. Plaintiffs, the class and its counsel, on the one hand, and Defendants and their counsel, on the other hand, agree that the settlement is fair and equitable to both sides.

23. The proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law and falls well within the range of reasonableness. The Net Settlement Amount of \$2,187,225.00 derived from a Gross Settlement Amount of \$3,550,000.00

1 is fair and just relief to all Settlement Class Members. According to Defendants records, the
2 Settlement covers approximately 2000 Settlement Class Members, including Plaintiffs.

3 **INVESTIGATION & DISCOVERY**

4 24. Plaintiff's counsel devoted a significant amount of time and resources towards
5 investigation and discovery into the facts and allegations of this Action. Plaintiffs' counsel served
6 extensive written discovery, including form and special interrogatories and requests for
7 production of documents, reviewed and analyzed pay records, including thousands of pages of
8 time and payroll data reports, and check stubs for class members and Plaintiffs, as well as
9 information regarding Defendants' policies and procedures regarding timekeeping, and meal and
10 rest periods, conducted eleven days of depositions of Defendants' management employees and
11 interviewed over 100 class members with the class list obtained through a *Bel Aire* Notice, in
12 order to calculate damages, and Plaintiffs sat for two depositions each.

13 25. Plaintiffs' counsel also spent a significant amount of time researching the law and
14 facts. In light of the analysis of the information learned during this process, Plaintiffs' counsel is
15 of the opinion that this Settlement is fair, reasonable, and adequate, and in the best interest of the
16 Class.

17 26. Over the course of several months following the second mediation, the parties
18 engaged in verbal and electronic negotiations. After substantial negotiations, exchange of
19 information, and damage assessments, the parties through counsel agreed to the primary terms of
20 settlement on September 22, 2022. The parties drafted and revised the Stipulation of Settlement
21 and the necessary exhibits which was completed and signed by the parties and counsel on or
22 about December 7, 2022, which has subsequently been amended to comply with this Court's
23 recent rulings related to PAGA releases on February 5, 2023.

24 27. Plaintiffs recognize the risk of prevailing on class certification or establishing a
25 trial plan to show common liability. Considering Defendants' arguments, Plaintiffs recognize
26 there is a risk that class certification may not be granted outside the settlement context. For
27 example, much consideration was given to the sampling of employee payroll and time records.
28

1 The variability of violations across the sample size revealed a potential issue in prevailing on
2 class certification. Similarly, the sampling of employee records and high turnover of employees
3 posed a serious risk that employees would be difficult to locate as the matter approached trial.
4 Also, Defendants claim that they were prepared to submit numerous declarations from Class
5 Members refuting Plaintiffs' claims and supporting Defendants' position that the claims were not
6 certifiable and lacked merit. Further, Plaintiffs off-the-clock claims are dependent on a trier of
7 fact accepting Plaintiffs' position that Defendants' records are unreliable and should not be
8 considered.

9 28. The reasonableness of the Settlement is further underscored by the legitimate legal
10 and factual arguments Defendants have made against Plaintiffs' claims, which could either
11 substantially reduce or eliminate recovery to the Class. While Class Counsel is confident that
12 Plaintiffs would succeed on liability, continued litigation would be costly, time-consuming, and
13 with no guarantee of the outcome.
14

15 **REASONABLENESS OF SETTLEMENT**

16 29. In light of the facts uncovered in discovery, the risks posed by Defendants'
17 defenses, and the risks as to class certification, the parties have concluded that this action should
18 be settled to avoid the expense and risk of further legal proceedings. Given all of these risks, and
19 assessing the reasonable settlement value of the claims, the Settlement of \$3,550,000 is fair,
20 reasonable, adequate, and in the best interest of the Class Members.

21 **SERVICE AWARD AND ATTORNEYS' FEES AND COSTS**

22 30. The proposed class representatives, Alfredo Garcia, Apolonio Piceno Perez, and
23 Rosalia Arce have at all times been willing and able to aggressively and competently assert the
24 interests of the Settlement Class members.

25 31. The additional compensation for providing a complete release of all claims,
26 including a 1542 waiver, is well justified as Plaintiffs took on the burden of litigating this case
27 and exerted a significant amount of time in attending meetings with their lawyers, attending two
28 mediations, sitting for two days of depositions each, helping to locate class members, and

1 carrying all the burdens of litigating it while others were reluctant or unwilling to come forward
2 to assist them in pursuing their claims.

3 32. Plaintiffs fully participated in the analysis and planning of this action throughout
4 the pendency of the litigation.

5 33. Plaintiffs responded to written discovery, helped with counsel's investigation of
6 other potential class members, sat for two days of depositions each, and were closely engaged in
7 the nature and extent of settlement discussions, and thoughtfully approved multiple rounds of
8 negotiations and the ultimate settlement with Defendants.

9 34. Throughout this litigation, Plaintiffs worked with their counsel regarding the
10 claims against Defendants, produced substantial information and documents relevant to the
11 action, provided lengthy responses to inquiries and questions, and attended several lengthy
12 meetings with counsel.

13 35. They were committed to staying involved by requesting periodic updates and
14 status reports.

15 36. The Settlement requires plaintiffs to provide a general release of all claims against
16 Defendants, which includes a waiver of unknown claims and their rights under Civil Code § 1542.
17 Plaintiffs have thus sacrificed significantly more than the other Class Members.

18 **ATTORNEYS' FEES AND COSTS**

19 37. CTLG's current lodestar for hours expended on the litigation is \$382,720. This
20 amount is in addition to co-counsel's lodestar. This amount will increase for preparation of the
21 final approval papers, preparation and attendance at any remaining hearings, correspondence and
22 communications with Settlement Class Members, and settlement administration and oversight.

23 38. CTLG's costs to date are \$49,308.45 and will increase after the filing of this
24 motion and the final approval motion. This amount is in addition co-counsel's costs. They are also
25 recoverable from the Total Gross Settlement Amount.

26 39. Given the current lodestar and costs, the amount of attorney's fees and costs
27 sought, and that will be addressed at final approval, are imminently reasonable.
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2 I declare under penalty of perjury under the laws of the State of California and of the United
3 States that the foregoing is true and correct, and that this Declaration was executed on March 8,
4 2023 in Albany, California.
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Ike M. Kaludi