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8 Attorneys for Plaintiff
9 FLORIN VRANCEANU

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN DIEGO**

13 FLORIN VRANCEANU, Individually and
14 On Behalf of All Others Similarly
Situating,

15 Plaintiff,

16 vs.

17 MERCK, SHARP & DHOME CORP, a
18 New Jersey Corporation, and and DOES 1
through 25, Inclusive,

19 Defendants.
20
21
22
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Lead Case No.
37-2020-00011926-CU-OE-CTL
(Consolidated with Case No
37-2020-00018042-CU-OE-CTL)

Hon. Timothy B. Taylor
Dept. C-72

DECLARATION OF ATTORNEY
ROBERT A. WALLER, JR., IN
SUPPORT OF PLAINTIFFS' MOTION
FOR (1) PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT, (2)
PROVISIONAL CLASS
CERTIFICATION, (3) APPROVAL OF
NOTICE PLAN, AND (4) TO SET
HEARING RE: FINAL APPROVAL OF
SETTLEMENT

[IMAGED FILE; MANDATORY E-FILE]

HEARING:

DATE: April 8, 2022
TIME: 1:30 p.m.
DEPT: C-72

1 I, Robert A. Waller, Jr., hereby declare under penalty of perjury:

2 1. I am an attorney licensed to practice before all courts of the State of California
3 and a member of the California Bar in good standing. I am co-counsel for plaintiff FLORIN
4 VRANCEANU in this action. I make this declaration in support of Plaintiff's motion for
5 preliminary approval of settlement. I have personal knowledge of the following facts and
6 if called to testify would testify as follows.

7 2. After substantial investigation, including propounding discovery which
8 consisted of Form Interrogatories, three sets of Special Interrogatories, two sets of Requests
9 for Admission, four sets of Requests for Production, and two deposition notices for
10 Person(s) Most Qualified from Defendant Merck, and after reviewing employee records
11 including payroll data and voluminous Excel spreadsheets provided by Defendant
12 containing detailed information of dates of separation, numbers of days between
13 separation and payment of vacation wages, and amounts paid, and providing a detailed
14 analysis of the claimed violations to Defendant's counsel, the parties, through counsel,
15 began settlement discussion. Counsel for the respective parties engaged in settlement
16 discussions directly in part to avoid unnecessary expenses associated with private
17 mediation. All settlement discussions were conducted arms-length and liability was
18 disputed by Defense counsel throughout the negotiations. The Settlement Agreement,
19 which is the result of considerable arm's-length negotiations, is fair, adequate and
20 reasonable and provides a specific, defined benefit to the class. The Settlement Agreement
21 and proposed Notice are attached as Exhibit 1 to the Declaration of Attorney Robert
22 Radulescu filed concurrently herewith.

23 3. Defendant's verified discovery responses and informal data provided confirm
24 the number of potential class members who were employed by Defendant Merck during
25 the class period and who were not timely paid vacation wages upon separation..
26 According to Defendant's verified responses to discovery, and detailed employee data
27 provided, there were identified to be 160 affected employees.

1 4. The complaint alleges Defendant denied members of the class timely
2 payment of vacation wages in violation of California Labor Code sections 201, 202, 227.3,
3 and an entitlement to waiting time penalties pursuant to California Labor Code section 203.
4 The waiting time penalties to which any employee are limited are to the number of days
5 they were not paid with a maximum of 30 days. Thus, in a case such as this the penalties
6 to be recovered are essentially capped. And, all employees were eventually paid their
7 accrued vacation wages, just not timely.

8 5. After arm's-length negotiation between counsel the parties have decided to
9 reach a settlement of this action where Defendant Merck has agreed to pay Nine Hundred
10 Twenty-Five Thousand dollars (\$925,000.00) to settle all class and PAGA claims. Based on
11 discovery responses and documents produced by Defendant Merck the estimated full
12 amount of recoverable damages and penalties is approximately One Million Three
13 Hundred Thousand dollars (\$1,300,000.00). The settlement equates to a recovery of
14 approximately 71% of the total recoverable damages and penalties.

15 6. The settlement takes into account the risk, expense, and complexity of further
16 litigation. Should the settlement not be approved Plaintiffs would have to incur additional
17 costs of retaining experts regarding human resources issues surrounding the various
18 alleged failure to pay timely vacation wages upon separation of employment, and an
19 economist expert to perform an economic analysis of the economic damages, if any,
20 suffered by the employees. Based on the relatively small number of employees in the
21 settlement class (+/- 160) the number of provable violations in relation to the amount being
22 paid by Defendant to settle the action, spending the additional money for these experts will
23 likely not result in any meaningful increase in the pro rata recovery for the settlement class
24 and may more likely reduce the overall monetary recovery received by any employee after
25 payment of costs for experts. Moreover, should the settlement not be approved and the
26 case proceed to trial additional costs will be incurred which will likely not result in any
27 meaningful increase in overall recovery to the members of the settlement class.

