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Attorneys for Plaintiff SEAN W POWERS,
as an individual and on behalf of all
employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

SEAN W POWERS, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

MARIO'S PLACE, INC., a California
Corporation; and DOES 1 through 50, inclusive,
Defendants.

Case No.: CVRI2301652

[Assigned for all purposes to Hon. Harold W.
Hopp, Dept. 1]

CLASS ACTION

**DECLARATION OF PLAINTIFF SEAN W
POWERS IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Date: November 4, 2024
Time: 8:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Harold W. Hopp

Action Filed: April 3, 2023
Trial Date: Not Set

DECLARATION OF SEAN W POWERS

I, SEAN W POWERS, declare as follows:

1. I am a named Plaintiff and Class Representative in this case. I am a former employee of the named Defendant MARIO'S PLACE, INC. ("Defendant"). 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.

JOB DUTIES AND EXPERIENCES

2. I worked for Defendant during the Class Period as an hourly-paid employee from August 8, 2021 to April 9, 2022. I was paid on hourly basis and classified as non-exempt from overtime.

3. During my employment, I experienced problems with taking all uninterrupted, 30-minute meal periods, taking all of my rest breaks, receiving reimbursement for work-related expenditures, and receiving all pay for all hours that I worked.

DUTIES OF A CLASS REPRESENTATIVE

4. 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. 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.

5. I have been actively involved in this case since I first retained Tunyan Law, APC. I have made myself available whenever my attorneys wanted to discuss aspects of my employment by Defendant, and I remain committed to seeing this matter through to the end.

6. I have conferred with my attorneys about the settlement proposed in this case. I am not an accountant, but I understand the factors and risks that need to be considered when evaluating a settlement. I believe that the Class Action Settlement obtained on behalf of the Class Members is fair

and reasonable in view of the issues and risks involved with the case.

7. I am asking to be the stand-in for other employees of Defendant. Because of that, I cannot quit on the Class, and I cannot put myself and my interests before the Class. I accept these duties and request that I be approved as the class representative for purposes of this amended Settlement.

COMMUNITY OF INTEREST: TYPICALITY AND ADEQUACY

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

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

10. I do not believe that I have any conflicts with Class Members included in this proposed Settlement. I do not have any intention to take any action that would place me in a position that is hostile to other Class Members. I also do not believe I have any conflicts of interest with the selected class action settlement administrator.

SERVICE AS A CLASS REPRESENTATIVE

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

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

13. **CMO ¶¶ H (2) (c)** 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.

1 14. **CMO ¶¶ H (2) (a)** I have devoted a substantial amount of my time, both before this
2 lawsuit was filed and also during its litigation to ensure a fair result for the employee class. This
3 involved ongoing communications and participation with my counsel during the course of this case.
4 My participation began with bringing certain issues that are involved in this matter to my counsel's
5 attention and explaining the factual background that was used to prosecute the claims in this case. For
6 example, I reviewed documents which I already had, I provided relevant documents to my counsel,
7 and I explained those documents and related facts to my counsel to assist them in their review. I
8 also assisted in identifying potential witnesses, including other employees, who might likewise have
9 been of assistance.

10 15. **CMO ¶¶ H (2) (a)** My efforts continued after suit was filed. For example, I have had
11 many discussions with the attorneys at Tunyan Law, APC regarding Defendant's wage and hour
12 policies, my claims in this case, litigation strategy, potential witnesses, discovery, updates on how the
13 case was proceeding, and how I could help the case. I also discussed strategy with my counsel. I
14 remained in regular communication with my attorneys regarding discovery and settlement discussions
15 that the parties had during the course of litigation and mediation. I continued to identify employees and
16 other witnesses to counsel, along with other information as to how they could be of potential use in this
17 matter. I also provided substantial information and documents to my attorneys to assist them in
18 preparing the case. I also made myself available to answer questions during the settlement
19 negotiations.

20 16. **CMO ¶¶ H (2) (a)** After the settlement negotiations, a long-form settlement agreement
21 was negotiated, and I reviewed it with my attorneys including the revisions to the settlement agreement
22 as I was able to ensure that its terms are likewise fair and adequate.

