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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

CHETERRA YOUNG, an Individual, on behalf of herself and all others similarly situated,

Plaintiff,

v.

PFT ALEXANDER, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendant.

Case No.: 23STCV07449

<u>CLASS AND REPRESENTATIVE ACTION</u>

<u>Assigned For All Purposes To:</u>
Hon. Kenneth R. Freeman

DECLARATION OF MAGGIE REALIN IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Date: March 27, 2025
Time: 10:00 a.m.
Dept.: 14

Complaint filed: April 5, 2023
Trial Date: None Set

I, Maggie Realin, declare as follows:

1. I am a Partner at the law firm of Cohelan Khoury & Singer, co-counsel of record for Plaintiff Cheterra Young ("Plaintiff") in this Action. I submit this declaration in support of the Motion for Preliminary Approval of Class and Representative Action Settlement. The following facts are within my personal knowledge and if called to testify I could and would competently testify to them.

Prosecution of this Action

2. On April 5, 2023, Plaintiff filed a class action complaint against Defendant (and submitted a PAGA letter on the same day), alleging claims for unpaid time, meal and rest break violations, failure to keep accurate payroll records, and derivative wage statement, waiting time and UCL claims. Plaintiff amended her complaint on June 12, 2023, adding a cause of action under PAGA.

3. We reviewed Plaintiff and other employees' records Defendant produced in this action, and these records did not indicate that Defendant has paid any meal or rest break premiums during the class period.

4. We also alleged on behalf of the Plaintiff that Defendant's policies do not comply with California law. For example, we alleged that the Defendant's meal break policy advises employees that their meal periods must begin before the start of the 6^{th} hour of work, even though California law provides that the meal break must begin before the end of the 5^{th} hour of work. Also, we alleged that the Defendant's meal break policy does not advise employees they are entitled to premiums if they work through a meal (or rest) break.

5. We also alleged that the Defendant's rest break policy provides that "due to client needs, an employee may be asked to interrupt their rest periods, assist the client and take their rest period at a later time." We argued that the applicable Wage Order does not impose such conditions on rest periods, because a rest break must be off-duty and free from any work-related interruption; if this requirement is not met, it is our position that an employee is entitled to a premium.

6. With respect to Plaintiff's unpaid wages claim, we alleged that Defendant's policy does not allow overtime without advanced approval from management. We argued on behalf of the Plaintiff that the need for overtime is often not known in advance, and a pre-approval from a manager is not feasible. This creates a Catch-22 situation, resulting in off-the-clock work. Further, we alleged that the management

advised Plaintiff and other employees that they were not allowed to clock in until the start of their shifts.

7. We further alleged derivative claims for inaccurate wage statements and for waiting time penalties, and violations of the UCL.

8. At the time this action settled, Plaintiff's motion for class certification was due on August 21, 2024.

9. Before mediation, we and the Defendant carefully investigated the claims and facts alleged in this action, and we made a thorough study of the legal principles applicable to the claims asserted against Defendant. For purposes of mediation, Defendant produced its employee handbook containing policies at issue in this action, and a 5% class sample of time and pay records for class members (Plaintiff and two other employees). It is our position that this sample is sufficient for purposes of this settlement, because Defendant does not dispute that until approximately April 26, 2023, it did not record meal break periods for *any* employee, nor paid any meal or rest break premiums.

Settlement

10. On May 1, 2024, the parties mediated this case before Kevin Banes, Esq., of Kevin T. Barnes Mediation, who is vastly experienced in wage and hour class actions. Following mediation, the parties reached the settlement in principle, and executed a Memorandum of Understanding. After additional weeks of arms'-length negotiations, the parties finalized the terms of the settlement agreement. A copy of the Settlement Agreement is attached as Exhibit A to the Declaration of Michael D. Singer.

11. The parties agreed that all Settlement Payments will be reported to the IRS and state tax authorities. Twenty percent (20%) of each class member's settlement payment will be allocated as wages, and 80% as penalties and interest, with withholding to apply only to the portion allocated to wages. It is our position that this allocation is based upon the nature of the claims; when allocating a portion of recovery to interest, and accounting for the fact that sections 226, 203, 1174(d) and 2698 provide for the payment of penalties, this tax allocation is reasonable.

