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HONORABLE BENJAMIN H. SETTLE

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

STEVEN EILERMAN, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

MCLANE COMPANY, INC. DBA MCLANE/NORTHWEST, a Washington Corporation,

Defendant.

Case No.: 3:16-CV-05303-BHS

**DECLARATION OF CRAIG ACKERMANN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR ATTORNEYS' FEES AND COSTS
AND IN SUPPORT OF PLAINTIFF'S
FORTHCOMING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

DECLARATION OF CRAIG J. ACKERMANN

I, Craig J. Ackermann, declare as follows:

1. I am an attorney licensed to practice law in the federal and state courts of California and Texas. I am over 18 years of age. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them. I submit this declaration in support of Plaintiff’s motion for attorney’s fees and costs, as well as in support of Plaintiff’s forthcoming motion for final approval of the Settlement Agreement.

2. I am a founding shareholder in the law firm of Ackermann & Tilajef, P.C., co-counsel of record (along with Hammondlaw P.C. and India Bodien, Esq.) for Plaintiff Steven Eilerman (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I submit this declaration in support of Plaintiff’s motion for attorneys’ fees and costs and for final approval of a wage-and-hour class action settlement in the amount of \$775,000 between Defendant McClane Company, Inc. DBA McClane/Northwest, a Washington Corporation (“Defendant”) and a Settlement Class of Plaintiff and approximately 250 truck drivers employed by Defendant who were paid based on Defendant’s “per mile” piece-rate compensation system. A copy of the Stipulation for Settlement and Release of Class Action Claims (“Settlement Agreement”) was attached as **Exhibit 1** to the Declaration of Julian Hammond filed in support of Plaintiffs’ motion for preliminary approval of the Settlement Agreement (Dkt. 38-1).

ATTORNEY EXPERIENCE

3. In 1994, I received a B.A. with honors and graduated Phi Beta Kappa from the University of Texas at Austin. In 1997, I received a J.D. from the University of Texas, School of Law. I became a member of the Bar of the State of Texas in 1997. I became a member of the Bar of the State of California in 2004. I am admitted *pro hac vice* in this action.

4. Since 1997, I have exclusively practiced employment law and have amassed a significant amount of experience in complex class action employment-related litigation. From 1997 through 2000, I was an associate in the labor and employment law group for Jenkins & Gilchrist, P.C. (“J&G”), in the firm’s Dallas, Texas office, where I represented Fortune 1000 companies, including

1 Hartford Insurance, Belo Corporation, and Alcatel, as second-chair in various employment-related
2 matters, including several class action cases. While employed by J&G, I drafted a number of summary
3 judgment motions in cases where we obtained summary judgment for the defendants. *See e.g., Wayne*
4 *v. The Dallas Morning News, Inc.*, CIV.A.No.3-98-CV-0711-L, 1999 WL 1146840 (N.D. Tex. Nov.
5 24, 1999) (with Robert E. Sheeder, Esq.); *Mieritz v. Hartford Fire Insurance Co.*, No. Civ.A.3:99-
6 CV-121-R, 2000 WL 422909 (N.D. Tex. April 17, 2000) (with Steve Fox, Esq.).

7 5. From 2000 through mid-2003, I worked in New York City for a plaintiffs' side
8 employment law firm, Arenson, Ditmar & Karban, where I was involved for several years, *pro hac*
9 *vice*, in a second-chair capacity representing 150 individually-named plaintiffs in a large sexual
10 harassment case against a major Wall Street bank that was brought in Hudson County Superior Court
11 in New Jersey and was eventually resolved for \$23.5 million. In terms of the number of plaintiffs and
12 the size of the settlement, this was, at the time, the second largest sexual harassment case in U.S.
13 history. There were over 60 depositions taken and defended in that case prior to trial.

14 6. In mid- and late-2003, I worked as an associate in the Labor and Employment Law
15 Section of Mitchell, Silberberg & Knupp, LLP in Los Angeles, where we represented large
16 entertainment companies in various employment-related litigations, including several class actions.

17 7. From February 2004 through the present, I have been a founding and managing
18 shareholder in the firm of Ackermann & Tilajef, P.C. where we have represented over 50,000
19 employees in wage and hour class actions, and other employment-related matters. Ackermann &
20 Tilajef, P.C. has amassed extensive experience in the litigation of complex class action cases, including
21 numerous wage and hour class actions for truck drivers alleging *inter alia* meal and rest break
22 violations, among others, as well as handling hundreds of individual employment cases.

