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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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Attorneys for Plaintiff Erick Grumm and the Putative Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF HUMBOLDT**

Erick Grumm, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

T.J.S. Leasing & Holding, Co., Inc. a
California Company, and Does 1-10,

Defendants.

CASE NO. DR160492

**DECLARATION OF CRAIG J.
ACKERMANN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Date: October 23, 2017

Time: 1:45 p.m.

Dept.: 3

Hon. Timothy P. Cissna

Complaint Filed: September 28, 2016

Trial Date: None

DECLARATION OF CRAIG J. ACKERMANN

I, Craig J. Ackermann, declare as follows:

Introduction

1. I am an attorney licensed to practice law before this Court and 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.

2. I am a founding shareholder in the law firm of Ackermann & Tilajef, P.C. (“A&T,” “Co-Class Counsel” or “Plaintiff’s Counsel”), attorneys of record (along with Jonathan Melmed of Melmed Law Group P.C.) for Plaintiff Erick Grumm (“Plaintiff”) and the proposed settlement class (the “Class”) in the above-captioned matter.

3. After engaging in difficult, but productive mediation and negotiation discussions, Plaintiff and T.J.S. Leasing & Holding, Co., Inc. (“Defendant”) have entered into a Joint Stipulation of Settlement and Release of Class Action (the “Settlement Agreement”) resolving the claims of the putative class. The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in the matter of *Erick Grumm v. T.J.S. Leasing & Holding, Co., Inc.* In exchange, Defendant will pay the Class the Gross Maximum Settlement Amount of \$200,000.00. The proposed settlement is to be paid out on a claims made basis. Regardless of the actual amount claimed by Class members, at least 70% of the Net Settlement Amount shall be distributed to the participating class Members. If more than 70% of the Net Settlement amount is claimed, then Defendant shall pay the actual amount claimed, with any amount unclaimed from the Net Settlement Amount reverting back to Defendant. Funds represented by any uncashed checks will be paid to the Department of Industrial Relations’ unclaimed wages fund in the name of the class member that did not cash his or her check. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**. The Notice of Proposed Settlement of Class Action (“Class Notice”) and Claim Form are attached as **Exhibits 1 and 2**, respectively, to the Settlement Agreement.

4. I have no knowledge of the existence of any conflicting interests between my firm and any of its attorneys and our co-counsel, Melmed Law Group P.C., on the one hand, and Plaintiff or any other Class Member, on the other.

1 Attorney Experience

2 5. In 1994, I received a B.A. with honors and graduated Phi Beta Kappa from the
3 University of Texas at Austin. In 1997, I received a J.D. from the University of Texas, School of
4 Law. I became a member of the Bar of the State of Texas in 1997. I became a member of the Bar of
5 the State of California in 2004.

6 6. Since 1997, I have exclusively practiced employment law and have amassed a
7 significant amount of experience in complex employment litigation. From 1997 through 2000, I was
8 an associate in the labor and employment law group for Jenkins & Gilchrist, P.C. ("J&G"), in the
9 firm's Dallas, Texas office, where I represented Fortune 1000 companies, including Hartford
10 Insurance, Belo Corporation, and Alcatel, as second-chair in various employment-related matters,
11 including several class action cases. While employed by J&G, I drafted a number of summary
12 judgment motions in cases where we obtained summary judgment for the defendants, including
13 several that were reported on Westlaw. *See Wayne v. The Dallas Morning News, Inc.*, CIV.A.No.3-
14 98-CV-0711-L, 1999 WL 1146840 (N.D. Tex. Nov. 24, 1999) (with lead counsel, Robert E. Sheeder,
15 Esq.); *Mieritz v. Hartford Fire Insurance Co.*, No. Civ.A.3:99-CV-121-R, 2000 WL 422909 (N.D.
16 Tex. April 17, 2000) (with lead counsel Steve Fox, Esq.).

17 7. From 2000 through mid-2003, I worked in New York City for a plaintiffs' side
18 employment law firm, Arenson, Ditmar & Karban, where I was involved for several years, *pro hac*
19 *vice*, in a second-chair capacity representing 150 individually-named plaintiffs in a large sexual
20 harassment case against a major Wall Street bank that was eventually resolved for \$23.5 million. In
21 terms of the number of plaintiffs and the size of the ultimate settlement, this sexual harassment case
22 was the second largest sexual harassment case in U.S. history. There were over 60 depositions taken
23 and defended in that case prior to trial.

