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JANNIKA SCHAKOW, on behalf of herself,
and all others similarly situated,

Plaintiffs,

v.

LERNER NEW YORK, INC. dba NEW YORK
& COMPANY; NEW YORK & COMPANY,
INC., dba NEW YORK & COMPANY; and
DOES 1-10, inclusive,

Defendants.

Case No. C-08 01145

**DECLARATION OF HUNTER PYLE IN
SUPPORT JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Date: May 28, 2009
Time: 9:00 a.m.
Dept.: 6
Judge: Hon. David Flinn

1 I, Hunter Pyle, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and a partner at
3 the law firm of Sundeen Salinas & Pyle (“SSP”), in Oakland, California. I am co-counsel of record
4 for the named plaintiff JANNIKA SCHAKOW (“Plaintiff” or “Class Representative”) and the
5 proposed settlement class (“Class” or “Class Members”) in this lawsuit (“Action”). I have personal
6 knowledge of the facts set forth in this declaration and could and would testify competently to
7 them.

8 **TERMS OF THE SETTLEMENT AND ADMINISTRATION**

9 2. Attached hereto as Exhibit 1 is a true and correct copy of the Joint Stipulation of
10 Settlement and Release Between Plaintiff and Defendant (“Settlement”) in this action. The
11 Settlement resolves all of Plaintiff’s claims against defendant LERNER NEW YORK, INC.
12 (“Defendant”) as well as all of the Class Members’ claims related to alleged missed meal and rest
13 break periods, including waiting time penalties, interest, and other penalties under federal and state
14 law.

15 **BACKGROUND AND EXPERIENCE OF PLAINTIFFS’ COUNSEL**

16 3. In 1997, I received a J.D. degree from Boalt Hall School of Law at the University of
17 California at Berkeley. While in law school, I received awards in the following classes: Evidence
18 Advocacy, Labor Law, Negotiations and Criminal Trial Practice. I was one of the leaders of the
19 Boalt Hall mock trial team that competed at the regional NITA mock trial competition. I also
20 served as a Director of the Boalt Hall Workers Rights Clinic.

21 4. As a law student, I clerked for Professor David Feller, one of the premier scholars in
22 the field of labor and employment law. I also worked as a law clerk at Eggleston, Siegel &
23 Lewitter; Beeson, Tayer & Bodine; and Davis, Cowell & Bowe. Each of these firms represents
24 employees in the labor and employment context.

25 5. I have been practicing law since December 1997. From December 1997 through
26 October 2003, I was an associate at Siegel & Yee, in Oakland, where I focused my practice mainly
27 on employment law. In that capacity, I was the primary attorney for numerous employment law
28

1 cases that resolved prior to trial, handling all aspects of these cases. Additionally, I served as
2 second chair in approximately ten trials.

3 6. In 2001, 2002, and 2003, I organized and presented at the annual trial practice
4 seminars entitled "Litigating for Social Justice." Among other topics I addressed were closing
5 arguments and cross-examination of hostile witnesses.

6 7. In October 2003, I left Siegel & Yee and became a partner at Sundeen Salinas &
7 Pyle. Since that time, most of my cases have involved employment law, and many of them have
8 involved wage and hour matters. Over the past five years, I have tried five state court cases (one of
9 which was in limited jurisdiction) and three federal cases to verdict.

10 8. I represented Latoya Jackson in a class action lawsuit brought against her former
11 employer for missed meal and rest breaks. This case was settled in 2007 for \$1,100,000. *Jackson*
12 *v. ACE* (Alameda County Superior Court case no. RG05241698).

13 9. I represented plaintiffs and the class in *Beasley, et al., v. Allied Cash Advance*
14 (Alameda County Superior Court Case No. 07359698), a wage and hour class action. This case
15 was settled for \$400,000.

16 10. I am counsel of record in several other pending class actions, including *Brown et al.*
17 *v. G.S. May* (United States District Court, Northern District of California case no. C08-05446);
18 *Randolph et al. v. AT&T Wireless Services, Inc., et al.* (Alameda County Superior Court case no.
19 RG05193855) (class certified); and *Janda et al. v. T-Mobile USA, Inc.* (United States District
20 Court, Northern District of California case no. C 05-03729 JSW).