23 8. Since 2004, our firm has represented more than 500 individual employees in cases
24 brought in a half a dozen states around the country (where we work with competent local counsel)
25 under various state and federal statutes, including the California Labor Code, and we have obtained
26 favorable results in numerous cases. In December 2012, for instance, we obtained a Final Judgment
27 following a jury trial and an appeal to the Ninth Circuit Court of Appeals in the amount of \$318,913.09
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1 in a Title VII and FEHA retaliation case. *See* Final Judgment, *Barrios v. Diamond Contract Services,*
2 *Inc.*, Case No. 2:07-cv-03500-CBM-FMO (C.D. Cal. Dec. 20, 2012), ECF No. 138 (final judgment
3 entered for Plaintiff in the amount of \$318,913.09); *see also Barrios v. Diamond Contract Services,*
4 *Inc.*, 461 F. App'x 571 (9th Cir. Dec. 13, 2011) (reversing original district court judge's denial of
5 motion for attorneys' fees).

6 9. Since 2007, we have successfully obtained class certification and been appointed as
7 adequate class counsel in a number of cases where *contested* class certification motions were filed and
8 fully briefed, including the following wage and hour class actions for truckers. *See, e.g.*, (1) Order
9 Adopting Findings and Recommendations, *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735
10 LJO DLB, 2012 WL 3638026 (E.D. Cal. Aug. 21, 2012) (Hon. Lawrence O'Neil) (Order adopting
11 findings and recommendations of Magistrate Beck); Findings and Recommendations Regarding
12 Plaintiff's Motion for Class Certification, *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735 LJO
13 DLB, 2012 WL 2912395 (E.D. Cal. July 16, 2012) (U.S. Magistrate Judge Dennis L. Beck)
14 (recommending certification of class action for 2,000 truck drivers alleging claims for unpaid
15 orientation time); (2) *Jack Morrison v. Knight Transportation, Inc.*, Tulare County Superior Court,
16 Case No. 228016, Nov. 13, 2009 Order Granting Plaintiff's Motion for Class Certification (Hon. Lloyd
17 Hicks) (granting certification of class of over 2,000 truck drivers that ultimately grew to over 4,100
18 drivers with claims for missed meal breaks premiums and unpaid rest periods); (3) *Anderson v. Andrus*
19 *Transportation*, San Bernardino County Superior Court, Case No. CIV DS 915878, August 16, 2011
20 Order Granting In Part Plaintiff's Motion for Class Certification (class certification granted to class of
21 over 550 truck drivers with claims for unpaid minimum wages and derivative claims); and (4) *Trujillo*
22 *v. Winco Foods, LLC*, Stanislaus County Superior Court, Case No. 622364, March 16, 2011 Order
23 Granting Plaintiff's Motion for Class Certification (granting class certification of missed meal and rest
24 break claims and derivative claims to class of 150 truck drivers). In each of these cases, the district
25 court or superior court judges determined that I and my firm were competent class counsel. In several
26 of the cases, including the *Morrison v. Knight* and *Winco* cases, our firm was sole and lead class
27 counsel and we were appointed as such by the Superior Court judges. In March 2017, we recently
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1 received a tentative ruling granting class certification in another trucker piece-rate class action (where
2 we are co-counsel with Hammonlaw, P.C.) currently pending in federal court in Los Angeles, but the
3 Court has not yet issued its final ruling in that case. *See Moss v. U.S.F. Reddaway, Inc.*, Case No.
4 5:15-CV-01541-JAK-FFM, pending before the Hon. John A. Kronstadt.