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

27 9. From January 2004 through the present, I have been a founding and managing
28 shareholder in the firm of Ackermann & Tilajef, P.C. where we have represented thousands of

employees in wage and hour class actions, and other employment-related matters. Ackermann & Tilajef, P.C. has extensive experience in the litigation of complex cases, including California-wide class actions. For example, since 2009, we have successfully obtained class certification and been appointed as adequate class counsel in a number of cases where contested class certification motions were filed and fully briefed. *See, e.g.*, (1) Order Adopting Findings and Recommendations, *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL 3638026 (E.D. Cal. Aug. 21, 2012) (Hon. Lawrence O’Neil) (Order adopting findings and recommendations of Magistrate Beck); Findings and Recommendations Regarding Plaintiff’s Motion for Class Certification, *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL 2912395 (E.D. Cal. July 16, 2012) (U.S. Magistrate Judge Dennis L. Beck) (recommending certification of class action for 2,000 truck drivers alleging claims for unpaid orientation time); (2) *Jack Morrison v. Knight Transportation, Inc.*, Tulare County Superior Court, Case No. 228016, Nov. 13, 2009 Order Granting Plaintiff’s Motion for Class Certification (Hon. Lloyd Hicks) (granting certification of class of over 2,000 truck drivers with claims for missed meal breaks premiums); (3) *Anderson v. Andrus Transportation*, San Bernardino County Superior Court, Case No. CIV DS 915878, August 16, 2011 Order Granting In Part Plaintiff’s Motion for Class Certification (class certification granted to class of over 550 truck drivers with claims for unpaid minimum wages and derivative claims); and (4) *Trujillo v. Winco Foods, LLC*, Stanislaus County Superior Court, Case No. 622364, March 16, 2011 Order Granting Plaintiff’s Motion for Class Certification (granting class certification of missed meal and rest break claims and derivative claims to class of 150 truck drivers). In each of these cases, the trial court judges determined that I and my firm were competent and adequate class counsel, or co-class counsel.

10. Since 2004, our firm has also represented more than 250 individual employees in cases brought under various state and federal statutes, including the California Labor Code, and we have obtained favorable results in numerous cases. In December 2012, for example, we obtained a Final Judgment in the amount of \$318,913.09 in a Title VII and FEHA retaliation case after a general jury verdict for the Plaintiff and a successful appeal to the Ninth Circuit from the district court’s denial of Plaintiff’s motion for attorneys’ fees. *See* Final Judgment, *Barrios v. Diamond Contract Services, Inc.*, Case No. 2:07-cv-03500-CBM-FMO (C.D. Cal. Dec. 20, 2012), ECF No. 138 (final judgment

1 entered for Plaintiff in the amount of \$318,913.09); *see also Barrios v. Diamond Contract Services,*
2 *Inc.*, 461 F. App'x 571 (9th Cir. Dec. 13, 2011) (reversing original district court judge's denial of
3 motion for attorneys' fees).

