

Kane Moon (SBN 249857)
kane.moon@moonyanglaw.com
Allen Feghali (SBN 301080)
allen.feghali@moonyanglaw.com
Edwin Kamarzarian (SBN 327830)
edwin.kamarzarian@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Paul Mancillas

[Additional Counsel on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

Coordination Proceeding
Special Title (Rule 3.550)
Black & Decker Wage and Hour Cases
Included Actions:

Mancillas v. Stanley Black & Decker, Inc.

Cosico and Martell v. Stanley Black & Decker, Inc., et al.

Judicial Council Coordination Proceeding
Case No. **JCCP 5218**

[Hon. David S. Cohn]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed with the Notice of Motion and Motion
for Preliminary Approval, Declaration of
Plaintiff Paul Mancillas, Declaration of
Plaintiff Matt Martell, Declaration of Plaintiff
Edward Cosico, and [Proposed] Order]*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
NO. CIVSB2123358

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
NO. 21CV002218

PRELIMINARY APPROVAL HEARING

Date: January 30, 2023

Time: 10:00 AM

Dept: S26

Complaint Filed: August 30, 2021

Trial Date: Not set

ADDITIONAL COUNSEL

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Christina M. Le (SBN 237697)
cle@wilshirelawfirm.com
Zachary Greenberg (SBN 331501)
Zgreenberg@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiffs Matt Martell and Edward Cosico

I, Justin F. Marquez, declare as follows:

THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

MY EXPERIENCE AND QUALIFICATIONS

5. I graduated from the University of California, Los Angeles's College Honors Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in 2008.

1 6. My practice is focused on advocating for the rights of consumers and employees in
2 class action litigation and appellate litigation. I am currently the primary attorney in charge of
3 litigating several class action cases in state and federal courts across the United States.

4 7. I have received numerous awards for my legal work. From 2017 to 2020, Super
5 Lawyers selected me as a “Southern California Rising Star,” and in 2022 I was selected as a
6 “Southern California Super Lawyer.” I was selected as one of the “Best Lawyers in America” in
7 2023. In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40” attorney.
8 I am also rated 10.0 (“Superb”) by Avvo.com.

9 8. I am on the California Employment Lawyers Association (CELA)’s Wage and Hour
10 Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced Wage
11 & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
12 mentored young attorneys through CELA’s mentorship program.

13 9. I am also an active member of the Consumer Attorneys of California (CAOC). In
14 2020, I was selected for a position on CAOC’s Board of Directors. I am also a past member of
15 CAOC’s Diversity Committee, and I help assist the CAOC in defeating bills that harm employees.
16 Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating
17 AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code
18 § 226.

19 10. As the attorney responsible for day-to-day management of this matter at the
20 Wilshire Law Firm, I have over thirteen years of experience with litigating wage and hour class
21 actions. Over the last thirteen years, I have managed and assisted with the litigation and settlement
22 of several wage and hour class actions. In those class actions, I performed similar tasks as those
23 performed in the course of prosecuting this action. My litigation experience includes:

24 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
25 million in gross recovery to class members for each year since 2020, including over
26 \$35 million in 2022.

27 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
28 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a

1 data breach class action holding that consumer plaintiffs adequately alleged injury
2 in fact under the benefit of the bargain theory and monitoring-costs theory.

- 3 c. In 2022, *Top Verdict* recognized Wilshire Law Firm and myself for having one case
4 in the Top 20 Labor & Employment Settlements (including number 15 for the \$1.6
5 million settlement in *Moreno v. Pretium Packaging, L.L.C*) and three additional
6 cases in the Top 50 Labor & Employment Settlements (numbers 25, 28, and 31).
- 7 d. To my knowledge, I am the only attorney to appear on each of the following *Top*
8 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
9 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 10 e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
11 winning class certification on behalf of hundreds of thousands of consumers for
12 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
13 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 14 f. As lead counsel, I prevailed against Bank of America by: winning class certification
15 on behalf of thousands of employees for California Labor Code violations; defeating
16 appellate review of the court's order certifying the class; defeating summary
17 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
18 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
19 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
20 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
21 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
22 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
23 3d Art. 8.
- 24 g. I was the primary author of the class certification and expert briefs in *ABM*
25 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
26 for over 40,000 class members for off-the-clock, meal period, split shift, and
27 reimbursement claims. *ABM Industries Overtime Cases* is the first published
28 California appellate authority to hold that an employer's "auto-deduct policy for

meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)¹ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-311.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

- h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.² Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.
- i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)

¹ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

² <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>

- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- k. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- l. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:
- 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike defendant’s affirmative defenses based on *Twombly/Iqbal*).
 - 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).
 - 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge’s discovery ruling which held that “evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA”).
 - 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because “an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

1 k. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
2 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
3 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
4 successfully opposed subsequent appeals to the California Court of Appeal and
5 California Supreme Court.