5 10. In addition, from 2010 through 2017, our firm has been appointed class counsel or co-
6 class counsel, and obtained final approval, in more than 125 wage and hour class action settlements for
7 truck drivers, including numerous cases alleging unpaid rest periods and/or missed or on-duty meal
8 breaks. Some examples of our trucker wage and hour cases include the following:

- 9 a. *Riley v. Pacific Tank Lines, Inc.*, Case No. CIVDS1603263 San Bernardino Superior
10 Court (Order dated March 28, 2017 finally approving \$695,000 settlement for 342
11 piece-rate drivers with unpaid rest break claims and an additional 101 hourly drivers
12 on the meal break claims paid on a piece-rate basis where fees were approved at 1/3
13 of the total settlement amount) (A&T was co-counsel for settlement class with two
14 other law firms);
- 15 b. *Plimpton et al. v. Gordon Trucking, Inc.*, CIV-DS-1511918 San Bernardino
16 Superior Court (Order dated Jan. 26, 2017 finally approving \$3.75 million
17 settlement for 1,900 truck drivers with claims of unpaid rest periods and on-duty
18 meal periods where fees were approved at \$1.25 million) (A&T was co-counsel for
19 settlement class with six other law firms);
- 20 c. *Morrison v. Knight Transportation, Inc.*, Case No. 228016, Tulare County Superior
21 Court (Judge Lloyd Hicks) (Order dated January 27, 2016, approving \$1,125,000 in
22 attorneys' fees on a contested fees motion following seven years of litigation and a
23 settlement for the class of 4,100 in the maximum amount of \$2.25 million, with the
24 attorneys' fees awarded at 1/3 on top of the amount to the class);
- 25 d. *Downs v. U.S. Foodservice, Inc.*, Case No. 3:10-cv-02163-EMC (N.D. Cal. Sept. 11,
26 2012), ECF No. 84 (granting approval to class action settlement for 1,100 truck
27 drivers with meal and rest break claims; Memorandum Decision Re Unopposed
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Motion for Final Approval of Class Action Settlement (Doc. 41) and For Attorneys’ Fees and Costs (Doc. 48) (A&T was co-counsel for the Settlement Class with Hammondlaw, P.C. and Goldstein Demchak Baller Borgen & Dardarian);

e. *Bond v. Ferguson Enterprises, Inc.*, NO. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. June 30, 2011) (granting approval to \$2.25 million class settlement for 553 truck drivers with meal and rest period claims with fees awarded at 30% of the total settlement amount) (A&T was co-counsel for the settlement class with one other law firm);

f. *Padilla v. Young’s Market Company, LLC*, Case No. 2:09-CV-08730 DMG (RCx) (C.D. Cal. Aug. 23, 2010), ECF No. 53 (approving \$1 million settlement of meal and rest break claims of 310 truck drivers with fees awarded at 25% of the total settlement amount) (A&T was co-counsel for the settlement class with Hammondlaw, P.C.);

g. *Jape v. Southern Wine and Spirits of America, Inc.*, Case No. CV09-2599 SJO (FMOx) (C.D. Cal. July 19, 2010), ECF No. 50 (granting final approval to \$1 million settlement for 301 truck drivers with fees awarded at 25% of the total settlement amount) (A&T was lead and sole class counsel for the settlement class);

h. *Valladares v. The SYGMA Network, Inc.*, Los Angeles County Case No. BC 406053 (April 6, 2010) (granting final approval to \$1.195 million wage and hour settlement for class of 515 truck drivers with claims for unpaid rest periods and missed meal breaks with fees awarded at 30% of the total settlement amount);

i. *Valdez v. Sysco Food Services of Los Angeles, Inc.*, Los Angeles County Case No. BC396372 (Feb. 1, 2010) (granting final approval to missed meal break settlement of \$1,400,000 for class of 480 truck drivers with fees awarded at 25% of the total settlement amount) (A&T was lead counsel for the settlement class).

11. My firm is currently serving as lead counsel or co-lead counsel in over 75 class action cases on behalf of truck drivers, the vast majority of which are in California, including more than 35

1 cases that have been resolved on a class basis and several that are being heavily litigated. Moreover, I
2 am currently co-lead-counsel on five trucker wage and hour class actions in Washington State,
3 including a few cases that have already received preliminary approval of the courts in Washington. *See*
4 *e.g., McMakin v. Domino's Pizza LLC*, Kings County Superior Court Case No. 16-2-20655-7 (Order
5 dated Feb. 13, 2017 granting preliminary approval to \$160,000 settlement for 70 truck drivers who
6 were paid on a piece-rate basis alleging they did not receive separately paid rest periods) (A&T was
7 appointed co-class counsel with Hammondlaw, P.C. and India Bodien). Accordingly, based on the
8 foregoing experience, we have accumulated a significant amount of skill, knowledge and expertise
9 litigating and resolving class actions for truckers over the last decade.