1 7. Pursuant to the settlement agreement Defendant will not oppose a request
2 for payment of attorney fees and reimbursement of costs up to Thirty-Three and One-Third
3 percent (33 1/3%) of the \$925,000 gross settlement amount, or the equivalent of \$308,333.33,
4 inclusive of reimbursable expenses. In addition, Defendant has agreed to not oppose a
5 request for an enhancement payment to Plaintiff FLORIN VRANCEANU in an amount not
6 to exceed \$10,000.

7 8. Should the court approve payment of maximum attorney fees and costs, plus
8 the maximum \$10,000 enhancement payment to Plaintiff Fierro that would leave a net
9 amount of \$606,666.67 for distribution to the settlement class.

10 9. Pursuant to the settlement agreement class members will recover their
11 proportionate share of the net settlement amount based on the number of days they were
12 not paid vacation wages timely upon separation. Given there are approximately 160
13 members in the settlement class if each employee were to receive the same amount they
14 would recover approximately \$3,854.16 each.

15 10. Moreover, the settlement is non-reversionary. Therefore, depending on how
16 many class members elect to opt-out the amount recovered by the settlement class could
17 be greater.

18 11. In exchange for this Settlement Payment, each Participating Class Member
19 will release their claims as alleged in the action.

20 12. The putative class will be informed of the proposed settlement by way of the
21 Notice of Class Action Settlement (“Notice”) which will advise them of the claims to be
22 released by the proposed Settlement. The Notice will further advise the Class of their
23 rights to automatically be included in the settlement, their right to object to the settlement,
24 or to request exclusion from the settlement, and the procedures and timing for doing so.
25 It will also advise them of the Final Fairness hearing date and the names, addresses, and
26 telephone numbers of those whom class members may contact in the event they have any
27 questions.

1 13. Phoenix Settlement Administrators (“Phoenix”) (or whomever is appointed
2 by the Court to administer the class settlement) will act as the Settlement Administrator
3 selected by the Parties. The costs of administration will be paid by Defendant Merck in
4 additional to the gross settlement amount; this adds additional financial benefit to the class
5 as those expenses will not be deducted from the settlement funds for distribution. Within
6 25 business days following entry of the preliminary approval order, Phoenix will mail to
7 each member of the class the Notice approved by the court. Attached hereto as Exhibit “1”
8 and incorporated by this reference is a copy of the proposed Notice.

9 14. Because this is a common fund settlement no claim form will need to be
10 return by any class member to participate in the settlement. Class Members will have 45
11 days from the initial mailing date to request exclusion or to object to the settlement. This
12 process ensures the best possible notice to the settlement class.

13 15. The proposed Notice will identify the individual Class Member's Estimated
14 Days during the Class Period and the amount of money each may expect to receive. The
15 Notice also includes the scope of the release of claims for both the Class Action Settlement
16 class and the PAGA Settlement Class to be given in exchange for the Settlement Payment
17 should the class member participate in the Settlement.

18 16. Because the amounts being recovered are for alleged penalties and are
19 considered payment of non-wages, the Claims Administrator, or Defendant Merck, will
20 also ensure the settlement class receive the appropriate tax reporting forms, *e.g.*, a Form
21 1099, for the amounts each class member receives.

22 17. Class Counsel is convinced this settlement is in the best interest of the class
23 based on discovery conducted, the negotiations, and a detailed knowledge of the issues
24 and evidence both supporting and adverse to the claims being made in this action. The
25 length and risks of trial and other normal perils of litigation which may have impacted the
26 value of the claims were all weighed in reaching the proposed settlement. In addition, the
27 affirmative defenses asserted by Defendant, the prospect of a potential adverse summary
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1 judgment ruling, proving class certification issues, as well as the uncertainty of class
2 certification, the difficulties of complex litigation, the lengthy process of establishing
3 specific damages and various possible delays and appeals, were also carefully considered
4 by Class Counsel in agreeing to the proposed settlement.