21 11. In both 2006 and 2007 I organized and facilitated two CLEs regarding class actions
22 in Alameda County. The faculty for both of these CLEs were the Honorable Ronald Sabraw, the
23 Honorable Robert Freedman, Walter Stemmler and Phillip Obbard (2006); and the Honorable
24 Bonnie Sabraw, the Honorable Robert Freedman, Walter Stemmler and Phillip Obbard (2007). In
25 2008 I was a panel speaker at the California Employment Lawyers Association's annual
26 convention.
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- 1 ▪ NY&CO's provision of training of Class Members their supervisors regarding the
2 implementation, and enforcement of meal period and rest break policies and procedures in
3 California during the Class Period
- 4 ▪ Audits, complaints, or investigations regarding NY&CO's meal or rest break policy or
5 practice; and
- 6 ▪ NY&CO's time keeping system and time keeping records, and policies and procedures
7 regarding time keeping as applied or communicated to Class Members.

8 16. In preparation for mediation and in the context of meeting and conferring over
9 document production, Plaintiff requested, and NY&CO provided, a sample of data regarding class
10 size, compensation levels, work schedules, and time records showing when meal and rest periods
11 were taken by Class Members. These records showed, among other things, how often the sampled
12 employees were working as the only manager on duty or as one of only two employees on duty.
13 They also showed whether the sampled Class Members punched out for meal and rest periods, and
14 pay rates for the class positions at issue.

15 17. Plaintiff then retained Hemming Morse, a forensic accounting firm, to analyze
16 NY&CO's data. Hemming Morse reviewed the sample data and provided Plaintiff with an
17 accurate estimate of NY&CO's potential exposure for missed and rest breaks and waiting time
18 penalties if Plaintiff were to prevail on a classwide basis on all claims. Hemming Morse then
19 created detailed analyses of the potential damages in this case.

20 18. Plaintiff provided Hemming Morse's analysis to NY&CO and the mediator, and
21 further provided computations of potential exposure for itemized wage statement violations and
22 various potential subclass outcomes.

23 19. On December 11, 2008, the parties mediated this case with David Rotman of
24 Gregorio Haldeman Piazza Rotman Frank & Feder in San Francisco. After a full day of mediation
25 the parties entered into a Memorandum of Understanding memorializing the major points of the
26 settlement presented here. The parties then met and conferred further over the next several weeks
27 regarding the details of the settlement set forth in the Joint Stipulation of Settlement.

28 20. On February 25, 2009, NY&CO's counsel informed Plaintiff's counsel that the
29 number of Class Members was 8,097, not 5,232, as the parties had believed at the time of the first
30 mediation. Subsequently, NY&CO's counsel informed Plaintiff's counsel that the number of Class

1 Members was 8,111.

2 21. In light of this increase in the number of Class Members, Plaintiff's counsel
3 requested that NY&CO contribute more money to the overall settlement fund in this case. On May
4 4, 2009, the parties returned to Mr. Rotman for a second full day of mediation. At that second day
5 of mediation, NY&CO agreed to increase the floor of the settlement from 50% of the Net
6 Settlement Fund to 65%. This increase will likely result in an additional \$80,000 being distributed
7 to the Class.

8 **FAIRNESS AND ADEQUACY OF THE PROPOSED SETTLEMENT**

9 22. Given my experience as an employment and wage and hour litigator, I believe the
10 proposed Settlement addresses all of the allegations of violations of the Labor Code and wage
11 order by Defendant, and provides adequate monetary relief to Plaintiffs and Class Members who
12 submit timely claims. Class Members will enjoy substantial monetary relief from the approximate
13 \$520,000 Net Settlement Fund that will be distributed depending on the actual number of claims
14 submitted by Class Members.

15 23. I have assessed the risks and inherent delays if we were to continue with the
16 litigation. It is my professional opinion, based on my experience, that the Settlement is fair,
17 reasonable, and adequate.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct, and that this Declaration was executed on May 11, 2009, in Oakland,
20 California.

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23 _____
Hunter Pyle