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Attorneys for Plaintiff ERIK CLEMENTE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ERIK CLEMENTE, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

MIDWAY CONSTRUCTION CORP., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: CIVSB2228816

[Assigned for all purposes to the Hon. Christian
Towns]

CLASS ACTION

**DECLARATION OF PLAINTIFF ERIK
CLEMENTE IN SUPPORT OF MOTIONS
FOR APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: April 9, 2025
Time: 8:30 a.m.
Courtroom: Dept. S-26
Judge: Hon. Christian Towns

Action Filed: December 27, 2022
Trial Date: Not Set

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1. I am a named Plaintiff in this case. I am a former employee of the named defendant, MIDWAY CONSTRUCTION CORP. (“Defendants”). As such, I have personal knowledge of, or am informed and believe, the following facts herein stated. If called as a witness. I could and would testify competently to the following:

2. I worked for Defendant during the Settlement Class Period. I held a job position of Team Leader.

4. Issues I experienced included time worked off the clock, some short, late, and missed meal periods, some missed rest breaks, unpaid overtime, and the late final pay and wage statement problems related to those issues.

5. This lawsuit is not an individual lawsuit. It is a proposed class action. I understand that, if approved as a class representative in this matter, I have an obligation to do my best to look out for the interests of other class members, the current and former employees of Defendant who I am seeking to represent. I understand that my obligations to the class exist even when the class is certified solely as part of a class action settlement. It is my understanding that, as one part of this duty to the class, I cannot agree to a settlement to benefit myself to the exclusion of the rest of the class members. After my inclusion in this matter, I have never asked my attorneys to simply settle this matter at any cost. Rather, I have asked them to obtain the best settlement they could within reason, and I believe that they have attempted to do so.

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DECLARATION OF PLAINTIFF ERIK CLEMENTE IN SUPPORT OF MOTIONS FOR APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

1 representative when the case was already ongoing, due to the need for a new plaintiff to assume the role
2 as a proposed class representative. I have made myself available whenever my attorneys wanted to
3 discuss aspects of my employment with Defendant, and I remain committed to seeing this matter
4 through to the end.

5 7. I have conferred with my attorneys about the settlement proposed in this case. I am not
6 an accountant, but I understand the factors and risks that need to be considered when evaluating a
7 settlement.

8 8. Summing it all up in the simplest terms, I am asking to be stand-in for other
9 employees of Defendant. Because of that, I cannot quit on the Class, and I cannot put myself and my
10 interests before the Class. I accept these duties and request that I be approved as the class
11 representative for purposes of this amended Settlement.

12
13 COMMUNITY OF INTEREST: TYPICALITY AND ADEQUACY

14 9. I was an hourly non-exempt employee of Defendant and was subject to the same pay
15 structure and rules as all the other hourly non-exempt employees of Defendant.

16 10. I am not aware of anything special about me that would raise unique defenses to my
17 claims, as opposed to the claims of the class. I am also not suing for anything unique to me. Rather, my
18 claims are based upon the same facts that relate to the rest of the Class.

19 11. I do not believe that I have any conflicts with Class Members included in this proposed
20 Settlement. I do not have any intention to take any action that would place me in a position that is hostile
21 to other Class Members.

22
23 SERVICE AS A CLASS REPRESENTATIVE

24 12. I believe that were it not for my stepping forward and taking on the duties of protecting
25 the interests of other Defendant's employees, it is likely that the interests of the class would neither
26 have been prosecuted, nor benefited. To my knowledge, other than the litigation encompassed by this
27 proposed Settlement, there is no other litigation, on a class or individual basis, concerning the claims in
28 this lawsuit. Nor has Defendant pointed to any.

13. I have assumed some long-lasting risk in prosecuting this case. Because it is so easy to search for information online these days, I will face an increased risk that future employers will discover information about this lawsuit online and have a negative reaction to learning that I sued an employer. This may make it harder for me to obtain future employment or change jobs for a better opportunity.

14. I have devoted a substantial amount of my time, both before this lawsuit was filed and also during its litigation to ensure a fair result for the employee class. This involved ongoing communications and participation with my counsel during the course of this case.

15. My participation began with bringing issues in this matter to my counsel's attention and explaining the factual background that was used to prosecute the claims in this case.

16. For example, I reviewed documents which I already had, I provided relevant documents to my counsel, and I explained those documents and related facts to my counsel to assist them in their review. I also assisted in identifying other potential witnesses, including other employees, who might likewise have been of assistance.

17. After the mediation, a long-form settlement agreement was negotiated, and I reviewed it with my attorneys as well as I was able to ensure that its terms are likewise fair and adequate.

18. In sum, I believe I have provided well over 20 hours of my time during the course of this litigation to ensure a good outcome for the best interests of the class.

19. I do not believe that I have any conflicts with Class Members included in this proposed Settlement.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on 12/3/2024, in California.

ERIK CLEMENTE, "Declarant"

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa, Suite 3100, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **DECLARATION OF PLAINTIFF ERIK CLEMENTE IN SUPPORT OF MOTIONS FOR APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Daniel J. McQueen
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ARENTFOX SCHIFF LLP
555 West Fifth Street, 43rd Floor
Los Angeles, California 90013
Telephone (213) 629-7400
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Counsel for Defendant

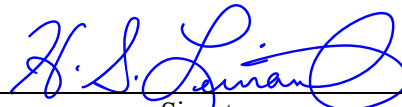
☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court’s Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **December 12, 2024** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature