

EXHIBIT D

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 17 **FOR THE COUNTY OF ALAMEDA**

18 LORENA GÓMEZ and ANIELKA
 19 RODRÍGUEZ, on their own behalf, on
 20 behalf of others similarly situated and the
 21 general public,

22 **PLAINTIFFS,**

23 vs.

24 MI PUEBLO SAN JOSE, INC., a
 25 California corporation; BENJAMÍN DE
 26 ANDA, an individual; and DOES 1
 27 through 10, inclusive,

28 **DEFENDANTS.**

Case No.: RG 07354914

**DECLARATION OF MICHAEL LOEB IN
 SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT**

DATE: July 22, 2009
TIME: 3:00 p.m.
DEPT: 17

Complaint Filed: November 7, 2007

1 I, Michael Loeb, declare:

2 1. I have personal knowledge of the matters stated in this declaration, and
3 can competently testify that they are true.

4 2. I practiced employment law for over 30 years in two law firms, the second
5 of which was McCutchen, Doyle, Brown & Enerson (later became Bingham Dana). I
6 have mediated cases since 1992. I became a full time mediator in April 2006 when I
7 joined JAMS. I estimate that I have mediated over 500 employment-related cases,
8 including over 60 wage and hour class actions.

9 3. I mediated the action entitled *Gómez, et al. v. Mi Pueblo San Jose, Inc., et*
10 *al.*, filed in the Alameda County Superior Court, Case No. RG 07354914.

11 4. I have been informed by counsel for the parties that at the initial
12 preliminary approval hearing, at the request of the Court, counsel for plaintiffs (Donn
13 Taketa and Enrique Martinez) and counsel for defendant (Dan Handman) agreed on the
14 record to waive the mediation privilege for purposes of the motion for preliminary
15 approval of the class action settlement. Based on that understanding, and at the request
16 of the parties, I am providing the following information regarding the mediations that
17 took place in this case.

18 5. The first day I mediated this case was September 17, 2008. The parties
19 submitted briefs prior to the mediation. During this first mediation, there was some
20 discussion of the class claims, but early on it was decided that it would be more
21 productive to focus only on the individual FEHA claims and to have the class claims be
22 the subject of a separate mediation at a later date. In the wake of that first day of
23 mediation, and follow-up calls with counsel for all parties, the individual FEHA claims
24 against Defendants Mi Pueblo San Jose, Inc., and Benjamin De Anda were resolved in
25 November 2008. The settlement of the individual FEHA claims was not linked in any
26 way to the negotiation of the wage and hour class claims. Therefore, I did not begin

1 substantively mediating the class claims until after the individual claims had been
2 settled.

3 6. In preparation for the mediation of the class claims, Defendant Mi Pueblo
4 provided Plaintiffs with a sampling of data. This data consisted of Defendants' full
5 compensation reports regarding payroll deductions during the class period, and
6 approximately 36 months' worth of payroll records.

7 7. Both sides provided their calculations of potential damages, which
8 included separate analyses and calculations for each potential component of class
9 damages. With the exception of the claim for unlawful deductions, Plaintiffs' class
10 claims, such as off-the-clock-work and record-keeping claims, were derivative of the
11 meal period claims. This means that Plaintiffs' claims of off-the-clock damages,
12 record-keeping penalties, and waiting-time penalties, were based on the alleged denial
13 of meal periods. In their damages analysis, Plaintiffs calculated the interest and
14 waiting-time penalties where applicable on both the meal period and derivative causes
15 of action. Plaintiffs also calculated interest on the unlawful deduction claims that are
16 the subject of this settlement.

17 8. On December 11, 2008, I conducted an all-day mediation with the parties
18 that was focused solely on the class claims. The parties had significant differences, but
19 over the course of the day we managed to make some progress. Nonetheless, on
20 account of those real and significant differences, it took two more months of working
21 closely with the parties and acting as an intermediary during more than 15 follow-up
22 telephone conferences to reach a settlement. On a number of occasions during the
23 settlement process, I also discussed with counsel the issues of cy pres and compliance
24 with Civil Procedure Code section 384.

25 9. The settlement was agreed to on February 18, 2009, while I was in Cabo
26 San Lucas on vacation, I had telephone conference with both parties. The settlement

1 agreement was finalized and signed shortly thereafter.

2 10. In my opinion, based on my extensive experience mediating wage and
3 hour class actions, I believe that the settlement reached in this case is fair, reasonable,
4 and adequate to protect the interests of all concerned. The settlement in this case will
5 provide relief to a class of approximately 2,700 current and former Mi Pueblo workers
6 who were subjected to payroll deductions for work-related uniforms, tools, and/or
7 equipment. The estimated amount of each class member's settlement check will
8 exceed the amount of the average payroll deduction for work-related uniforms, tools,
9 and/or equipment. That does not happen often in class action settlements. In addition,
10 this is not a "claims made" settlement. The class members will not be subject to a
11 claims process to receive payment. Furthermore, the unique needs of the class are
12 taken into account by the inclusion of a Spanish-language class notice, and the choice
13 of a class administrator with Spanish-speaking staff to handle questions and concerns
14 from class members in their own language. The parties have also agreed that the class
15 notice will contain an explicit statement that no class member will be retaliated against
16 for participating in the settlement.

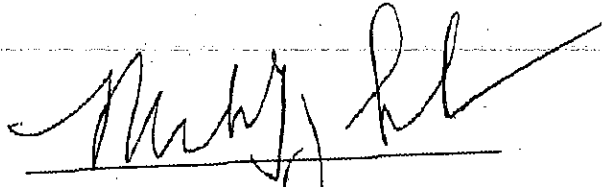
17 11. The meal period claims and the derivative off-the-clock and record-
18 keeping claims are being dismissed without prejudice as part of the settlement. My
19 opinion is that dismissal of these claims, without prejudice, is more reasonable and fair
20 to the class than a settlement with a minimal payment that might be inadequate.

21 12. Although there may have been meal period violations at individual stores,
22 it was not likely that such violations rose to the level of a company-wide policy or
23 practice. Therefore, it was very possible that these claims may have not been amenable
24 to class certification.

25 13. Counsel for all parties in this case were well-versed in wage and hour law,
26 and had experience with class action issues. As evidenced by the length of time it took
27

1 to reach a settlement and finalize the terms of the settlement agreement, this settlement
2 was the product of arm's-length negotiations by counsel who vigorously advocated for
3 their clients and their divergent positions.
4

5 I declare under penalty of perjury under the laws of the State of California that
6 the foregoing is true and correct and that this declaration was executed on July 14,
7 2009, in Boston, Massachusetts.

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9 _____
10 Michael Loeb

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