10 12. On February 28, 2017, this Court entered an order preliminarily approving the
11 Settlement Agreement in this case. In its Preliminary Approval Order, the Court conditionally certified,
12 for purposes of settlement, a class consisting of: "All individuals who (1) resident in Washington State,
13 (2) were employed by Defendant as a truck driver, (3) drove at least one route of three hours or more
14 within Washington State, and (4) were paid on a "per mile" piece-rate basis, at any time from March
15 17, 2013 through and including December 31, 2016 ("the Settlement Class Period)." See, Preliminary
16 Approval Order at ¶ 3 (Docket No. 45). Among other things, the Court also conditionally approved,
17 subject to further review at the final fairness hearing scheduled for May 17, 2017, the following:

- 18 a. A Maximum Settlement Amount of \$775,000;
- 19 b. The Class Representative enhancement payment of \$5,000;
- 20 c. The sum of \$232,500 as attorneys' fees to Class Counsel, representing 30% of the
21 Maximum Settlement Amount;
- 22 d. The sum of costs awarded to Class Counsel which shall not exceed \$15,000; and
- 23 e. The Settlement Administration Expenses, not to exceed \$10,000.

24 See Preliminary Approval Order at ¶2.

25 13. If the Court grants final approval to this Settlement, the average recovery per class
26 member after all the above-referenced deductions will be around \$2,050 (i.e., \$512,500 net settlement
27 amount / 250 class members = \$2,050), while the maximum will be substantially higher than this.
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1 Based on my experience, this is an excellent result for unpaid rest break cases and, as shown further
 2 below, is comparable with, or better than, results obtained in other similar cases.

3 **Adequacy of the Settlement**

4 14. The settlement in this case was obtained despite the various significant affirmative
 5 defenses raised by the Defendant. First, Defendant argued that Plaintiff's claims for unpaid rest breaks
 6 brought under Washington state law may be retroactively preempted by the Federal Aviation
 7 Administration Authorization Act of 1994, as amended. Passage of such legislation would result in the
 8 class claims being wiped out entirely and the class members obtaining no recovery. Issues related to
 9 retroactive preemption first appeared in the 2015 Highway bill called the Denham Amendment;
 10 however, the amendment did not make it through the Senate. After the Denham amendment failed, the
 11 American Trucking Association, the 50 ATA-affiliated state trucking associations, the National Private
 12 Truck Council, the Truckload Carriers Association, and the Truck Renting and Leasing Association
 13 placed pressure on the House Committee on Transportation and Infrastructure to include the Denham
 14 language in the FAA Reauthorization bill. In addition, on May 17, 2016, the House Appropriations
 15 Subcommittee on Transportation, Housing, and Urban Development, and Related Agencies approved
 16 the 2017 Transportation, Housing, and Urban Development funding bill which included an amendment
 17 of the FAAAA that would preempt state rest and meal break laws retroactive to 1994. Congress
 18 recently combined the THUD FAAAA amendment as Section 134 H.R. 5394, which is an omnibus
 19 federal budget bill to fund the federal government through most of 2017. Congress will vote on H.R.
 20 5394 sometime in 2017. The trucking industry has indicated that this is their top legislative agenda
 21 item for the coming year.¹ At the time that the parties reached a negotiated settlement in this case,
 22 certain legislation was also then pending in Congress' FAA Reauthorization Bill which contained
 23 language restricting a state from enacting or enforcing a law or regulation requiring a motor carrier that
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25 ¹ See, <http://www.cjdigital.com/to-protect-carriers-from-big-payouts-congress-may-stamp-out-state-efforts-to-reform-driver-pay/> (“Major proponents include the American Trucking Association and the
 26 Western States Trucking Association, both of whom have said legislation to assert federal authority over
 27 break and pay laws for truckers is a top-level agenda item in the coming years. “This actually is our No.
 28 1 priority,” says Western States’ head of government affairs Joe Rajkovicz.”).