12. The Parties agreed $11,250, or 5% of the MSA will be allocated for payment under the PAGA. 75% of this amount ($8,437.50) will be paid to the LWDA, and 25% ($2,812.50) to PAGA-Eligible Employees. The PAGA penalties under this Settlement represent approximately 1.2% of the total potential PAGA penalties for all of Plaintiff's claims, assuming class members suffered 6 types of

violations in every single pay period (1,510 pay periods times $100 multiplied by 6 penalties for unpaid time, meal and rest break violations, failure to maintain accurate payroll records, and derivative 226 and 203 claims, for maximum penalties of $906,000.

13. The parties selected Phoenix Settlement Administrators as the Settlement Administrator. The parties obtained bids from 4 administrators, and Phoenix's was the most competitive bid.

14. The settlement amount of $225,000 derives primarily from Plaintiff's unpaid overtime, and meal and rest break claims. Defendant estimates there were approximately 6,346 workweeks worked by the 59 class members through April 15, 2024.

15. The agreement contains an escalator clause, providing that Defendant has an option to either increase the Maximum Settlement Amount, or cut off the Class/PAGA Periods should the number of workweeks as of April 15, 2024 exceed 6,981. Based on the analysis of the produced data, Defendant's maximum potential exposure is as follows:

- <u>Overtime claim:</u> **$323,646.** This is based on Plaintiff's investigation that class members worked approximately 1 hour of unpaid time every week. Thus, Defendant's exposure for overtime is as follows: 6,346 workweeks times 1 hour of unpaid overtime per week at $51 overtime rate = **$323,646**. The minimum/regular wage claim is not valued, because class members were full time employees, so any off-the-clock work would be incurred at an overtime rate.
- <u>Meal break claim</u>: **$872,950**. Evidence in this action shows that from the beginning of the class period and until approximately April 26, 2023, Defendant did not keep records of meal break recordings, resulting in a 100% meal break violation rate. Thus, the meal break premium calculation is 5,135 workweeks until April 26, 2023 times 5 (every day) times $34 hourly rate = $872,950.
- <u>Rest break claim</u>: **$215,764.** This is based on 1 violation per workweek, based on Plaintiff's evidence that rest breaks were at times missed and interrupted due to work duties. The 6,346 workweeks multiplied by the 1 per workweek violation rate, multiplied by $34 hourly rate equals $215,764 in unpaid rest break premiums.
- <u>Wage statement penalties</u>: **$148,750**. There are 45 class members and 1,510 pay periods

during the applicable limitations period. Defendant's maximum exposure is as follows: $50 initial violation *45 employees = $2,250; $100 subsequent violation * 1,465 pay periods (1,510 pay periods – 45) = $146,500, for a total of $148,750. This results in an average recovery of $3,055 per employee, so is under the $4,000/employee cap.

- <u>Waiting time penalties</u>: Plaintiff calculated daily wages for 58 former employees at $272 (8 hours at $34), times 30 days, for a total of **$473,280**.

16. Thus, Defendant's potential maximum liability for Plaintiff's direct claims is **$1,412,360**, and an additional **$622,030** for Plaintiff' wage statement and waiting time penalties claims, for a total of **$2,034,390**. Thus, the MSA of $225,000 represents almost 16% of Defendant's maximum potential liability for Plaintiff's direct claims, and over 11% of Defendant's maximum liability for all Plaintiff's non-PAGA claims.

17. The Settlement represents almost 16% of Defendant's maximum potential liability for Plaintiff' direct overtime, and meal and rest break claims, and over 11% of Defendant's maximum liability for all claims, without any risks, costs, and uncertainty of prolonged litigation.

18. Without accounting for the length of each class member's employment, a class member will recover over $1,990 as a result of this settlement, or over $18.50 per workweek. Based on the average hourly rate of $34, this amounts to recovery of <u>approximately **57** meal and rest break premiums, or approximately **38** hours of overtime wages per class member</u>.