5 18. The Settlement was reached as a result of arm's-length negotiations. Though
6 cordial and professional, the settlement negotiations have been, at all times, adversarial
7 and non-collusive in nature. Indeed, continued good faith but occasionally contentious
8 negotiations were required to ultimately reach agreement. While Class Counsel and
9 Plaintiff believe in the merits of the case, they recognize the inherent risks of litigation and
10 understand the benefits of the class receiving significant settlement funds immediately as
11 opposed to risking an unfavorable decision on class certification, summary judgment, the
12 merits of the case at trial, the damages awarded, and/or the results of any appeal which,
13 in itself, can take several more years to litigate.

14 19. The proposed settlement, subject to the Court's approval, is the product of
15 substantial effort by the Parties and their respective counsel. The settlement was reached
16 following probative factual evaluation of Defendant's relevant policies and procedures, job
17 descriptions, as well as detailed review of the records relating to the putative class
18 members' dates of separation from employment, the date they paid vacation wages, their
19 respective regular rate of compensation for purposes of determining their "daily rate" for
20 purposes of calculating their amount of waiting time penalties.

21 20. The Parties thoroughly investigated and evaluated the factual strengths and
22 weaknesses of this case before reaching the proposed Settlement, and engaged in sufficient
23 investigation and formal and informal discovery to support the Settlement.

24 21. Plaintiff's counsel have significant experience in litigating similar multi-party
25 and/or class actions involving misclassification, overtime, and failure to provide rest/meal
26 period related cases.

1 22. I have been lead or co-lead counsel in approximately 22 jury and court trials
2 in both state and federal courts. I have been lead or co-lead counsel in the following multi-
3 party and/or class action cases:

4 a. *Busby v. Bactes*, San Diego Superior Court, Case No. 37-2014-00022652-
5 CU-MC-CTL, which is a certified class action in which I was appointed class counsel, which
6 proceeded to trial in November 2019 (before Hon. Kenneth J. Medel), and which is
7 currently on appeal on a Petition for Review to the Supreme Court of California (D078204).

8 b. *Navarro v. R&R International Freight Forwarding, Inc.*, San Diego
9 Superior Court, Case No. 37-2017-00014806-CU-WT-CTL, in which I represented the
10 defendant-employer in a class and PAGA action for missed meal periods, missed rest
11 breaks and unpaid overtime and applicable penalties. The case was settled on a class and
12 PAGA basis.

13 c. *In re Waste Management Wage & Hour Cases*, JCCP 4534, San Diego
14 Superior Court, which was a consolidated class action involving claims by drivers denied
15 meal periods and rest breaks as well as allegations that Waste Management unlawfully
16 auto-deducted 30 minutes from each drivers' work hours. The action was settled as a class
17 action.

18 d. *Ryan Greig, et al. v. Pacific Eagle*, United States District Court Southern
19 District of California, Case No. 07-cv-1176 JAH (POR), which was a multi-party action
20 wherein I personally handled the claims of twenty (20) individual security guards claiming
21 a failure to provide meal and rest periods and failing to pay proper overtime. The case was
22 settled on an individual damages basis.

23 e. *Simsisulu, et al. v. Pacific Maritime Association*, United States District
24 Court for the Central District of California, Western Division, Case No. CV99-11175 CBM
25 (RCx), which was a multi-plaintiff case alleging race discrimination. Case was tried to a
26 verdict in binding arbitration before JAMS.

1 f. *Robert Bernabe, et al. v. H&R Block Mortgage Corp., Option One Mortgage,*
2 Orange County Superior Court, Case No. 30-2007-00100296, which was a multi-plaintiff,
3 multi-action case for failure to pay employees earned bonuses. Cases were settled in
4 mediation and directly between counsel.

5 g. *Megan Eldredge, et al. v. Irvine Company Apartment Communities, Inc., et*
6 *al.,* Orange County Superior Court, Civil Complex Center, Case No. 30-2013-00668779-CU-
7 NP-CXC, which was resolved on an individual basis following denial of class certification
8 by the trial court.

9 h. *Kyle Hillis, et al. v. City of Aliso Viejo, et al.,* Orange County Superior
10 Court, Civil Complex Center, Case No. 30-2013-00688926-CU-NP-CXC, which resulted in
11 the City of Aliso Viejo changing an unlawful/unapproved traffic sign resulting in traffic
12 citations to motorists.

13 i. *D'Angelo Santana, et al. v. Rady Children's Hospital - San Diego,* San
14 Diego Superior Court Case No. 37-2014-00022411-CU-MT-CTL [consolidated with
15 *Marceleno v. Rady Children's Hospital - San Diego,* Case No. 37-2014-0022652-CU-MC-CTL],
16 a class action alleging violations of the California Confidentiality of Medical Information
17 Act ("CMIA"), California Civil Code §56, *et seq*, on behalf of 14,121 patients whose
18 information was release. Case settled after class certification and denial of Defendant's
19 motion for summary judgment.

