

THE HONORABLE JOHN McHALE  
Department 43  
December 10, 2018 at 9:00 a.m.  
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

JOSEPH LOWRY, JAMES PHILIP, MARK SANDERS, AARON TAYLOR, individually and as representatives for the class of similarly situated employees,

PLAINTIFFS,

vs.

RALPH'S CONCRETE PUMPING, INC., a Washington Corporation,

DEFENDANT.

NO. 04-2-36411-6 SEA

DECLARATION OF ROBERT B. KORNFELD IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND FOR AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

I, ROBERT B. KORNFELD, under penalty of perjury under the laws of the State of Washington, do hereby declare as follows:

1. I am one of the four (4) Plaintiff class counsel in this case, a member Kornfeld, Trudell, Bowen & Lingenbrink and a member in good standing of the bar of the state of Washington and Arizona. I respectfully submit this declaration in support of Plaintiffs' motion for approval of this settlement and payment of attorney's fees and costs in this case. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and would testify competently to them all if called upon to do so by this Court.

DECLARATION OF ROBERT KORNFELD IN SUPPORT OF MOTION FOR APPROVAL OF PAYMENT OF ATTORNEY'S FEES & COSTS -1

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1  
2 2. Kornfeld, Trudell, Bowen & Lingenbrink is a law firm in Kirkland, Washington  
3 that focuses on personal injury, complex civil and commercial litigation, including class action  
4 cases, with emphasis on the insurance side of civil matters and medical negligence. The  
5 undersigned has personal experience in class actions involving insurance regulation violations  
6 involving personal injury protection (PIP) and other related class action insurance regulation  
7 matters. The undersigned has been appointed co-class counsel in a number of other PIP class  
8 action cases in Washington, in addition to this wage and hour commercial class action case.  
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10 3. I am one of the founding members of Kornfeld, Trudell, Bowen & Lingenbrink and  
11 I concentrate my practice in complex civil litigation and, as stated earlier, with an emphasis on  
12 personal injury and medical negligence. I have been involved in several class actions brought on  
13 behalf of PIP insureds against insurers and have been successful in assisting to recover damages  
14 for class members in these other cases.  
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16 4. I received my BA from the University of Vermont in 1976 graduating with college  
17 honors in the area of European studies and received my J.D. from Gonzaga Law School in 1979.  
18

19 5. I have tried jury trials in the Washington State courts and have been involved with  
20 cases before the Washington Supreme Court, the Washington State Court of Appeals and am  
21 licensed to practice before the federal district court in the Western District of Washington and  
22 before the United States Supreme Court in Washington D.C.

23 6. I am actively involved in several professional organizations and activities. For  
24 example, I am currently involved with a Washington State Association for Justice, formerly  
25 WSTLA, have served as a senior editor of Trial News and directed seminars and participated in  
26 panels on seminars for lawyers in Washington and I am a member of the Arizona Association of  
27

1 Justice aka the Arizona Trial Lawyers Association. I have been named, for several years in a row,  
2 to the annual Washington "Super Lawyers" list of attorneys and have the highest ratings for ethics  
3 with Martindale Hubbell- an "AV" rating and with AVVO a 10 rating.  
4

5 7. Additional work was performed by my paralegal and legal assistant, Dawn Poley,  
6 and my law clerk Hannah Talmage who is entering law school next fall. Both performed work that  
7 I or other attorney would have had to perform absent such assistance including, but not limited to,  
8 assisting to provide inspection of files and records of employees of Defendant at its attorney's  
9 office, and Ms. Poley, a longtime employee with my office of over 18 years, also helped us to  
10 develop facts, assist in maintaining ongoing client relations with all four Plaintiff class rep's,  
11 assisted in answering discovery propounded to Plaintiffs by Defendant, assisted to collect  
12 discovery, analyze it and reduce it to a manageable summaries, and obtained records by means of  
13 the Freedom of Information Act through which we requested records of Ralph's from L & I and  
14 from the state of Washington. These were received from the State of Washington through requests  
15 of public disclosures under the Freedom of Information Act and she and other staff members  
16 analyzed these records and provided paralegal substantive work based on their training and past  
17 experience in working for our firm.  
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21 8. As a contingency fee lawyer, this practice is not without risks and the expenditure  
22 of out of pocket costs, in addition to the risks of losing and not being paid for your time. There is  
23 always the risk on a contingency fee percentage basis or contingency hourly case that we may not  
24 get paid for our time and efforts or actual out of pocket money spent to prosecute a case such as  
25 this one. Payment of Robert Kornfeld's attorney's fees and reimbursement of his costs has always  
26 been contingent on successfully obtaining relief for the four Plaintiff class representatives and all  
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1 class members. As a result, there was a substantial risk of non-payment of fees and all out of  
 2 pocket costs, particularly in light of the challenges inherent in this type of work on this particular  
 3 case in this litigation. Work on this case has necessarily been to the exclusion of other work on  
 4 other matters that likely would have otherwise generated fees. Robert Kornfeld has been denied  
 5 use of attorney's fees, which could have been earned from other cases, and earnings of attorney's  
 6 fees over the course of this case, from other cases, over the six (6) years.  
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 9 9. As of October 30, 2016, Robert Kornfeld's total lodestar \$359,905.00 for Robert  
 10 Kornfeld.