19. Class members will receive a portion of the MSA based on the number of workweeks they worked during the class period. This formula is realistic because class members' individual recovery is proportionate to the amount of time they were employed with Defendant.

20. Before settling this action, the parties had a thorough understanding of their respective claims and defenses, as this action has been litigated for over a year.

21. Prior to mediation, Class Counsel had investigated class members' claims, examined documents and data, and performed damage calculations. At the time of mediation, the parties understood their respective positions.

22. The Class Notice summarizes the terms of the Settlement Agreement, advises the class members of their estimated individual settlement payment, and informs them of their right to object to

or exclude themselves from the Settlement within 60 days after the Notice mailing. Because this is the California-only class, and the mailing will occur only in California, 60 days to opt out from or object to the Settlement is sufficient.

Risks of Further Litigation if the Case did Not Settle

23. Plaintiff recognizes several risks to succeeding on certification and the merits of this action. First, as typical in a meal break case, Plaintiff would rely on a timecard review of the missing meal break recordings to assert a presumption under *Donohue v. AMN Servs., LLC*, 11 Cal.5th 58 (2021) that meal breaks were not provided. Defendant could potentially argue that the rebuttal of this presumption would involve individual examination of all employees, and doing so could not manageably occur on a classwide basis.

24. Regarding Plaintiff's argument about unlawfulness of Defendant's policies, Defendant would likely assert that whether the policy states a meal break will be provided before the start of the 6th hour of work as opposed to before the end of 5th hour of work is a distinction without a difference, as both variations mean the same thing. Defendant will argue there is nothing unlawful in requiring overtime pre-approval, and that its policy specifically prohibits off-the-clock work. Further, records Defendant produced showed it paid substantial overtime.

25. With respect to Plaintiff's rest break claims, Defendant will argue that the law does not require that employees be advised about their entitlement to premiums. Further, damages and penalties calculations could present complicated issues, as employees did not have to clock out to take rest breaks, or otherwise record them.

26. Lastly, with respect to wage statement and untimely wages claims, they are derivative of Plaintiff's unpaid time, and meal and rest break claims, so if Ms. Young does not prevail on the underlying claims, her derivative claims would also fail. Defendant will likely assert that wages that were not paid cannot form the basis of these derivative claims.

27. Also, most recently, the California Supreme Court held that a good-faith defense applicable to Labor Code section 203 extends to Labor Code section 226, in that "if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to

comply with the wage statement law." *Naranjo v. Spectrum Sec. Servs., Inc.* __ Cal.5th___, 2024 Cal. Lexis 2438, at *3 (2024), which could prevent Plaintiff's recovery of wage statement penalties.

28. I believe the requested class representative Service Payment of $10,000 for my client Cheterra Young is reasonable and warranted in light of the time and effort spent on this case, and the benefit her efforts conferred upon the Class in the settlement result achieved. Plaintiff spent significant time assisting counsel with our investigation and conferring by email and telephone on a regular basis. In agreeing to serve as a Class Representative, Plaintiff formally agreed to accept the responsibilities of representing the interests of all Class Members, not just her own. Plaintiff also assisted in gathering and reviewing case documents and pleadings, was on telephonic stand-by for mediation, and evaluated and approved the proposed Settlement on behalf of the Settlement Class. Plaintiff assumed the risks and potential negative notoriety resulting from suing her employer.

29. I have no conflicts of interest with the class or with the class representative. I am not related to the representative Plaintiff. I do not represent opposing factions within the class in that all claims are predicated upon the same theories of liability and benefit all class members equally. In sum, I am well–suited to act as Class Counsel and will continue to vigorously represent the interests of the class.

30. Based on my experience as Class Counsel, I believe that the proposed Settlement is fair, reasonable, and adequate for the Class.

I declare under the penalty of perjury under the laws of United States and the State of California that the foregoing is true and correct and that this declaration is executed on August 29, 2024, in San Diego, California.

MRealin

Maggie Realin