6 11. Christina M. Le is a Senior Associate Attorney at Wilshire Law Firm. She is
7 admitted to practice in the State of California, the Ninth Circuit Court of Appeals, and the United
8 States District Courts for the Central, Southern, Eastern, and Northern Districts of California. She
9 graduated from Loyola Law School, Los Angeles and attended the University of California,
10 Berkeley for her undergraduate studies, where she obtained a Bachelor of Arts in History. She has
11 over 15 years of litigation experience, which includes the successful handling of numerous
12 employment, wage and hour, and class and representative action matters during the latter half of
13 her career in state and federal court through inception through case resolution. Prior to joining
14 Wilshire Law Firm in November 2021, Ms. Le gained invaluable litigation experience working at
15 various plaintiff and defense firms, including Kristensen Weisberg PLC, Jones Bell LLP, Archer
16 Norris PLC, and Lewis Brisbois Bisgaard & Smith LLP, which is a large firm with a national
17 practice. Ms. Le is an active member of NELA, CELA, CAALA, LACBA, the CELA Wage and
18 Hour Committee, and the Vietnamese Bar Association of Southern California. Her current
19 contingent billing rate for this case is \$750.00 per hour, as most recently approved in both state
20 and Federal Court in comparable wage and hour matters and consistent with her level of
21 experience.

22 12. Zachary D. Greenberg is a third-year associate at Wilshire Law Firm, PLC. Zachary
23 was admitted to the State Bar of California in 2020 and has since been admitted to the United States
24 District Court for the Central District of California and the United States Court of Appeals for the
25 Ninth Circuit. Zachary received a Bachelor of Arts in International Business and a Minor in
26 Economics from Western Washington University. He received his Juris Doctor from Loyola Law
27 School. Zachary's practice has been primarily focused on complex class and representative action
28 litigation. His current contingent billing rate for this case is \$450 per hour.

13. I do not believe that I have any conflicts of interest with the Class or with the Class Representative. I am not related to the Class Representative. I respectfully submit that I and Wilshire Law Firm are well suited to act as Class Counsel in this action, and we have and will continue to vigorously represent the interests of the Class.

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 on January 4, 2023 at Los Angeles, California.


Justin F. Marquez

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los
Angeles, California 90017. On **January 6, 2023**, I served the foregoing document described as:

5 **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFFS' MOTION**
6 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

7 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
addressed as follows:

8 Amanda C. Sommerfeld
9 asommerfeld@jonesday.com
Jennifer A. Wilson
10 jawilson@jonesday.com
JONES DAY
11 555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071.2452
12 Telephone: +1.213.489.3939
Facsimile: +1.213.243.2539

Aileen H. Kim
aileenkim@jonesday.com
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: +1.949.851.3939
Facsimile: +1.949.553.7539

13 ***Attorney for Defendant STANLEY BLACK & DECKER, INC. and STANLEY***
14 ***CONVERGENT SECURITY SOLUTIONS, INC.***

15 Justin F. Marquez
justin@wilshirelawfirm.com
Christina M. Le
16 CLe@wilshirelawfirm.com
Zachary D. Greenberg
17 ZGreenberg@wilshirelawfirm.com
WILSHIRE LAW FIRM
18 3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
19 Tel: (213) 381-9988
20 Fax: (213) 381-9989

21 ***Attorneys for Plaintiffs***
EDWARD COSICO and MATTHEW MARTELL

22
23 [✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The
24 envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with
25 the firm's practice of collection and processing correspondence for mailing. Under
26 that practice it would be deposited with U.S. postal service on that same day with
27 postage thereon fully prepaid at Los Angeles, California in the ordinary course of
28 business. I am aware that on motion of the party served, service is presumed invalid
if postal_cancellation da!9 9r postage meter date is more than one day after date of
deposit for mailing in affidavit....

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

3 Executed this, **January 6, 2023** at Los Angeles, California.

4 Janelle Jickain
Type or Print Name


Signature