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Attorneys for MARK FRANKLIN, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

MARK FRANKLIN on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

DESERT HAVEN ENTERPRISES; and
DOES 1-100,

Defendants.

Case No. BCV-23-101153
(Consolidated with Case No. BCV-23-101829)

*[Assigned for All Purposes to the
Honorable Gregory A. Pulskamp; Div. J]*

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

Date: October 30, 2024

Time: 8:30 a.m.

Division: J

Location: 1215 Truxton Avenue
Bakersfield, California 93301

Complaint Filed: April 13, 2023

Trial Date: None Set

1 I, DAVID MARA, declare the following:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiff and the Class in
3 this matter. I am duly admitted to practice before all the courts of the state of California.
4 The following facts are within my personal knowledge and, if called to testify, I could and
5 would competently testify thereto.
- 6 2. I graduated from California Western School of Law.
- 7 3. I was admitted to practice law in California in May 2004.
- 8 4. I extensively handle employment cases which involve violations of the California Labor
9 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class
10 actions and cases alleging violations of the Private Attorneys General Act of 2004
11 (“PAGA”).
- 12 5. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County Superior
13 Court, Case No. GIC834348) which was the underlying case in the California Supreme
14 Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
15 1004, in which the California Supreme Court delineated the scope of employer obligations to
16 provide, and employee rights to receive, meal and rest periods under California law.
- 17 6. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer Attorneys
18 of California (“CAOC”). For example, I authored the Amicus Curiae briefs on behalf of
19 CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The California
20 Supreme Court ruling that, like meal periods, employers must relieve employees of all duty
21 and relinquish all control to satisfactorily discharge its obligation to authorize and permit rest
22 periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The California Supreme Court ruling
23 that the time spent on the employer’s premises waiting for, and undergoing, required exit
24 searches of packages, bags, or personal technology devices voluntarily brought to work is
25 compensable hours worked within the meaning of the Wage Orders.); *Oliver v. Superior*
26 *Court* (2021) California Court of Appeal Case No. H049185 (A brief asking the California
27 Court of Appeal for the Sixth Appellate District to determine whether mandatory drive time
28 of personal vehicles should be considered hours worked within the meaning of the Wage

1 Orders' suffered or permitted test.). *Davidson v. O'Reilly Auto Enterprises, LLC* (9th Cir.,
2 2020; Docket No. 18-56188) (a brief seeking Review *En Banc* of an order denying class
3 certification in a wage and hour matter).

4 7. I am also a member of CAOC's Amicus Committee that determines the cases in which the
5 organization will agree to provide amicus support.

6 8. I have also lectured as a panelist for California Employment Lawyers Association
7 regarding a host of wage and hour issues.

8 9. My firm has been granted class certification in both state and federal courts.

9 10. I have been named as class counsel in a number of wage and hour class actions in which
10 the Court granted the plaintiff's motion for class certification. For example, I have been
11 named class counsel in the following cases: *Mario Norona v. B&G Delivery System, Inc.*
12 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
13 *Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH);
14 *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-
15 00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*
16 (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San
17 Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Robert Bejar,*
18 *et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-
19 08404-JST), *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San
20 Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v.*
21 *Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No.
22 CIVDS2010153); *Sonny Williams, et al. v. Hansen and Adkins Auto Transport, Inc.; et al.*
23 (San Bernardino County Superior Court, Case No. CIVDS2020832); *Bobby Williams, et*
24 *al. v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-
25 00063361-CU-OE-CTL); and *Ashton Harden vs. Mushiana Transport Inc.* (Sacramento
26 County Superior Court, Case No. 34-2021-00301950-CU-OE-GDS).

27 11. I have also been named as class counsel in numerous cases during the settlement process.

28 Here is a non-exhaustive list of cases where I have been named as class counsel in cases

1 during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior
2 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern
3 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*
4 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*
5 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*
6 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
7 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
8 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
9 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
10 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
11 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
12 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
13 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
14 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
15 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior
16 Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo
17 County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et*
18 *al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*
19 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.
20 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino
21 County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v.*
22 *Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No.
23 CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County
24 Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI*
25 *Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry*
26 *Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-
27 2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino
28 County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries,*

1 *Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua*
2 *Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior
3 Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern
4 County Superior Court, Case No. BCV-21-101357).

5 12. On April 13, 2024, Plaintiff filed a class action complaint against Defendant (the “Class
6 Action”). The complaint alleges the following causes of action against Defendant: (1)
7 Failure to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide
8 Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Adopt a
9 Compliant Sick Pay/Paid Time Off Policy; (6) Knowing and Intentional Failure to Comply
10 with Itemized Employee Wage Statement Provisions; (7) Failure to Pay all Wages Due at
11 the Time of Termination; and (8) Violation of Unfair Competition Law.