23 17. **CMO ¶¶ H (2) (c)** I believe that the Class Representative service payment of \$7,500 for
24 me is fair and reasonable as it takes into consideration the fact that I have always considered the interests
25 of the other Class Members just as I have my own interests and understand that I have to put the interests
26 of the other Class Members before my own. I have not negotiated or entered into any undisclosed
27 separate settlement and release agreements for general release of my non-wage related claims, nor have I
28 received any undisclosed compensation in this case. The only compensation I will receive is whatever

amount the Court awards as a service payment and for general release of all claims as well as my share of the settlement fund as a class member and as an aggrieved employee. Therefore, I believe this service payment is fair as I signed a general release, so I am not only giving up my wage and hour claims, but I am also giving up all claims beyond wage and hour claims I had against my former employer. Since I have signed a general release for any and all claims related to my employment with Defendant, I cannot pursue any other claims against Defendant while Class Members can still pursue other claims not released in this Class Action. I was not able to find a job in Riverside County in a similar industry for four months after my employment termination with Defendant which created a financial burden on me, and I had to look for a job and move to Orange County.

18. **CMO ¶¶ H (2) (c) (d)** Furthermore, the Class Representative service payment is fair and reasonable as I risk the potential stigma of being a Class Representative in a Class Action labor dispute, which may affect my future employment in this industry while other class members did not undertake that risk but will benefit from this settlement. A Google search with my name and Defendant show that I am a Plaintiff in this Class Action case. To be clear I do not know of any adverse consequences I actually suffered as a result of prosecuting this action.

19. **CMO ¶¶ H (2) (c)** I believe that the Class Representative service payment for me is also fair and reasonable as this service payment also takes into consideration the time, effort, risks, stress, and sacrifice of signing a general release of all claims over just wage and hour claims, as well as the benefit provided to all class members as a result of my involvement in this litigation.

20. **CMO ¶¶ H (2) (b)** In sum, in addition to assuming the risks that go along with being a class representative and named plaintiff in litigation, I believe I have also provided well over 25 hours of my time during the course of this litigation to ensure a good outcome for the best interests of the Class. I believe I have been diligent and acted above and beyond that which is expected of a Class Representative throughout all stages of the litigation. I will continue to diligently act as the Class Representative up to and including final approval of the Class Action Settlement.

21. **CMO ¶¶ H (2) (c)** It is also my opinion that the service payment is fair and reasonable because in addition to the many hours spent participating in this case, I accepted the potential risk of being liable for the opposing parties' costs if we were unsuccessful in this lawsuit. My attorneys told me

1 these costs could be tens of thousands of dollars or more based on the extent of formal litigation. I
2 believed in this case and was willing to be a Class Representative Plaintiff knowing the risks involved.

3 22. This litigation has also resulted in a valuable benefit to the Class Members who will
4 participate in the monetary payout of this Settlement because of my involvement.

5 23. CMO ¶¶ H (2) (e) I have been informed that my individual share of the class action
6 settlement is \$170.30 for 34.86 class workweeks and \$1.41 for individual share of PAGA settlement for
7 \$1.29 PAGA pay periods which I will receive in addition to the enhancement award the Court will
8 approve.

9 24. Based on the time, risk, stress, sacrifice of signing of a general release, and the great
10 outcome of this case, I believe that the requested service payment for me is fair and reasonable.

11
12 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
13 true and correct.

14 Executed on 9/23/2024 | 5:06 PM PDT, at Laguna Niguel, California.

15 DocuSigned by:

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17 SEAN W POWERS, "Declarant"

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COUNTY OF LOS ANGELES

On the date indicated below, I served the document described as: **DECLARATION OF PLAINTIFF SEAN W POWERS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

LESTER, CANTRELL & KRAUS, LLP

**DECLARATION OF PLAINTIFF SEAN W POWERS IN SUPPORT OF MOTIONS FOR APPROVAL OF CLASS AND
PAGA REPRESENTATIVE ACTION SETTLEMENT**