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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA BARBARA

ROBERT BARAY, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

CURATION FOODS, INC, a Delaware
Corporation; LANDEC CORPORATION, a
Delaware Corporation; and DOES 1 through
50, Inclusive;

Defendants.

Case No. 21CV02834

**DECLARATION OF ROBERT BARAY IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: August 29, 2023
Time: 8:30 a.m.

Judge: Hon. James F. Rigali
Dept.: 2

1 I, ROBERT BARAY, declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am the named Plaintiff in the above
4 wage and hour class action filed against CURATION FOODS, INC. and LANDEC CORPORATION
5 (hereinafter "Defendants").

6 2. This declaration is being submitted in support of Plaintiff's motion for Final Approval of
7 Class Action and PAGA Settlement.

8 3. I retained Class Counsel in April 2021 and filed the lawsuit in July 2021. I filed the case
9 on behalf of myself and a class of current and former non-exempt California employees employed by
10 Defendants during the period from July 16, 2017 to June 6, 2022.

11 4. I worked for Defendants as a non-exempt employee in Santa Barbara County from March
12 of 2013 to July of 2020.

13 5. I filed the case because I believed my rights as an employee were violated by Defendants
14 and also the rights of other employees that worked for Defendants. Among other claims, I believe
15 Defendant failed to pay me for all time worked, including overtime compensation, and failed to provide
16 legally compliant meal and rest periods.

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

22 7. During these conversations, I learned about my responsibilities as the plaintiff in the
23 lawsuit and as the proposed Class Representative. I understood that pursuing this action as a class
24 action rather than merely seeking my individual claims substantially increased the risk to me. Those
25 risks included the possibility of being held liable for Defendants' attorneys' fees and costs in a complex
26 class action if I lost the case. I also understood that as the Class Representative, I would be under
27 increased scrutiny by the attorneys and the Court because I needed to prove that I was an adequate class
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1 representative. Further, I understood that I would lose some autonomy over my individual claims that
2 I could not make decisions for my sole benefit and that I needed to make every litigation decision with
3 the best interests of the Settlement Class in mind.

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

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

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

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

18 12. **Review and Approval of Settlement:** A mediation was held on June 6, 2022. Even
19 though I could not attend, I was available by telephone to speak with my attorneys and did speak with
20 them regarding the mediation before it took place, as well as during the mediation itself. I also spoke
21 with my attorneys after the mediation and discussed the proposed settlement. I was very satisfied with
22 the terms of the settlement that was agreed to by the parties. When the settlement papers were ready, I
23 again spoke with my attorneys and reviewed the settlement agreement which I signed on August 9,
24 2022.

25 13. **Broad General Release:** I understand that the Class Representative Service Award is
26 intended, in part, to compensate me for my release of the Released Class Claims. Additionally, unlike
27 the other Class Members, I also granted Defendants and the Released Parties a broad general release
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1 and waiver of claims pursuant to California Civil Code section 1542 and released Defendants and all
2 additional Released Parties from all claims, demands, rights, liabilities and causes of action of every
3 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
4 whether in tort, contract, or for violations of any federal, state or other governmental statute, law,
5 regulation or ordinance.

6 14. **Participation:** Since I retained Class Counsel over two years ago, I have been actively
7 involved with this class action lawsuit performing the duties described above. While I did not keep
8 formal time records, I was in regular contact with my attorneys, reviewed important court filings, and
9 spent considerable time on the issues presented during the litigation and in the settlement process. I
10 estimate that I spent approximately 20 to 30 hours working on this case.

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

16 16. Ultimately, I believe I did the right thing in pursuing this case on behalf of the class who
17 now stand to receive substantial monetary payments as a result of this case and settlement. I also
18 believe that the requested Class Representative Service Award in the amount of \$17,500.00 from the
19 settlement is fair compensation for the (1) the broad general release I executed, (2) the work I
20 performed, (3) the sacrifices made not pursuing this case individually, and (4) the risks I undertook.

21 17. In light of all the time and effort I have spent on this case, the sacrifice I have made, the
22 risks I undertook by suing a former employer, the exposure to being responsible for paying Defendants'
23 costs in the event we did not win the case, and in light of the size of the settlement, I believe the request
24 for \$17,500.00 as a service award is fair and reasonable.

25 18. Further, I support my attorneys' application for a Class Counsel Award in the amount of
26 up to \$165,000.00, plus costs and expenses of up to \$20,000.00 for reimbursement of actually incurred
27 litigation expenses.

1
2 I declare under the penalty of perjury under the laws of the State of California that the foregoing
3 is true and correct. Executed Jul 26, 2023, at Santa Maria, California

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5 By: Robert Baray
6 [Robert Baray \(Jul 26, 2023 14:09 PDT\)](#)
7 ROBERT BARAY
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