12 13. On April 7, 2023, Plaintiff provided notice to the Labor and Workforce Development
13 Agency (“LWDA”) in accordance with the PAGA. Thereafter, on June 12, 2023, Plaintiff
14 filed an action against Defendant that alleges causes of action under the Private Attorneys
15 General Act of 2004 (the “PAGA Action”). This case was designated with Case Number
16 BCV-23-101829. The complaint sought civil penalties under the PAGA in relation to the
17 following alleged violations suffered by allegedly similar aggrieved employees: (1) Failure
18 to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal
19 Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Pay all Wages Due
20 at the Time of Termination; (6) Knowing and Intentional Failure to Comply with Itemized
21 Employee Wage Statement Provisions; and (7) Failure to Adopt a Compliant Sick Pay
22 Policy.

23 14. On June 2, 2023, Defendant filed a notice of removal of the Class Action to the U.S. District
24 Court for the Central District of California. Thereafter, Plaintiff filed a motion to remand
25 the matter back to state court, which led to Defendant agreeing to stipulation to remand the
26 matter back to state court and the matter returned to the Superior Court of California, for
27 the County of Kern.

28 15. On September 28, 2023, the Parties filed a stipulation to consolidate the Class Action and

the PAGA Action. The Court granted this stipulation on October 3, 2023.

16. After filing, the Parties engaged in extensive informal discovery and Plaintiff conducted investigation into the claims. As part of this discovery, Defendant produced hundreds of documents and policies including, but not limited to, wage and hour policies – including meal and rest period policies – that covered putative class members, Plaintiff’s time and pay records, and a sampling of time and pay records for Class Members.

17. The Parties attended an all-day mediation with respected wage and hour mediator Mark Rudy on January 16, 2024. This mediation was unsuccessful. Thereafter, the Parties continued to engage in negotiations at arms-length, with Defendant producing additional documents and data. The Parties engage in additional mediation conversations with Mr. Rudy. As a result of these continued settlement discussions, all of which were facilitated through the mediator, the Parties were able to reach a settlement, which was reduced to a MOU that was executed on April 18, 2024. The Parties then met and conferred over all the terms of the settlement and finalized their agreement in the Parties’ Agreement. The Parties’ Agreement is attached hereto as **Exhibit 1**.

18. On August 14, 2024, the Parties entered a Stipulation to Amend the Terms of Settlement Agreement Paragraph 58(A). Due to a scrivener’s error, the Agreement contained an erroneous calculation of affected workweeks. Through the stipulation, the Parties amended the total number of affected workweeks contained in Paragraph 58(A) of the Agreement to 92,005.

19. Class Counsel applies for an award of attorneys’ fees in the sum of \$612,500 (35% of the GSA), and litigation costs of \$22,346.18 (originally estimated not to exceed \$50,000).

20. Class Counsel at the Mara Law Firm, PC, have worked 426 hours to date on this case and have calculated the lodestar fee on those hours at \$313,200 at rates reflecting those currently earned in the marketplace.

21. All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case and are reflected in the result achieved.

22. This was a highly contested matter which required a significant amount of time and labor.

1 Class Counsel had to investigate and analyze documents and data for Plaintiff and a
2 sampling of Class Members. In addition, as part of the above investigation and analysis,
3 Plaintiff had to marshal the evidence in a manner in which it could be adjudicated on a
4 class-wide basis. So often, lawyers unskilled in the class action aspect of wage and hour
5 cases do not pay attention to or put the work into how the evidence must be presented for
6 class-wide adjudication. Strong class-wide cases perish in the hands of inexperienced
7 counsel because the case has not been worked up to succeed at certification. Class Counsel
8 here has considerable experience in class litigation and, from the beginning of the case, is
9 marshalling the evidence with a sharp focus on class-wide proof needed for the matter to
10 get certified. This case was no different. This filtering of voluminous evidence into class-
11 wide proof while keeping an eye on the merits of the litigation required a considerable
12 amount of attorney time and skill.

13 23. All services were performed by Class Counsel on a contingent basis.

14 24. Class Counsel's hourly rates are between \$600 and \$800 and are in line with rates typically
15 approved in wage and hour class action litigation and which rates have been approved by
16 Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and
17 San Diego County Superior Courts.

18 25. I devoted 288 hours to this case. The following is a summary of my tasks and activities
19 performed in the litigation of this matter: case intake with Plaintiff; research into new case;
20 pre-filing investigation and legal research; reviewing and revising initial complaint in class
21 action and related documents; reviewing and revising PAGA notice; reviewing and
22 revising PAGA complaint; researching and investigating legal issues throughout case;
23 interoffice discussions throughout case; discussions with co-counsel throughout case;
24 reviewing removal documents; conducting research into issues related to removal; drafting
25 motion to remand; investigating Defendant's pay-structures and policies for its employees;
26 analyzing records produced by Defendant relating to its policies, pay-structures, and time
27 keeping; creating document summary; performing an analysis on the sampling of Class
28 Member time and wage records; researching issues relevant to mediation brief; drafting

1 mediation brief and mediation damage and exposure model; preparing for and attending
2 mediation; engaging in extensive post-mediation settlement discussions; reviewing and
3 revising the settlement agreement and the Notice to the Class; reviewing and revising
4 preliminary approval motion and supporting papers; drafting declaration in support of
5 preliminary approval; reviewing weekly status reports from the Settlement Administrator
6 regarding Class participation; working with Settlement Administrator; drafting declaration
7 in support of final approval; and reviewing and revising final approval motion and
8 supporting documents.

