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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

GONZALO ESTRADA; AURELIA  
MARTINEZ, on behalf of themselves and all  
individuals similarly situated,

Plaintiffs,

v.

BASHAS', INC.,

Defendant

Case No. CIV 02-0591- DJH

**DECLARATION OF JOCELYN D.  
LARKIN IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT, APPROVAL  
OF CLASS NOTICE AND NOTICE  
PLAN, AND FOR SETTING OF  
SCHEDULE FOR FINAL APPROVAL**

1 I, Jocelyn D. Larkin, declare:

2 1. I am the Executive Director of the Impact Fund, a nonprofit legal foundation  
3 that supports complex public interest litigation with grants and training, and as counsel. I am  
4 one of the lawyers that this Court appointed as Class Counsel.

5 2. I am a member in good standing of the bar of the State of California, as well as  
6 the Northern District of California among many other courts. I was admitted *pro hac vice* in  
7 this action.

8 3. I submit this declaration in support of Plaintiffs' Motion for Preliminary  
9 Approval of Class Action Settlement, for Approval of the Class Notice and Notice Plan, and  
10 for Setting of Schedule for Final Approval.

11 4. I have personal knowledge of the facts contained in this declaration and, if  
12 called as a witness, am competent to testify to those facts.

13 **SETTLEMENT HISTORY AND TERMS**

14 5. The parties attempted to settle this case in March 2010, while the company was  
15 still in Chapter 11 bankruptcy. The mediation was unsuccessful.

16 6. Following the district court's order denying reconsideration of its class  
17 certification order in April 2014, the parties agreed to undertake another effort to settle the  
18 case.

19 7. Several factors encouraged settlement efforts. First, the certification order had  
20 finally resolved that the equal pay claim would be part of the case. Second, since Bashas'  
21 had phased out the differential pay scales in 2007, injunctive relief was no longer necessary  
22 for that claim, and the extent of Bashas' potential back pay liability to the class was fixed  
23 (with only interest and attorneys' fees continuing to accrue). Third, since the Court  
24 decertified the working conditions claim, the parties no longer had to agree on complex and  
25 potentially injunctive relief for that claim.

1           8.       Both parties had the benefit of extensive formal and informal discovery, which  
2 is detailed in the Declaration of Elizabeth Lawrence, submitted in support of the Motion for  
3 an Award of Attorneys' Fees and Costs.

4           9.       The parties jointly requested a stay of the court's order directing the mailing of  
5 class notice to allow time to explore settlement; the court granted the stay. (ECF Nos. 321,  
6 322.)

7           10.      On June 24, 2014, the parties attended a formal mediation session with Tod F.  
8 Schleier, a respected and experienced local mediator.

9           11.      The negotiations were conducted at arms' length and the parties focused on  
10 resolving class relief before addressing relief for the named plaintiffs or attorneys' fees. The  
11 mediation was successful and the parties signed a memorandum of understanding, setting  
12 forth the essential terms of the agreement.

13           12.      The proposed settlement agreement is attached to this declaration as **Exhibit 1**.

14           13.      The parties negotiated an Administrative Cost Fund of \$400,000 because  
15 locating class members in this case presents unique challenges, resulting from the very long  
16 duration of the case. The class period opens in 1998 and, according to Bashas',  
17 approximately 90% of the class members are no longer employed at Food City. It is likely  
18 that some class members will have moved from the address that they used while employed at  
19 Food City. It is also likely that some class members have moved or returned to Mexico or  
20 other countries in Central America. Moreover, mailing claim checks to class members in  
21 Mexico require several additional administrative steps to ensure that they are received. A  
22 final challenge is that many class members are monolingual Spanish speakers, requiring all  
23 communications to be in both English and Spanish. After considering these challenges and  
24 researching options for distributing checks in Mexico, Plaintiffs earmarked this sum as the  
25 amount necessary to ensure that as many class members as possible are located and that they  
26 receive their claim share of the settlement fund.

1 14. There are currently approximately 12,000 class members. However, at least  
2 20% of the class worked in positions in which there was no difference in the pay scales. For  
3 example, courtesy clerks were all paid at minimum wage irrespective of the store format.