4 11. In addition, from 2009 through the present, our firm has been appointed class counsel
5 and obtained final approval of numerous wage and hour class action settlements for truck drivers.
6 *See, e.g.,* Supplemental Order Granting Final Approval to Class Action Settlement, *Downs v. U.S.*
7 *Foodservice, Inc.*, Case No. 3:10-cv-02163-EMC (N.D. Cal. Sept. 11, 2012), ECF No. 84 (granting
8 approval to class action settlement for 1,100 truck drivers with meal and rest break claims;
9 Memorandum Decision Re Unopposed Motion for Final Approval of Class Action Settlement (Doc.
10 41) and For Attorneys' Fees and Costs (Doc. 48), *Bond v. Ferguson Enterprises, Inc.*, NO. 1:09-cv-
11 1662 OWW MJS, 2011 WL 2648879 (E.D. June 30, 2011) (granting approval to class settlement for
12 553 truck drivers); Order Re Final Approval of Class Action Settlement, *Padilla v. Young's Market*
13 *Company, LLC*, Case No. 2:09-CV-08730 DMG (RCx) (C.D. Cal. Aug. 23, 2010), ECF No. 53
14 (approving settlement of meal and rest break claims of 310 truck drivers); Order Granting Plaintiffs'
15 Motion for Final Approval of Class Action Settlement, Approving Service Awards to the Class
16 Representatives, and Granting Plaintiffs' Motion for Attorneys' Fees and Costs, *Jape v. Southern*
17 *Wine and Spirits of America, Inc.*, Case No. CV09-2599 SJO (FMOx) (C.D. Cal. July 19, 2010), ECF
18 No. 50 (granting final approval to settlement for 301 truck drivers); Order Granting Plaintiffs' Motions
19 for: (1) Final Approval of Class Action Settlement and Award of Enhancement Fee to Class
20 Representative; and (2) Reasonable Attorneys' Fees and Reimbursement of Litigation Expenses and
21 Costs to Class Counsel, *Valladares v. The SYGMA Network, Inc.*, Los Angeles County Case No. BC
22 406053 (April 6, 2010) (granting final approval to wage and hour settlement for class of 515 truck
23 drivers); Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, *Valdez v.*
24 *Sysco Food Services of Los Angeles, Inc.*, Los Angeles County Case No. BC396372 (Feb. 1, 2010)
25 (granting final approval to missed meal break settlement for class of 480 truck drivers); Order (1)
26 Granting Final Approval of Class Action Settlement; (2) Awarding Payment of Class Counsel's
27 Attorneys' Fees, Expenses, and Costs; and (3) Awarding Participation, Service, and Incentive
28 Payment to Class Representative From Settlement Fund, *Murray v. United Natural Foods, Inc.*, Placer

1 County Sup. Court Case No. SCV21938 (Jan. 6, 2009) (granting final approval to settlement for 335
2 truck drivers).

3 12. From 2012 through 2014, we represented plaintiffs in class action cases alleging
4 claims for unreimbursed mileage expenses. On September 16, 2013, in the case of *Zotea v. Ross*
5 *Stores, Inc.*, Alameda County Superior Court Case No. CV11592051, the Honorable Wynne Carvill
6 appointed me as co-class counsel in conjunction with granting final approval to a settlement regarding
7 the failure to reimburse mileage expenses on behalf of a class of retail supervisory employees. On
8 November 1, 2013, in the case of *Grom v. The Men's Wearhouse, Inc.*, Sacramento Superior Court
9 Case No. 34-2012-00117446, the Honorable Alan G. Perkins appointed me as co-class counsel in
10 conjunction with granting final approval to a settlement regarding the failure to reimburse mileage
11 expenses on behalf of a class of retail employees. On November 20, 2013, the Honorable Morris C.
12 England, in conjunction with a Memorandum and Order granting Final Approval of a class action
13 settlement for unreimbursed mileage expenses of supervisors of Best Buy LP, found that our firm was
14 adequate class counsel in *Monterrubio v. Best Buy Stores, L.P.*, No. 2:11-cv-03270-MCE-AC (E.D.
15 Cal. November 20, 2013). On June 30, 2014, in conjunction with the granting of final approval to a
16 settlement regarding the failure to reimburse mileage expenses on behalf of a class of 1,400 current
17 and former Assistant Managers, Store Managers, and Department Managers, the Honorable Jon S.
18 Tigar approved me and Michael Malk as competent class counsel for the putative class in the case of
19 *Boring v. Bed Bath and Beyond of California LLC*, Case No. 3:12-cv-05259-JST (N.D. Cal. June 30,
20 2014). On August 6, 2014, in conjunction with the granting of final approval to a settlement regarding
21 the failure to reimburse mileage expenses on behalf of a class of thousands of assistant managers, the
22 Honorable Phyllis J. Hamilton approved me as competent class counsel for the putative class in the
23 case of *Eichelberger and Montellano v. Home Depot USA, Inc.*, Case No. 4:13-cv-00260PJH (N.D.
24 Cal. Aug. 6, 2014).