9 26. My hourly rate is \$800. Based on my hourly rate and the hours expended, 288, my fee is
10 \$230,400, which is reasonable and necessary to the successful litigation of this matter.

11 27. Jill Vecchi is a partner at Mara Law Firm, PC. She solely handles wage and hour class
12 actions and PAGA actions. Ms. Vecchi graduated from Santa Clara University School of
13 Law and was admitted to practice law in California in December 2014 and received her
14 undergraduate degree from University of California, Riverside in 2010. Ms. Vecchi has
15 been litigating wage and hour class actions for nine (9) years and has handled over one
16 hundred (100) class action and PAGA lawsuits.

17 28. Ms. Vecchi has been named as class counsel in the following certified cases as a result of
18 the court granting a motion for class certification: *Mario Norona v. B&G Delivery System,*
19 *Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS);
20 *Jerald Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case
21 No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.*
22 (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); *Denson Sales, et al.*
23 *v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-08404-
24 JST); *Sonny Williams v. Hansen and Adkins Auto Transport, Inc.; et al.* (San Bernardino
25 County Superior Court, Case No. CIVDS2020832); *Bobby Williams v. Mohsen Transport,*
26 *Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-OE-CTL); and
27 *Ashton Harden vs. Mushiana Transport Inc.* (Sacramento County Superior Court, Case No.
28 34-2021-00301950-CU-OE-GDS)..

1 29. Ms. Vecchi has also been named as class counsel in numerous cases during the settlement
2 process. Here is a non-exhaustive list of cases where Ms. Vecchi has been named as class
3 counsel in cases during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo
4 County Superior Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services,*
5 *Inc.* (Kern County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance*
6 *Beverage Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Alton Davis*
7 *v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-
8 00004724-CU-OE-CTL); *Timothy Spikes, et al. v. Bear Trucking, Inc., et al.* (San
9 Bernardino County Superior Court, Case No. CIVDS1715151); *Terrance Bailey v. Blue*
10 *Apron, LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey*
11 *Weast v. California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case
12 No. CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San
13 Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega*
14 *Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case
15 No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside
16 County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba*
17 *NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO);
18 *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No.
19 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San
20 Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw*
21 *Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674);
22 *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County
23 Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC*
24 (Kern County Superior Court, Case No. BCV-21-101357).

25 30. Ms. Vecchi devoted 138 hours to this case. The following is a summary of her tasks and
26 activities performed in the litigation of this matter: draft PAGA notice; draft class and
27 PAGA complaints; interoffice discussions throughout case; discussions with Defendant's
28 Counsel throughout case; draft discovery to propound on Defendant; draft case

1 management conference statements; draft and revise stipulations; review removal to
2 federal court; analyzing documents and information produced by Defendant, including
3 records produced by Defendant relating to its policies, pay-structures, and time keeping;
4 prepare for and attend mediation; draft and revise settlement agreement; draft and revise
5 preliminary approval motion; working with Settlement Administrator during notice
6 process; review weekly status reports from the Settlement Administrator regarding Class
7 participation; review and revise Settlement Administrator's declaration; and draft and
8 revise motion for final approval of the settlement.

9 31. Ms. Vecchi's hourly rate is \$600. Based on her hourly rate and the hours expended, 138,
10 her fee is \$82,800 which is reasonable and necessary to the successful litigation of this
11 matter.

12 32. Class Counsel seeks reimbursement of the litigation costs and expenses of \$22,346.18.

13 33. A true and correct copy of the Westlaw Court's Express's Legal Billing Report, Volume
14 14, Number 3, California Region for December 2012 is attached as **Exhibit 2**.

15 34. A true and correct copy of the Declaration of Richard M. Pearl in *Hohnbaum v. Brinker*
16 *Restaurant Corp.* SDSC GIC834348 is attached as **Exhibit 3**.

17 35. A true and correct copy of the 2012 National Law Journal Survey of Hourly Billing Rates
18 for Partners and Associates is attached as **Exhibit 4**.

19 36. A true and correct copy of Mara Law Firm, PC's Summary of Time and Costs is attached
20 hereto as **Exhibit 5**.

21 37. The final approval motion and supporting documents were uploaded to the LWDA.
22 Attached hereto as **Exhibit 6** is a confirmation received as a result of this upload.

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

25 Dated: October 8, 2024

MARA LAW FIRM, PC

26
27 
28 David Mara, Esq.
Attorneys for Plaintiff