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Others Similarly Situated

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAUNA BARNARD, an individual, on
behalf of herself and all others similarly
situated, all other aggrieved employees, and on
behalf of the general public,

Plaintiff,

v.

COREPOWER YOGA LLC, a Colorado
Limited Liability Company, and DOES 1
through 50, Inclusive,

Defendant.

Case No. 4:16-cv-03861 (HSG)

HON. HAYWOOD S. GILLIAM, JR.
Courtroom: 2 - Oakland Courthouse, 4th Floor

CLASS ACTION

**DECLARATION OF DAVID C. HAWKES
IN SUPPORT OF UNOPPOSED MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES AND CLASS
REPRESENTATIVE SERVICE AWARD**

Hearing Date

Date: February 15, 2018
Time: 2:00 p.m.

1 I, DAVID HAWKES, declare as follows:

2 1. I am a partner at the law firm of Blanchard Krasner & French, counsel of record
3 for the Plaintiff in this matter. The following facts are within my own personal knowledge, and
4 if called as a witness, I could testify competently to the matters stated herein.

5 2. Prior to filing the Complaint in this matter, I conducted research and made
6 inquiries regarding the factual and legal bases for the allegations alleged, including an analysis
7 of Defendant's written policies and requirements concerning yoga class preparation, use of
8 music, scheduling between different studios, reimbursement of reasonable business expenses,
9 pay policies, meal breaks, and the actual practices followed in the field.

10 3. After the action was filed, formal discovery revealed more about the facts and
11 circumstances that led to this litigation and the amount of damages suffered by class members.
12 Such discovery and investigation included: the propounding of written discovery
13 (interrogatories and requests for production); extensive meet and confer efforts regarding
14 deficiencies with Defendant's responses; the deposition of Defendant's 30(b)(6) witness
15 covering 13 distinct topics related to liability; the production by Plaintiff of nearly two thousand
16 pages of requested documents; the defense of Plaintiff in deposition on November 2, 2016;
17 discussion with class members about facts and circumstances related to the alleged class claims;
18 and conducting detailed analysis of unpaid minimum wage/off-the-clock time (such as travel
19 time between studios, preparation of music playlists, yoga sequences, themes, reading and
20 responding to corporate communications, and unpaid work performing required duties relating to
21 "programming"), meal period violations, rest break violations, unreimbursed business expenses
22 (such as mileage travelled between studios, music subscription services, cell phone and/or music
23 storage and playback devices) incurred by class members and the value of same.

24 4. I recognize the significant expense, delay, and risk of continuing to litigate this
25 Class Action against Defendant through class certification, trial, and possible appeals, which
26 could take several years. Class Counsel has also taken into account the uncertain outcome and
27 risk of litigation, especially in complex wage and hour class actions involving meal and rest
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1 break violations and unpaid wages/"off the clock" claims, such as this litigation. Class Counsel
2 is aware from colleagues and research of numerous class actions involving such claims that have
3 resulted in minimal or no recovery and/or taken five years or longer to achieve any recovery
4 whatsoever. Class Counsel is also mindful of and recognizes the inherent problems of proof
5 related to, and alleged defenses to, the claims asserted in the Action.

6 5. Defendant has steadfastly and vigorously asserted throughout that its policies and
7 practices complied at all times with all applicable wage and hour laws, that its yoga instructors
8 were properly paid and provided meal periods and rest breaks, and that Plaintiff was (at best) in a
9 unique situation that lead to any violations that she suffered. If Defendant is successful in
10 proving any of its viable defenses, it would successfully preclude or significantly limit any
11 recovery on all class claims. Defendant's legal and factual arguments have merit and could very
12 possibly succeed in reducing or precluding class damages on some, many, or all claims in this
13 matter and Plaintiff would certainly face significant barriers and impediments in achieving and
14 maintaining class certification and proving liability and damages. Lastly, even if Plaintiff was
15 successful in achieving class certification and at trial, there is a significant risk that Defendant
16 would appeal the judgment and, at best, delay the resolution of this matter for several years (at
17 worst, an appeal may reverse any favorable judgment obtained by Plaintiff).

