

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney S. Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff TYRA TOLER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TYRA TOLER, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

TOTAL TESTING SOLUTIONS, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 21STCV38452

**DECLARATION OF TYRA TOLER IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: May 1, 2023

Time: 10:00 a.m.

Judge: Hon. Elihu M. Berle

Dept.: 6

1 I, TYRA TOLER, declare as follows:

2 1. I am over the age of eighteen, a California resident, Plaintiff and Proposed Class
3 Representative in the above-entitled matter. I submit this declaration in support of Plaintiff's Motion
4 for Final Approval of Class Action and PAGA Settlement and in support of Plaintiff's Motion for Class
5 Counsel Fees, Litigation Expenses Payment and Class Representative Service Payment. I have personal
6 knowledge of all the facts stated herein. I could and would competently testify under oath to these facts
7 in court if requested to do so.

8 2. I retained Class Counsel in June of 2021 and filed the lawsuit in October 2021. I filed the
9 case on behalf of myself and a class of individuals who were paid on an hourly basis by Defendant and
10 performed work in California during the time period between October 19, 2017, to June 7, 2022.

11 3. I worked for Defendant as a misclassified independent contractor in California from
12 January of 2021 to April of 2021. At all times during my employment with Defendant, I was entitled to
13 legally mandated meal and rest periods, minimum wages, and overtime compensation.

14 4. I filed the case because I believed my rights as an employee were violated by Defendant
15 and also the rights of other employees that worked for Defendant. Among other claims, I believe
16 Defendant failed to provide compliant meal and rest periods, failed to pay for all hours worked, failed
17 to furnish accurate itemized wage statements, failed to pay all wages upon separation, and failed to
18 reimburse mandatory business expenses.

19 5. Before I initiated the case as a plaintiff and Class Representative, I spoke at length with
20 my attorneys. We discussed my work experience and how company policies were applied to me and
21 other employees. I provided the attorneys with documents they requested. We reviewed the documents
22 together and asked and answered many questions regarding my experience working for Defendant, the
23 litigation process, and about class actions generally.

24 6. During these conversations, I learned about my responsibilities as a plaintiff in the lawsuit
25 and as proposed a Class Representative. I understood that pursuing this action as a class action rather
26 than merely seeking my individual claims substantially increased the risk to me. Those risks included
27 the possibility of being held liable for Defendant's attorneys' fees and costs in a complex class action if
28 I lost the case. I also understood that as a Class Representative, I would be under increased scrutiny by

1 the attorneys and the Court because I needed to prove that I was an adequate class representative.
2 Further, I understood that I would lose some autonomy over my individual claims that I could not make
3 decisions for my sole benefit and that I needed to make every litigation decision with the best interests
4 of the Settlement Class in mind.

5 7. I also understood that the pursuing this litigation created a very public record of my
6 grievances with Defendant which produced the risk that a future employer could hold it against me that
7 I sued a former employer.

8 8. I also knew that I was making a sacrifice in that I could have pursued my claims only on
9 an individual basis, likely obtaining a recovery greater than the portion of the class settlement I stand to
10 receive from this settlement. My attorneys explained to me that the net settlement value of my individual
11 claims may be greater than my ultimate recovery from the net class settlement amount.

12 9. Notwithstanding these risks and sacrifices, I decided to go through with the case because
13 I believed violations occurred and most employees would not know what their rights are and even if
14 they did, they would be apprehensive to file a lawsuit against their employer for fear of retaliation.

15 10. During the lawsuit I communicated on a regular basis with my attorneys. I reviewed status
16 updates from my attorneys and court filings on a regular basis, and spoke to my attorneys on the phone,
17 because I wanted to keep up with developments in the case which I understood was one of my duties as
18 a class representative.

19 11. **Review and Approval of Settlement:** A mediation was held on June 7, 2022. Even
20 though I could not attend, I was available by telephone to speak with my attorneys and did speak with
21 them regarding the mediation before it took place, as well as during the mediation itself. I also spoke
22 with my attorneys after the mediation and discussed the mediator's proposal which was ultimately
23 accepted. I was very satisfied with the terms of the settlement that was agreed to by the parties. I
24 reviewed and signed the Memorandum of Understanding on March 16, 2022, and when the settlement
25 papers were ready, I again spoke with my attorneys and reviewed the settlement agreement which I
26 signed on September 2, 2022, and when the settlement papers were ready, I signed on November 1,
27 2022.
28

1 12. **Broad General Release:** I understand that the Class Representative Service Payment is
2 intended, in part, to compensate me for my release of the Released Class Claims. Additionally, unlike
3 the other Class Members, I also granted Defendant a broad general release and waiver of claims pursuant
4 to California Civil Code section 1542 and released Defendant from all claims, transactions, or
5 occurrences that occurred through the date this Agreement is fully executed, including, but not limited
6 to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the
7 Operative Complaint and (b) all claims related to her alleged employment with Defendant; (c) all PAGA
8 claims that were, or reasonably could have been, alleged based on facts contained in the Operative
9 Complaint, Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any
10 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
11 disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or
12 based on occurrences outside the Class Period. However, included in this release are claims for wrongful
13 termination under California Labor Code Section 132(a) and serious and willful claims. Plaintiff
14 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law
15 that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be
16 and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's
17 discovery of them.

18 13. **Participation:** Since I retained Class Counsel approximately twenty months ago, I have
19 been actively involved with this class action lawsuit performing the duties described above. While I did
20 not keep formal time records, I was in regular contact with my attorneys, attended hearings, reviewed
21 important court filings, and spent considerable time on the issues presented during the litigation and in
22 the settlement process. I estimate that I spent approximately 15-20 hours working on this case.

23 14. Also, my attorneys explained to me that the settlement process involved a two-step review
24 by the Court to determine whether the settlement was fair before ordering that the settlement be funded
25 and paid. I knew this process also involved notifying all class members of the settlement terms and of
26 their rights to make a claim for their settlement share, to opt out of the settlement or to object to the
27 settlement.
28

15. Ultimately, I believe I did the right thing in pursuing this case on behalf of the class who now stand to receive substantial monetary payments as a result of this case and settlement. I also believe that the requested Class Representative Service Payment in the amount of \$10,000 from the settlement is fair compensation for the (1) the broad general release I executed, (2) the work I performed, (3) the sacrifices made not pursuing this case individually, and (4) the risks I undertook.

16. In light of all the time and effort I have spent on this case, the sacrifice I have made, the risks I undertook by suing a former employer, the exposure to being responsible for paying Defendant's costs in the event we did not win the case, and in light of the size of the settlement, I believe the request for \$10,000 as a service award is fair and reasonable.

17. Further, I support my attorneys' application for a Class Counsel Fee and Litigation Expenses Payment in the amount of \$73,333.33, comprised of \$53,333.33 for attorneys' fees (one-third of the Gross Settlement Amount) and up to \$20,000 for reimbursement of actually incurred litigation expenses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on Feb 23, 2023, at Tt, California.

By:  Tyra Foler (Feb 23, 2023 13:59 PST)

TYRA TOLER