25 13. Our co-counsel, Jonathan Melmed, Esq. has been a litigator for four years. In his prior
26 position, Mr. Melmed was an associate attorney at Von Behren & Hunter, LLP ("VBH"). At VBH
27 Mr. Melmed litigated complex commercial litigation matters where he represented life and health
28 insurers in in bad faith, ERISA, breach of contract and related disputes. At VBH, Mr. Melmed also

1 represented and assisted in the representation of hotels, restaurants and real estate development groups
2 in state and federal commercial litigation, including class action cases. In 2015, our firm and Melmed
3 Law Group P.C. began representing truck drivers in class action cases. Mr. Melmed has been
4 appointed adequate class counsel in several recent cases. *See, e.g., Blan v. Best Overnight Express,*
5 *Inc.*, Case No. BC-CIVDS1517585, San Bernardino Superior Court (final approval granted on July
6 27, 2016) (Judge Gilbert Ochoa); *Reyes et al. v. Mike Lowrie Trucking, Inc.*, Case No. FCS045537,
7 Solano County Superior Court (final approval granted on February 2, 2017) (Judge Harry S.
8 Kinnicutt); *Blan v. Button Transportation, Inc.*, Case No. FCS045949, Solano County Superior Court
9 (final approval granted on December 8, 2016) (Judge Michael Mattice); *Plimpton et al. v. Gordon*
10 *Trucking, Inc.*, Case No. CIV-DS1511918, San Bernardino County Superior Court (final approval
11 granted on February 16, 2017) (Judge Donald Alvarez); *Cleary v. Penske Truck Leasing Co., L.P.*,
12 Case No. CIVDS1600144, San Bernardino County Superior Court (final approval granted on
13 February 8, 2017) (Judge Janet M. Frangie); *Upton v. Coremark International, Inc.*, Case No. CGC
14 15-549348, San Francisco County Superior Court (final approval granted on May 10, 2017) (Judge
15 Curtis E.A. Karnow); *Mark Broner v. Michael Dusi Trucking, Inc.*, Case No. 16CVP-0044, San Luis
16 Obispo County Superior Court (final approval granted on March 15, 2017) (Judge Donald G.
17 Umhofer); *Anthony Riley v. Pacific Tank Lines, Inc.*, Case No. CIVDS1603263, San Bernardino
18 County Superior Court (final approval granted on March 28, 2017) (Judge John M. Pacheco); *Alex*
19 *Pena v. Inner Valley Transport, Inc.*, Case No. BCV-100625-LHB, Kern County Superior Court (final
20 approval granted on May 5, 2017) (Judge Thomas S. Clark); *William Haynes v. Reliable Trucking,*
21 *Inc.*, Case No. C16-01237, Contra Costa County Superior Court (final approval granted on May 26,
22 2017) (Judge Barry P. Goode); *Ramirez v. Castlewood West, LLC*, Case No. 16CV01137, Monterey
23 County Superior Court (final approval granted on May 18, 2017) (Judge Lydia Villarreal); *Tami Long*
24 *v. Covenant Transport, Inc.*, Case No. 1:15-cv-278, Eastern District of Tennessee, Chattanooga
25 Division (final approval granted on April 28, 2017) (Judge Travis R. McDonough); *Bruce Waddell v.*
26 *Dalton Trucking, Inc.*, Case No. CIVDS1603262, San Bernardino County Superior Court (final
27 approval granted on August 7, 2017) (Judge John M. Pacheco); *Nigel Davis v. Western Merchandise*
28 *Express, Inc.*, Case No. BCV-16-101216, Kern County Superior Court (final approval granted on