1 compensates employees on a piece-rate basis to pay those employees separate or additional
 2 compensation, provided that the motor carrier pays the employee a total sum that when divided by the
 3 total number of hours worked during the corresponding work period is equal to or greater than the
 4 applicable hourly minimum wage of the state. The legislation covered the time period at issue in this
 5 case because it will retroactively clarify that the 1994 Federal Aviation Authorization Act was intended
 6 to nullify state meal and rest break laws and, if passed, would retroactively preempt all claims at issue
 7 in the instant case.² Senator Barbara Boxer, who retired in January 2017, spearheaded the effort to
 8 deny the inclusion of retroactive preemption in the reconciled FAA bill.³ However, given the
 9 legislative agenda of the new Trump administration and its stated objective to eliminate regulations on
 10 business, House Republicans and Republican Senators will continue their efforts to pass retro
 11 preemption in the coming year(s). This risk has significantly increased because of the recent election
 12 which put Republicans in majority control of Congress, and the Presidency is in the hands of a
 13 Republican as well. Accordingly, even if we were to prevail on class certification and/or on summary
 14 judgment or at trial, there is still a significant risk that the putative Class members would be precluded
 15 from any recovery on these grounds.

16 15. Second, Defendant argued that that the putative class may not be certified. A number of
 17 federal courts in California have denied class certification in piece-rate wage and hour claims, where
 18 drivers sought either rest break pay or other non-productive time separate and apart from the piece-
 19 rate, including the following:

- 20 ■ *Burnell v. Swift Transportation, Inc.*, 5:10-CV-00809-VAP-OP, 2016 W.L. 2621616 (C.D. Cal.
 21 May 4, 2016) (Hon. Virginia Phillips). The court denied plaintiff's motion for class certification
 22 of piece-rate unpaid wage claims for truck drivers, noting as follows: "Plaintiffs fail to
 23 demonstrate that non-driving duties are not adequately compensated by Swift's mileage-based
 24 compensation system. Without proof of a general policy that Swift denied minimum wage to
 drivers, Plaintiffs cannot demonstrate liability in a manner capable of class-wide resolution."⁴

25 ² See, <https://www.congress.gov/amendment/114th-congress/house-amendment/794/text>

26 ³ <http://thehill.com/policy/transportation/270740-dem-senator-slams-trucking-poison-pill-in-faa-bill>

27 ⁴ Notably, the Ninth Circuit Court of Appeals denied an appeal from the order denying class
 28 certification. To date, then, the putative class members in the Swift case have recovered *nothing*.

- 1 ▪ *Ayala v. U.S Xpress Enterprises, Inc. et al* Case No. 5:16-cv-00137 (December 22, 2016).
2 Defendant defeated class certification in trucker piece-rate case where drivers included both
3 California and non-California residents, based on lack of predominance of common issues, and
4 the putative class members will likely recover *nothing*.
- 5 ▪ *Cole v. CRST Van Lines*, 2012 WL 4479237 (C.D. Cal. Sept. 27, 2012) - the court denied
6 plaintiff's motion for class certification on piece-rate claims and granted defendant's motion for
7 judgment on the pleadings. CRST is another large trucking company with thousands of drivers.
8 Based on the Cole decision, the current and former piece-rate drivers have recovered, and are
9 likely to recover *nothing*.

10 16. Finally, Defendant raised a number of other possible defenses to Plaintiff's claims in
11 this case, such as the possibility that the *Demtrio v. Sakuma* decision on which Plaintiff's claims are
12 predicated may not be retroactive (although two federal district court decisions have held that it is
13 retroactive); that the Dormant Commerce Clause of the U.S. Constitution would preclude the
14 application of Washington State labor laws to those portions of Defendant's drivers' routes outside of
15 Washington, such that only rest breaks taken within Washington state would be compensable, which
16 would dramatically reduce Defendant's exposure in this case; and that there was insufficient *scienter*
17 by Defendant such that would be responsible for liquidated damages on unpaid rest breaks, particularly
18 given the lack of state law authority that the law would be applied retroactively and the possibility of
19 federal preemption under the Federal Aviation Authorization Administration Act of 1994.

20 17. Based on my experience as a class action employment litigator, and my familiarity with
21 the issues related to certification, federal preemption, and the other issues raised by Defendant in
22 defense of Plaintiff's claims, and my familiarity with meal and rest break class actions for truck drivers
23 in general, I believe the Settlement Agreement obtained here is a fair and adequate compromise of the
24 monetary relief claims raised by Plaintiffs and the Class in this case.