20 23. I am also counsel or co-counsel of record in the following pending class
21 and/or PAGA actions:

22 a. *Jane Doe v. Santa Cruz-Monterey-Merced Managed Medical Care*
23 *Commission, d.b.a. Central California Alliance for Health,* Santa Cruz Superior Court, Case No.
24 20CV02149, a class action alleging violations of the California Confidentiality of Medical
25 Information Act ("CMIA"), California Civil Code §56, *et seq*, on behalf of +/- 35,000
26 patients whose information was release. Case is pending.

1 b. *In re: Scripps Health Data Incident Litigation*, San Diego Superior Court,
2 Case No. 37-2021-00024103-CU-BT-CTL (assigned to Hon. Gregory W. Pollack), a class
3 action alleging violations of the California Confidentiality of Medical Information Act
4 (“CMIA”), California Civil Code §56, *et seq*, on behalf of nearly one million patients whose
5 information was release. Case is pending.

6 c. *Gallardo v. Amazon.com Services, LLC*, U.S.D.C. Southern District of
7 California, Case No. 3:22-cv-00297-LAB-AHG, removed from San Diego Superior Court
8 (Case No. 37-2022-00001593-CU-OE-CTL), a class action alleging mis-classification of Area
9 Managers, failure to pay overtime wages, failure to provide proper wage statements, and
10 failure to provide seating in violation of the California Labor Code and applicable
11 Department of Industrial Relations Wage Order. Case is pending.

12 d. *Kelly Bell v. Scripps Health, Inc.*, San Diego Superior Court, Case No. 37-
13 2022-00005620-CU-OE-CTL (assigned to Hon. Joel R. Wohlfeil), a class action alleging
14 failure to pay timely overtime wages and failure to provide meal periods. Case is pending.

15 e. *Ibolya Radulescu v. Western Union*, U.S.D.C. District of Colorado, Case
16 No. 1:19-cv-03009-SKC, a class action alleging violations of Colorado Consumer Protection
17 statutes for Western Union’s failure to notify customers who sent money that the money
18 they sent was never picked up or redeemed and Western Union retained possession of the
19 funds. Case is pending a ruling on class certification.

20 e. *Leigh-Pink, et al. v. Rio Properties LLC*, U.S.D.C. District of Nevada, Case
21 No. 2:17-cv-02910-GMN-VCF, a consumer class action alleging the Rio All-Suites Hotel
22 concealed from guests the presence of an uncontrolled outbreak of *Legionella* bacteria in the
23 hotel’s water system. Case is pending in the District Court of Nevada with a certified
24 question from the Court of Appeals for the Ninth Circuit pending before the Supreme
25 Court of Nevada (No. 82572).

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1 f. *Gonzalez v. Sweetwater Car Wash, Inc., et al.*, San Diego Superior Court,
2 Case No. 37-2021-00020303-CU-OE-CTL (assigned to Hon. Gregory W. Pollack), a class
3 action and PAGA claim, in which I represent the defendant-employer, alleging claims for
4 missed rest breaks, missed meal periods, unpaid overtime and applicable penalties. Case
5 is pending.

6 24. Both Plaintiff's counsel and Defendant's counsel, Alexander Grodan, of
7 Morgan, Lewis & Bockius LLP, are particularly experienced in wage and hour employment
8 law and class actions. Class counsel having prosecuted numerous cases on behalf of
9 employees for California Labor Code violations, are experienced and qualified to evaluate
10 the Class claims and to evaluate settlement versus trial on a fully informed basis, and to
11 evaluate the viability of the defenses.

12 25. Counsel on both sides share the view that this is a fair and reasonable
13 settlement in light of the complexities of the case, the state of the law and uncertainties of
14 class certification and litigation, and the excellent benefit for the Class. Given the risks
15 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and
16 reasonable and in the best interests of the class, and should be preliminarily approved.

17 26. Based upon the foregoing, the proposed non-reversionary, common fund
18 Settlement of \$925,000, and with Defendant agreeing to pay the costs of claims
19 administration, is well within the "ballpark" of reasonableness and should be preliminary
20 approved.

21 I declare under penalty of perjury under the laws of the State of California the
22 foregoing is true and correct.

23 By,

24 Dated: March 11, 2022

/s/ Robert A. Waller, Jr.
ROBERT A. WALLER, JR.
Attorney for Plaintiff FLORIN
VRANCEANU and all others similarly
situated