1 April 26, 2017) (Judge Sidney P. Chapin); *Nigel Davis v. Transforce, Inc.*, Case No. BCV-16-101393,
2 Kern County Superior Court (final approval granted on June 5, 2017) (Judge Thomas S. Clark); *Elson*
3 *et al v. Covey Auto Express, Inc.*, Case No. STK-CV-UOE-2016-0009114, San Joaquin County
4 Superior Court, (final approval granted on September 18, 2017) (Judge Linda L. Lofthus); *Jarrold P.*
5 *Asplund v. White Timber Industries, Inc.*, Case No. 16-2-00870-5, Cowlitz County Superior Court
6 (Washington State) (final approval granted on September 13, 2017) (Judge Michael Evans); *Ruben*
7 *Campos v. Black Eagle Trucking, Inc.*, Case No. 37-2016-00023781-CU-OE-CTL, San Diego County
8 Superior Court (final approval granted on August 25, 2017) (Judge Timothy Taylor); *John Powers v.*
9 *Estenson Logistics, LLC*, Case No. CIVDS1602295, San Bernardino County Superior Court (final
10 approval granted on July 12, 2017) (Judge David Cohn); *Gerald W. Harris et al v. Jerry DeBriac*
11 *Logging Co., Inc.*, Case No. 16-2-00402-5, Cowlitz County Superior Court (final approval granted on
12 June 7, 2017) (Judge Stephen M. Warning); *Christopher P. Young v. First Class Service Trucking*
13 *Company, Inc.*, Case No. STK-CV-2016-10381, San Joaquin County Superior Court (preliminary
14 approval granted on July 5, 2017) (final approval set to be heard December 8, 2017) (Judge Elizabeth
15 Humphreys); *Hugues v. The Morning Star Trucking Company, LLC*, et al. Yolo County Case No.
16 CV16-1215 (August 3, 2017) (granting final approval to \$1.95 million Class Action Settlement for
17 unpaid rest breaks for 1,405 truck seasonal truck drivers, with an additional \$500,000 in debt relief
18 on the plaintiffs' trucking school over-charging claims and agreement that the defendant would lower
19 the cost of trucking school in its training agreement going forward); *Oscar Torres et al v. Salinas*
20 *Farm Labor Contractor, Inc.*, Case No. 2018173, Stanislaus County Superior Court (preliminary
21 approval granted on July 17, 2017) (final approval set to be heard December 19, 2017) (Judge Roger
22 M. Beauchesne); *Rocco Isabella v. Equinox Holdings, Inc.*, Case No. BC578960, Los Angeles
23 Superior Court (preliminary approval granted on July 25, 2017) (final approval set to be heard on
24 January 4, 2018) (Judge Ann I. Jones).

25 14. In 2015, our firm, along with Melmed Law Group P.C, began to file cases on behalf
26 of truck drivers paid on a piece-rate basis who were not paid separately and hourly for rest breaks, pre
27 and post-trip inspection time and other non-driving time. The instant case was one of the cases
28 initiated in this niche.

1
2 Background Facts And The Parties' Claims And Defenses

3 15. The attorneys I supervise and I have performed substantial work and diligently
4 investigated and prosecuted this case to a successful conclusion. Our work, in conjunction with co-
5 counsel Jonathan Melmed, resulted in the creation of a significant settlement fund for the benefit of
6 the Class. We avoided protracted litigation by conducting considerable investigation and informal
7 discovery before filing suit related to the class claims, and efficiently communicated and exchanged
8 information with Defense counsel such that the parties could successfully settle the case after a
9 significant exchange of informal discovery and a full-day mediation. Because of the risks involved
10 in litigating the case and the contested legal and factual issues, Class Counsel believe this settlement
11 to be fair, reasonable, and adequate.

12 16. While I took the lead role in litigating this case, my co-counsel Jonathan Melmed was
13 involved in the litigation strategy and all facets of this litigation. My firm's legal assistants Jaclyn
14 Blackwell and Kaitlyn Morales and associate Sam Vahedi worked on this case, along with Melmed
15 Law Group P.C.'s paralegal Lorie Gutierrez, and legal assistants Minsoo Lee and Cristy Sipaque.

16 17. In September 2016 our firm and Melmed Law Group P.C. were retained by Erick
17 Grumm, the Plaintiff and Class Representative. During the course of our interview, with Mr. Grumm,
18 and our initial investigation of this case, we learned that Defendant is a California corporation with its
19 headquarters in Ferndale, California in Humboldt County. Defendant is a trucking company that
20 transports milk, juice and other liquids to various locations throughout California. In order to provide
21 these services, Defendant employs approximately 47 drivers at any one time. Defendant has employed
22 approximately 79 drivers in total during the Class Period.