18 6. I considered the expense and length of continued proceedings necessary to
19 continue the action against Defendant through class certification, trial and any possible appeals.
20 I concluded that further litigation would be protracted and complex and, accordingly, very
21 expensive. Specifically, if the Parties failed to reach a settlement and litigation proceeded, I
22 conservatively estimate additional attorneys' fees and costs incurred could exceed \$500,000 just
23 for Plaintiff's counsel (and Defendant would also likely incur a similar amount). Further, any
24 appeal would cause further delay and expense. Proceeding with the litigation through trial (and
25 possible appeal) would have been quite risky and expensive, and even if a settlement were
26 reached after many more months of litigation, the attorneys' fees and costs of litigation might
27 have caused Defendant to decrease what it was willing to offer. Thus, in reaching the Settlement
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1 the Parties avoided considerable additional attorneys' fees and costs that would have been
2 incurred if this matter proceeded to trial (and possible appeal).

3 7. I believe it is more likely than not that Plaintiff could successfully achieve class
4 certification, establish liability, and prove damages for at least some of the alleged claims (and
5 possibly most or all claims). However, the barriers to recovery and risks and uncertainties of
6 further litigation are significant and achieving class certification and proving liability and
7 damages is by no means a certainty. In fact, doing so would very likely prove difficult and
8 Plaintiff would face significant obstacles and barriers to any recovery, let alone one that exceeds
9 the Settlement amount. CPY believes that Plaintiff would be unable to establish liability on most
10 or all claims and, in any case, the amount of damages provable at trial is far less than Plaintiff
11 asserts. For example, Defendant asserts that it properly provided meal periods to all of its yoga
12 instructors, properly authorized and permitted all of its yoga instructors to take rest breaks, its
13 policy required all yoga instructors to record all time worked in the timekeeping system and that
14 all such time would be (and was) paid, its policies did not require yoga instructors to incur work-
15 related expenses (including mileage), yoga instructors did not incur work-related travel or other
16 expenses (at worst, only a very few did and an individual inquiry is necessary to determine),
17 yoga instructors were properly paid for all hours worked and all required work could be
18 accomplished during their work shifts, and that the derivative claims of inaccurate wage
19 statements and waiting time penalties must fail if liability is not established on the predicate
20 violations and/or any violation was not willful or intentional because a "good faith dispute"
21 existed regarding any unpaid amounts proven to be owed.

22 8. Defendant has also consistently and steadfastly asserted that Plaintiff would be
23 unable to achieve class certification on any of the class claims. If litigation continued, Defendant
24 would contest class certification by arguing that individualized inquiries predominate over
25 common issues regarding whether a particular Class Member suffered any of the alleged
26 violations, thus precluding certification. Defendant would also argue that there exists no common
27 unlawful policy, Plaintiff could not prove that class treatment would be manageable, and/or
28 Plaintiff's claims are atypical of the claims alleged because she was uniquely situated. These

1 viable arguments present a serious threat to Plaintiff's chances of achieving class certification in
2 this litigation and are well-supported by applicable authority. I evaluated and considered
3 Defendant's well-supported and potentially viable arguments, the resulting considerable risks of
4 achieving class certification and maintaining certification through trial, in settling this matter.

5 9. Defendant is confident that Plaintiff would be unable to achieve class
6 certification. Further, even if class certification is achieved for some or all claims, Defendant
7 strongly believes Plaintiff will not be able to establish liability or prove the full amount of
8 damages claimed. If Defendant is successful in defeating class certification and/or liability,
9 Plaintiff and the Class Members would receive nothing.