11 10. The following table shows all work on this case for which recovery of attorney's  
 12 fees are sought. I have stated the currently hourly rate, the number of hours worked through  
 13 October 29, 2018 and the total amount of fees. These time summaries are taken from  
 14 contemporaneous, daily and/or weekly time report prepared and maintained by Robert Kornfeld  
 15 and his staff in the regular course of business over the last approximately 6 years since I was  
 16 retained.  
 17

NAME & POSITION	DESCRIPTION OF WORK PERFORMED	RATE	HOURS BILLED	TOTAL
Robert B. Kornfeld Partner at Kornfeld, Trudell, Bowen & Lingenbrink, PLLC J.D. from Gonzaga University, 1979	Met and signed class Plaintiffs Joe Lowry, Aaron Taylor, Mark Sanders and James Philp about investigating a potential class action case; prepared complaint with co-counsel; prepared each Plaintiff for their depositions and attended one of more depositions; legal research regarding recovery of double damages, review of the CBA of the unions in this case, issues of removal and remand research; drafting and review and edits of motions regarding removal/remand,	\$650	553.7	\$359,905.00

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 DECLARATION OF ROBERT KORNFELD IN SUPPORT  
 OF MOTION FOR APPROVAL OF PAYMENT OF  
 ATTORNEY'S FEES & COSTS -4

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	<p>drafting, research and discovery about prevailing wages, travel time, break time, standby time, draft interrogatories, answer interrogatories, summarize discovery; retaining experts such as Neil Beaton and speaking to Neil Beaton and his assistant to develop damages, motion work; and attending hearing(s); prepare letters to opposing counsel Adam Belzberg; CR 26 conferences; review and summarize deposition transcripts and participate in monthly meetings with co-counsel; taking numerous witness statements; retain expert Jonathan Strait to respond to 39 declarations secured by Ralph's of employees whose interests were adverse to Ralph's and explore all possible ethical violations; retention of David Burkett to assist Bill Houck and Rob Kornfeld to prosecute this case and eventually secured fourth counsel Toby Marshall to assist with this case; ongoing monthly communications with four class Plaintiffs to review, discuss case and delegate out work to each; review of pleadings regarding Defendant's motion for discretionary review which was denied; settlement discussions with Adam Belzberg after a settlement demand was sent; discovery conferencing – CR 26 with opposing counsel in handling settlement demand and negotiations with opposing counsel; research and review of case of <i>Demetrio v. Sukuma Bros. Farms, Inc.</i> and other production and cases and discussions with opposing counsel about evaluating damages with Neil</p>			
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DECLARATION OF ROBERT KORNFELD IN SUPPORT OF MOTION FOR APPROVAL OF PAYMENT OF ATTORNEY'S FEES & COSTS -5

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	<p>Beaton; calls with Neil Beaton to determine what documents he needed to calculate and economic loss to the class; summary judgment motion filed by Defendant and research and review file and discuss how to respond; and prepare and edit and add to primary and additional witness disclosures &amp; supplemental witness disclosures; follow up with additional absent class members for witness statements and secure numerous in forms of dec.; review information/time cards; respond to motion to expand number of depositions and other CR 26 conferences; read and review application of a number of California cases on point and research cases from the northern district of California to bar such depositions; further discussions with John Strait about ethical issues raised; propounding requests for admission and going over statements I took from absent class members; calls to Larry Gregory and Ed Taylor, union representatives, about this case; repeated discussions with accountants for computing damages of prevailing wage, travel time, standby time and the like; continued discussions with John Strait and renewed conversations with Adam Belzberg about a trial continuance and discussion of <i>Auto Zone</i> and <i>Hill v. Garda</i> cases in our settlement; providing supplemental answers to discovery about witnesses, absent class members, who were recanting all or part of their declarations; request supplementation under CR 26 e of discovery propounded to Defendant; motions for order to</p>			
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DECLARATION OF ROBERT KORNFELD IN SUPPORT OF MOTION FOR APPROVAL OF PAYMENT OF ATTORNEY'S FEES & COSTS -6