4 **FAIRNESS OF THE SETTLEMENT**

5 15. In my opinion, the proposed settlement is fair, adequate, and reasonable. The  
6 proposed settlement has the full support of the Named Plaintiffs as well. The reasons for my  
7 opinion are described below.

8 16. The monetary settlement fund will compensate class members for a large  
9 proportion of their wage losses and accrued interest resulting from the differential pay scales.  
10 While Plaintiffs had developed different methods for analyzing class member wage loss and  
11 accrued interest, I believe the most likely result at trial (if we proved liability) would have  
12 been damages between \$5 and \$6 million. The amount available for distribution to the class  
13 after fees, costs, service awards and administrative expenses, (\$6.5 million less \$400,000 for  
14 Administrative Costs and approximately \$1,822,000 for fees, costs and service awards) is  
15 approximately \$4.275 million, or 71 - 85% of losses.

16 17. The distribution plan does not favor one segment of the class over another.  
17 The formula for determining a class member's share is identical for all class members and is  
18 calculated based upon their *actual* losses. For class members with a loss, the awards will  
19 range from less than \$50 to several thousand dollars.

20 18. The process for distributing the fund will maximize the likelihood that class  
21 members will receive their share of the fund. Class members need not provide  
22 documentation nor submit a complicated claim form. The shares are determined based upon  
23 the employer's payroll records. The settlement allocates ample funds to locate class  
24 members who may have moved within the United States or out of the country.

25 19. A contingent second distribution will ensure that, as much as is practically  
26 possible, settlement funds will go to class members.

1           20. Any residual funds will not revert to the employer, but will instead be  
2 distributed *cy pres* in equal shares to:

- 3           a. the University of Arizona Law School Immigrant Workers' Clinic,
- 4           b. Community Legal Services of Arizona, and
- 5           c. the Arizona State University Alumni Law Group.

6 More information about each organization is set forth in **Exhibit 2**.

7           21. The proposed *cy pres* recipients bear a nexus to the underlying cause of action  
8 and share the same geographic service area as the case.

9           22. The request for attorneys' fees is consistent with the 25% common fund  
10 benchmark in the Ninth Circuit and is particularly reasonable in light of the very long  
11 duration of the contentious litigation and the excellent results obtained. The class settlement  
12 is not conditioned on an award of attorneys' fees.

13           23. The scope of the class release is limited to the claims raised in the case.

14           24. While Plaintiffs feel that they have a very strong case and are likely to win at  
15 trial, further delay associated with pre-trial litigation, trial, and another appeal poses the  
16 greatest risk to the class. First, with each passing year, class members become increasingly  
17 difficult to locate. In addition, the employer operates in a highly competitive industry and  
18 was in Chapter 11 bankruptcy less than five years ago. As a result, Plaintiffs cannot assume  
19 the long-term solvency of the defendant. Finally, because the disputed pay scales are no  
20 longer in effect, past wage losses are fixed. Continuing litigation would result in higher  
21 attorneys' fees and expense while bringing little additional benefit to the class, especially in  
22 light of the risk of losing entirely. Given that the settlement provides a large measure of the  
23 outcome achievable with a liability determination, it is my judgment that the settlement is  
24 appropriate.

25           25. The proposed Class Notice is attached to this declaration as **Exhibit 3**. This is  
26 the English language version; plaintiffs are having a Spanish translation prepared. The  
27

1 translated notice will be submitted prior to the hearing on preliminary approval. The notice  
2 provides the substantive information required by Rule 23(e).

3  
4

5 I declare under penalty of perjury under the laws of the State of California and the United  
6 States that the foregoing is true and correct. Executed this 27th day of August, 2014 in  
7 Berkeley, California.

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9 */s/ Jocelyn D. Larkin*  
10 Jocelyn D. Larkin

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**CERTIFICATE OF SERVICE**

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I hereby certify that on August 27, 2014, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal and a Notice of Electronic Filing was electronically transmitted from the court to the e-mail addresses on file.

*/s/ Jocelyn D. Larkin*  
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Jocelyn D. Larkin