10 10. I am a 2002 graduate of the University of San Diego School of Law, admitted to
11 practice before the United States District Court (Southern District, Northern District, and Central
12 District of California), Ninth Circuit Court of Appeal, and all California State Courts. Proposed
13 Class Counsel Blanchard Krasner & French has extensive experience litigating wage and hour,
14 employment, and class action matters, including certification of many classes and approval of
15 many class settlements. The firm represents both plaintiffs and defendants in complex class
16 action litigation, including wage and hour and employment matters, as well as advising and
17 representing individual clients regarding wage and hour and other employment matters.
18 Additionally, both with Blanchard Krasner & French and previous law firms, I personally have
19 extensive experience in employment and consumer class action and representative litigation
20 matters, including cases against defendants such as FH Paschen/FHP Techtonics/SN Nielsen,
21 Coldwell Banker, Pacific Aggregates, Press Enterprise, Prudential, Re/Max, San Diego Padres,
22 AOL/Time Warner, Daimler/Chrysler, Broadcom, Cathy Jean, CorePower Yoga (San Diego
23 Superior Court/U.S. District Court - Southern District of California in 2011), Fry's Electronics,
24 and Nifty After Fifty, as well as defending class action cases against such companies as
25 Comprehensive Educational Services (d/b/a "ACES") and Roadrunner Sports. I have also
26 prosecuted (and defended) numerous employment claims to successful resolution on behalf of
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1 individual and joined plaintiffs, in state court, federal court, and before the California Labor
2 Commissioner.

3 11. To assure that this case was properly prosecuted, my firm had to devote
4 substantial time and resources, which precluded our ability to take on other potential fee-
5 generating cases. In addition to significant litigation expenses and lost opportunities with other
6 matters, and the risks taken by accepting this case on a contingency basis, to date, I have spent
7 420.9 hours litigating this case. My reasonable hourly rate is \$495/hr. I expect additional hours
8 to be incurred to secure final approval of the settlement, to take steps to assure compliance with
9 the notice to the class, respond to class member inquiries, achieve final approval, and otherwise
10 handle settlement administration issues that may arise. Thus, the current lodestar for Blanchard
11 Krasner & French totals \$208,345. The time spent on this matter has not been compensated.

12 12. My reasonable hourly rate for my time on this wage and hour class action is
13 \$495/hr. My reasonable hourly rate of \$495 was recently approved in a similar wage and hour
14 class action in August 2017 by Hon. Richard E.L. Strauss in *Cardinal v. Nifty After Fifty LLC*,
15 Case No. 37-2015-00015664-CU-OE-CTL. I understand my current hourly rate of \$495/hr. is
16 consistent with (or even below) the rates of class counsel and employment law practitioners of
17 similar experience litigating cases in San Francisco and/or the Northern District of California.
18 Moreover, my rate is consistent with the market, as it is the same rate that is charged to and paid
19 by the firm's clients who are billed for services on an hourly basis for, among other matters,
20 defending employment litigation and class action litigation and advising regarding employment-
21 related issues.

22 13. Hours expended by Blanchard Krasner & French ("BKF") in this matter are
23 reasonable given the complexity and volume of the claims and defenses in this litigation, as well
24 as the fact it was contentiously litigated for over one year and has required additional time to
25 negotiate, finalize, and obtain preliminary approval, as well as prepare for and achieve final
26 approval. The reasonableness of BKF's hours is further supported by the fact that Defendant has
27 employed a well-known, nationally-recognized, and well-respected employment and class-action
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1 defense firm from San Francisco (Drinker Biddle & Reath LLP) that is highly-skilled in
2 defending complex employment class actions. Further, Defense Counsel has consistently
3 simultaneously assigned three attorneys to the matter, including a highly-experienced and skilled
4 partner with nearly 30 years of experience (Cheryl Orr, Esq.) and two additional highly-
5 experienced and skilled attorneys with 7+ and 5+ years of experience.