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	shorten time and discussions to stay discovery pending completion of certain things; prepare reply brief and declarations and review Defendant's response and declarations; obtain additional witness statements and; obtaining driver logs from a few absent class members; continued calls to John Strait about the ethical violations; supplementing the primary witness and additional witness disclosure of John Strait from my calls with him and supplementing them; prepare and serve all trial subpoenas to our witnesses; propound additional discovery sets 1-10 sets; mediation revisions and disclosure of additional witnesses, conference with co-counsel regarding our draft response to summary judgment of Def't motion to decertify and working on getting final report on damages from Beaton; prepare and serve deposition CR 30(b)(6) notices and prepare for Defendant Hensen's deposition, Gribble's deposition; work on motions for preliminary and final approval;, attend mediation and conferences following it and negotiations pertaining to settlement and prepare pleadings to approve.			
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11. The hourly rate for my attorney's fees is based on a variety of factors, including among others, my experience skill and sophistication required for this type of legal service provided on complex litigation like this; the rates customarily charged and recognized as reasonable in complex litigated matters; the rates customarily charged with other lawyers with similar skill and experience and the experience, reputation and ability of Robert Kornfeld in this

and other complex litigation cases. (See also Motion, Declaration of Mr. Robert Kornfeld and  
DECLARATION OF ROBERT KORNFELD IN SUPPORT  
OF MOTION FOR APPROVAL OF PAYMENT OF  
ATTORNEY'S FEES & COSTS -7

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1 Order of August 14, 2015 of trial Judge Monica Benton granting Mr. Kornfeld's fee request at  
2 \$650 per hour in the case of *Alex Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 230 P.3d 583 (2010)  
3 (King County 04-2-36411-6), which was retried in front of a jury a second time and fees were  
4 ordered.).  
5

6 12. My lodestar calculations are based on my current standard hourly rate of \$650 per  
7 hour. Judge Benton in King County Superior Court in 2015 has approved a fee request at \$650  
8 per hour for Robert Kornfeld and this is his standard rate at the time of this application three (3)  
9 years later. This is a reasonable and typical billing rate in King County Superior Court for a  
10 complex litigation civil lawyer with similar experience as the undersigned in complex contingency  
11 fee cases. This is the only means and method of being reimbursed for attorney's fees and costs  
12 when there is a risk of no recovery of both fees and costs advanced. The undersigned has been  
13 practicing over 38 years in Washington. The undersigned has spent 553.7 hours in litigating this  
14 matter. This request is reasonable under these facts and circumstances, particularly after working  
15 on this case for about 6 years.  
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18 13. I was the attorney primarily responsible for recognizing this case, being retained by  
19 all four class Plaintiffs and for reviewing the work from my law firm. I supervised work not just  
20 with my law firm but jointly with my co-counsel to avoid duplication of effort and to encourage  
21 efficiency. I have reviewed my personal billing records and reduced or eliminated time, which was  
22 not necessary or duplicative. I not only eliminated all secretarial time, but also eliminated over  
23 \$14,600 in paralegal or legal assistant time, particularly for Dawn Poley and Hannah Talmage. I  
24 also made reductions where time arguably could have been more efficient. I reduced time entered  
25 by myself when it was duplicative to that provided by my co-counsel. My remaining time was  
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1 reasonable and necessarily expended to secure the successful resolution of this case in the context  
2 that there was a risk I would not be paid at all for my time nor my costs of \$38,327.55, which I  
3 advanced hoping to win this case.  
4

5 14. Through the date of this submission, Robert Kornfeld has reasonably and  
6 necessarily incurred \$38,327.55 litigation expenses reasonably related to the prosecution of this  
7 case. His expenses are customarily charge to and paid by hourly or contingency fee clients. The  
8 following chart summarizes all of my litigation expenses taken from contemporaneous  
9 documented expense records and those regularly posted and prepared and maintained by my law  
10 firm in the regular course of business. These charges were reasonable and I incurred these and ask  
11 to be reimbursed for the same.  
12

Filing Fees & Court Fees	\$899.43
Courier, Process Service	\$272.00
Transcripts	\$1,947.02
Expert fees- Neil Beaton and John Strait, Esq.	\$32,048.19
Reproductions (scanning & copying)	\$2,497.91
Mediation	\$625.00
Travel expenses	\$38.00
<b>Total</b>	<b>\$38,327.55</b>

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20 15. I anticipate that the firm will incur additional fees and expenses in relation to the  
21 approval process including the motion for final approval and in Reply to any challenge that  
22 Defendant or anyone may make to the request for the fees and costs award. I will detail all work  
23 performed and expenses incurred after October 30, 2018 in a supplemental declaration that will be  
24 filed with this Court before it rules on the motion for an award of fees and expenses.  
25

26 16. I believe the settlement reached in this case is fair, reasonable, adequate, and in the  
27 best interests of the Settlement Classes.

1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
2 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY  
3 KNOWLEDGE.

4 DATED this 30 day of October, 2018, in Kirkland, WA.

5  
6 KORNFELD TRUDELL BOWEN  
& LINGENBRINK, PLLC

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10 Robert B. Kornfeld, WSBA #10669  
11 Attorney for Plaintiffs  
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