25 18. The amount obtained here in total and per class member that will be paid out per
26 participating Class Member, if the Court grants final approval, compare favorably with the amounts
27 recovered for class members in similar trucker wage and hour cases alleging unpaid rest breaks. For
28 example, on July 30, 2014, in the case of *Anderson v. Andrus Transportation Services*, Case No. CIV
29 DS 915878 (San Bernardino Superior Court), the Honorable Judge Brian McCarville granted final
30 approval to a settlement of a class of truck drivers challenging a piece-rate compensation system with

1 claims for *inter alia* unpaid rest breaks, as in the instant case. In *Anderson*, the total settlement amount
2 was of \$275,000 for 550 truck drivers, and it was a claims-made settlement where 189 truckers
3 submitted claims, the average recovery was \$356.91, the maximum recovery was \$1,976.54, and the
4 unclaimed funds reverted to defendant. Similarly, in *Gonzalez v. SAIA Motor Freight Line LLC*, San
5 Bernardino Superior Court Case No. CIVDS1503144, our firm settled a trucker piece-rate class action
6 for 214 truck drivers for \$499,000 on a claims-made basis. In the end, 91.22% of the net settlement
7 amount was claimed by 174 drivers. The average recovery was \$1,587 and the maximum recovery was
8 \$2,125. Final approval was granted on January 11, 2016 by the Hon. Wilfred Schneider. Other cases
9 also support final approval here. Furthermore, on November 2, 2010, in the case of *Juan Avila v.*
10 *Savage Services Corporation*, LASC Case No. BC 412458, Los Angeles Superior Court Judge Rex
11 Heeseman granted final approval to a \$354,165 settlement for a class of 163 truck drivers where the
12 plaintiffs asserted claims identical to those asserted in the instant case. Similarly, on April 6, 2010, in
13 the case of *Francisco Valladares v. The Sygma Network, Inc.*, LASC Case No. BC406053, Los
14 Angeles Complex Superior Court Judge William Highberger granted final approval to a \$1,195,000
15 settlement for a class of 518 truck drivers paid on a piece-rate basis with alleged claims for unpaid rest
16 breaks and missed meal breaks. On a per class member basis, the average recoveries on those cases
17 were approximately \$1,412 in *Avila* and around \$1,500 in *Valladares*. These comparators demonstrate
18 unequivocally that the \$775,000 amount obtained for the class of 250 drivers here is fair and
19 reasonable, particularly given the current risks of retroactive federal preemption passing sometime in
20 the next several years.

21 19. The settlement reached between the parties was the product of Class Counsel's review
22 of an extensive body of information, documents, and damages calculations based thereon. Class
23 Counsel reviewed highly relevant information including (a) class size, (b) number of days worked by
24 the Class, (c) the average number of hours worked per day (and thus the number of statutorily required
25 rest breaks), (d) the number of overtime hours worked during the Class Period, and (e) Class Members'
26 effective average hourly rate of pay. Class Counsel also reviewed the Employee Handbook, Class
27 Members' job descriptions and other relevant documents. Based on the foregoing data, information,
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1 and documents, Class Counsel was able to calculate estimated potential damages for the Class. As a
2 result, we are confident that we obtained an optimal settlement considering the totality of the
3 circumstances.

4 20. The settlement is fair and adequate given the litigation risks and delay inherent in
5 further litigation and appeals. The Court found the same in its Order preliminary approving the
6 Settlement. Defendant vigorously challenged Plaintiffs' claims, and Plaintiffs faced serious challenges
7 in certifying the Class and obtaining a recovery on his claims. Defendant pointed to similar cases
8 where courts had denied class certification, and to the risk of retroactive preemption passing Congress
9 if we were to litigate the case. Nonetheless, both Plaintiffs and Defendant concluded that the further
10 conduct of the Action would be protracted and expensive, and that it is desirable that the Action be
11 fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in
12 order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted
13 litigation, and to permit the operation of Defendant's business without further expensive litigation and
14 the distraction and diversion of its personnel with respect to matters in issue in the Action. Both parties
15 took into account the uncertainty and risks inherent in any litigation, especially in complex cases such
16 as the Action. The parties therefore determined that it is desirable and beneficial to it that the Action be
17 settled. Risks on both sides were considered in reaching the Settlement Agreement.