6 14. The case was accepted on a contingency fee basis and my firm advanced and
7 risked litigation expenses for more than a year. Specifically, my firm incurred out-of-pocket
8 costs, including filing fees of \$1,628.21, mediation fees of \$4,000, travel expenses of \$3,724.81,
9 service of process of \$245.85, and overnight delivery charges of \$63.58, and other necessary
10 litigation expenses. These litigation expenses currently total \$9,662.45. Additional litigation
11 expenses are expected to be incurred to achieve final approval. All of these costs are normally
12 billed to and paid by the firm's hourly-paying clients. These costs were reasonably incurred in
13 the prosecution and resolution of this matter, but have not been reimbursed. BKF incurred these
14 out-of-pocket expenses without any assurance they would be repaid.

15 15. Due to the high stakes involved in terms of the merits issues, class actions are
16 vigorously defended and this case was no exception. In addition to significant costs and lost
17 opportunities with other matters, and the risks taken by accepting this case on a contingency
18 basis, this case involved in excess of four-hundred twenty (420) hours of BKF's attorney time,
19 including but not limited to pre-filing investigation, discovery, meetings and communications,
20 research and analysis, and: 1) pre-filing investigation and research; 2) drafting of pleadings; 3)
21 depositions and planning and preparation therefore, drafting extensive discovery requests for
22 documents and information from Defendant for purposes of evaluating and investigating the
23 class claims and damages; 4) meeting and conferring with Defense counsel on numerous
24 occasions regarding discovery issues, disputes, and requests for information and documents; 5)
25 obtaining and thoroughly analyzing thousands of pages of relevant documents, including
26 policies, procedures, manuals, payroll and time records; 6) drafting a lengthy mediation brief and
27 settlement conference briefs, and preparing for mediation and settlement conference; 7)
28 numerous lengthy meetings and conferences with Plaintiff over the course of the litigation; 8)

1 engaging in lengthy pre-settlement conference negotiations, attending a full-day settlement
2 conference and, thereafter, follow-up negotiations for several months; 9) engaging in lengthy
3 pre-mediation settlement negotiations, attending a full-day mediation and, thereafter, follow-up
4 negotiations; 10) voluminous and continuous research regarding the changing legal authority and
5 complex issues that arose during the litigation; 11) engaging in post-mediation negotiation and
6 discussion to finalize settlement documents; 12) preparing appropriate settlement documents,
7 including the Memorandum of Understanding, Settlement, proposed Class Notice, and
8 Preliminary Approval Motion; 13) work with the settlement administrator and Defense Counsel
9 to accomplish dissemination of Class Notice and settlement administration matters; 14)
10 communications with Class Members; 15) prepare the Motion For Attorneys' Fees and Costs
11 and planned attendance at the hearing on Motion for Award of Attorneys' Fees and Costs; and
12 (16) all other actions necessary to vigorously prosecute this class action over a period of more
13 than two years and produce the significant benefit this Settlement brings to the Class Members.

14 16. BKF undertook this litigation on a wholly contingent basis. From the outset,
15 Class Counsel understood it was embarking on a complex, expensive and lengthy litigation with
16 no guarantee of ever being compensated for the large investment of time and money the case
17 would require. In undertaking that responsibility, BKF was obligated to assure that sufficient
18 resources were dedicated to the prosecution of this litigation and that funds were available to
19 compensate staff and the considerable out-of-pocket costs that a case such as this entails.

20 17. Because of the nature of a contingent practice involving complex litigation lasting
21 several years, not only do contingent litigation firms have to pay regular overhead, but they also
22 have to advance the expenses of the litigation. With an average lag time of two to four years for
23 these cases to conclude, the financial burden on contingent counsel is far greater than on a firm
24 that is paid on an ongoing basis. As described in more detail hereinabove, from the outset, this
25 litigation presented a number of unique risks and uncertainties that could have prevented any
26 recovery whatsoever (and continue to present such risks if the Court denies final approval).