18 21. Moreover, the parties engaged in extensive exchanges of informal discovery prior to
19 settling this matter. Accordingly, sufficient information existed to allow Class Counsel to act
20 intelligently in valuing this case and, given the parties' arms' length bargaining, the extensive
21 exchange of informal discovery, and the experience of Class Counsel, the presumption of fairness
22 applies. Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest
23 of the Class. The settlement was also entered into after an all-day mediation conducted at arms' length
24 and continuing negotiations that took place after the mediation and a mediator's proposal.

25 **Reasonableness of Attorneys' Fees Sought**

26 22. As noted, Class Counsel is seeking final approval of attorneys' fees in the amount of
27 30% of the Total Settlement Amount of \$775,000, which is a reasonable fee for wage and hour class
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1 actions as a percentage of the common fund. The following table summarizes the total lodestar to date
 2 incurred by my firm coupled with our legal consultant Barry Goldstein, Esq.:

TOTAL AGGREGATED LODESTAR OF ALL TIMEKEEPERS ON THIS CASE				
Timekeeper	Yrs. Experience	Hours	Hourly Rate	Lodestar
Craig Ackermann, Esq.	20	11.5	\$685.00	\$7,877.50
Brandon Wheatley, Esq.	2	2.5	\$420.00	\$1,050
Jaclyn Blackwell	5	3.20	\$175.00	\$560.00
Barry Goldstein, Esq.	46	31.70	\$865.00	\$27,420.50
			TOTAL	\$36,908.00

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 10 23. On the basis of my extensive experience litigating employment class action cases, my
 11 current hourly rate is \$685 per hour. Over the years, my rates and the rates of my team have been
 12 approved by numerous state and Federal Courts in Los Angeles and elsewhere. *See e.g., Bond v.*
 13 *Ferguson Enterprises, Inc.* 2011 WL 26488314 (E.D.Cal. June 30, 2011) granting approval to class
 14 settlement for 553 truck drivers and approving A&T's fees and rates as of 2011 and a multiplier of 1.7
 15 on the total attorneys' fees expenses). My tasks on this case included initial client contact, editing the
 16 Complaint and the mediation brief, devising an effective legal strategy for litigation and settlement,
 17 legal research regarding the Dormant Commerce clause, interaction with opposing counsel regarding
 18 the negotiation of the Settlement Agreement, and supervising all aspects of my staff's and contract
 19 attorney's work, including editing of pleadings, drafting and editing the mediation brief, reviewing
 20 and/or responding to over 100 emails related to this case, and assisting with the post-mediation
 21 negotiations about the settlement and drafting my declaration in support of final approval and fees. To
 22 date, I have spent a total of 11.5 hours on this case.

23 24. In addition, our settlement consultant, Barry Goldstein, Esq., who has over 45 years of
 24 employment class action experience, served as the lead negotiator for the putative class at the
 25 mediation. In addition to teaching employment law at Harvard Law School, Mr. Goldstein was lead
 26 counsel for the NAACP Legal Defense fund in charge of employment litigation for 18 years, took over
 27 20 class action cases to trial and has resolved more than 10 cases for more than \$50 million.
 28 According to a 1995 article in Businessweek, Mr. Goldstein's firm "... collected more than \$600

1 million in damages and legal fees from companies its clients have sued for discrimination over the past
2 three years.”⁵ My rate and the rate of Mr. Goldstein and the other attorneys and staff members on the
3 listed chart are consistent with the rates charges by competent class counsel in Los Angeles, San
4 Francisco and Seattle for attorneys and paralegals of comparable skill and experience.

5 25. As shown in paragraph 10 above and as further set forth below, my firm has obtained
6 fees amounting to 30% or 1/3 of the common fund in numerous trucker class actions similar to this
7 one. On November 12, 2015, in the case of *Gonzalez v. SAIA Motor Freight Line LLC*, San Bernardino
8 Case No., CIVDS1503144, the Honorable Judge Wilfred J. Schneider in Department S32 finally
9 approved a class action settlement for truck drivers that included attorneys’ fees at 1/3 of the total
10 settlement amount. Similarly, on July 30, 2014, in the case of *Anderson v. Andrus Transportation*
11 *Services*, Case No. CIV DS 915878 (San Bernardino Superior Court), the Honorable Judge Brian
12 McCarville granted final approval to a settlement of a class of truck drivers challenging a piece-rate
13 compensation system with claims for *inter alia* meal and rest breaks, and unpaid wages for rest breaks,
14 as in the instant case where the fees awarded amounted to 1/3 of the total settlement fund.

15 26. An additional factor militating in favor of the granting of the requested fee award is the
16 fact that this case was both legally and financially risky for Plaintiff’s Counsel. See *Vizcaino v.*
17 *Microsoft Corp*, 290 F.3d 1043, 1048-49 (9th Cir. 2002). Specifically, there was the prospect of
18 enormous cost inherent in class action litigation, as well as a battle with a corporation represented by a
19 well-respected law firm; the risk that Defendant could prevail on its argument that no class litigation
20 was available to be pursued here (i.e., non-certification); and the risk that that Plaintiffs’ claims would
21 be retroactively preempted by federal law. If Plaintiffs had lost this case, Class Counsel would have
22 recovered nothing, not even their out-of-pocket litigation costs.

23 27. Moreover, as further explained in the declaration of Julian Hammond, the requested
24 fees in the amount of \$232,500 are not significantly greater than the actual lodestar incurred by Class
25 Counsel. In prior meal and rest break class actions for truck drivers, Class Counsel has been awarded
26

27 ⁵ <https://www.bloomberg.com/news/articles/1995-01-22/the-swat-team-of-bias-litigation>.

attorneys' fees with lodestar multipliers of 1.75 and 1.62. *See e.g., Bond v. Ferguson Enterprises, Inc.*, 2011 W.L. 26488879, *13-14 (E.D. Cal. June 30, 2011) (Hon. Oliver Wanger) (approving \$675,000 in fees on maximum \$2,250,000 million settlement, where lodestar was determined by the court to be \$385,601, and a multiplier of 1.75 was approved based on the fact that 342 class members were to receive \$963,391 in the aggregate, the meal break law was in flux, the case was handled on a pure contingency fee basis); *see also Francisco Valladares v. The Sygma Network, Inc.*, LASC Case No. BC406053 (April 6, 2010 Order Granting Final Approval) (a truck driver meal and rest period case wherein Los Angeles Complex Litigation Judge William Highberger issued an Order awarding Class Counsel with a lodestar multiplier of 1.62 in a similar trucker meal and rest break class action that resolved before class certification or dispositive motions were ruled upon). Accordingly, any lodestar multiplier under 1.75 is presumptively reasonable for a case like the instant case.

Costs Incurred

28. The actual litigation costs incurred in this case by Ackermann & Tilajef, P.C. amount to \$5,441.96, as follows:

Ackermann & Tilajef, P.C. Costs

3/17/2016	India Lin Bodien Law	Reimbursement for 1/2 Filing Fee for Summons & Complaint	\$120.50
4/21/2016	Nationwide Legal	Service of Summons & Complaint	\$298.00
4/21/2016	Nationwide Legal	File Proof of Service of Summons & Complaint	\$205.00
6/1/2016	India Lin Bodien Law	Pro Hac Vice fee	\$226.00
10/13/2016	JAMS	1/2 Mediation Fee	\$3,225.00
10/24/2016	Steve Eilerman	Reimbursement for Costs incurred to travel to mediation on 10/26/16	\$943.10
10/24/2016	India Lin Bodien Law	Reimbursement for 1/2 Costs incurred to travel to mediation on 10/26/16	\$294.51
	Westlaw	Legal Research	\$87.50
	In-House Copying - A&T	121 pages @ \$.35 / page	\$42.35
		TOTAL:	\$5,441.96

Class Representative Enhancement Award

29. Plaintiffs request that the Court grant final approval to the reasonable and fair Enhancement Award to the named Plaintiff in the amount of \$5,000 based on the risks he took in

1 bringing this case forward, the benefits he conferred on the Class, the reputational risk he undertook in
2 terms of his applications for future employment and the public record of this case, the fact that he
3 agreed to a general release of all of his claims that is broader than the release offered by the Class, the
4 fact that, if had they lost this case, he could have been ordered to pay Defendant's costs, the fact that
5 the amount requested as an Enhancement Award is consistent with awards approved in similar cases,
6 and the fact that, to date, after notice to the Class of the proposed Enhancement Award, no class
7 member has objected to it, and Defendant does not object to the Enhancement Award.

8 I declare under penalty of perjury under the laws of the United States and the State of
9 Washington that the foregoing is true and correct.

10 Dated: April 21, 2017

11
12 By: /s/ Craig Ackermann
13 Craig J. Ackermann, Esq.