23 18. During our investigation, we ascertained that, Defendant compensated its drivers
24 based on a per mile, piece-rate pay structure. Defendant paid truck drivers on this "per mile" basis
25 with no additional and separate pay on an hourly basis for time spent on rest breaks, inspections,
26 loading and unloading, cleaning/fueling and/or paperwork. There was no separate and hourly pay for
27 the Non Driving Tasks.

28 19. On September 28, 2016, Plaintiff filed a Class Action Complaint in Humboldt County

1 Superior Court. The Complaint alleged, on behalf of Plaintiff and a class of similarly situated truck
2 drivers, that Defendant violated California's minimum wage law by not separately paying truck
3 drivers at hourly rates for certain work-related tasks that were not specified in Defendant's
4 compensation plan and for their time spent on their statutory rest breaks. *See Bluford v. Safeway*
5 *Stores, Inc.*, 216 Cal. App. 4th 864, 872-73 (2013) ("[A] piece-rate compensation formula that does
6 not compensate separately for rest periods does not comply with California minimum wage law.");
7 *see, also, Labor Code* § 226.2 (Codifying *Bluford* and creating a safe harbor defense pursuant to which
8 employers could wipe out liability for all piece-rate related claims prior to December 31, 2015 by
9 paying either 4% of the W2 wages paid to all Class Members during the period from July 1, 2012 to
10 December 31, 2015 or 3% of the same amount if some non-productive time was paid for separately
11 and hourly).

12 20. Specifically, Plaintiff alleged: (a) Defendant failed to pay drivers their hourly rate, or
13 alternatively minimum wage, for time spent on pre-trip and post-trip vehicle inspections, related
14 paperwork, and statutory rest breaks in violation of Labor Code sections 1194 and 1194.2; (b) because
15 Defendant did not separately pay for time spent on statutory rest breaks, Defendant owed rest period
16 premiums under Labor Code section 226.7; (c) waiting time penalties; and (d) unfair business
17 practices under Business and Professions Code section 17200 based on the foregoing.

18 21. Following its receipt of Complaint, Defendant made it clear to me and my co-counsel
19 that it denied the allegations in the Complaint. In particular, Defendant contended that its truck drivers
20 experienced no minimum wage violations because the delivery rate lawfully compensated them for
21 all tasks associated with making deliveries (including loading and unloading time for local routes,
22 vehicle inspections mandated by the Department of Transportation ("DOT"), and completing
23 paperwork to document a delivery). Citing the DLSE Manual, Defendant contended that its piece-
24 rate lawfully compensates truck drivers for all activities that are essential to completing deliveries.
25 Defendant also maintained that its delivery rate lawfully includes statutory rest breaks and argued that
26 *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013) was at odds with the plain language of
27 the IWC Wage Order No. 9.

28 22. Defendant further argued that, even if Plaintiff prevailed on that claim, potential

1 liability would be less than \$3.00 per day—pay for two 10-minute breaks at minimum wage (\$9.00
2 per hour for most of the limitations period). Plaintiff contended, by contrast, that pay for the rest
3 breaks would have to be at the truck drivers’ normal hourly rate.

4 23. Defendant further contended that Plaintiff’s derivative claims for liquidated damages
5 and penalties would fail for the same reasons, and also that Plaintiff is not entitled to liquidated
6 damages or penalties because Defendant acted in good faith with a reasonable belief that its conduct
7 was lawful. *See* Cal. Lab. Code §§ 226(e), 1194.2(b), 2699(e)(2).

8 *The Parties’ Informal Discovery and Mediation*

9 24. As noted, in an attempt to avoid the expense of protracted litigation, the parties agreed
10 to engage in informal discovery and attempt to resolve the matter through arms-length negotiations
11 between counsel before experienced wage-and-hour mediator, Alan Berkowitz, Esq. Counsel agreed
12 to engage in extensive pre-mediation discovery to enable Plaintiff and his counsel to evaluate
13 thoroughly the potential strengths and weaknesses of the claims and defenses in the action.
14 Accordingly, Defendant provided Plaintiff’s counsel with Plaintiff’s personnel file and payroll
15 records, including, an employment agreement between Plaintiff and Defendant; Defendant’s company
16 policy regarding rest breaks and meal periods; and records showing piece rate driving logs.

17 25. Plaintiff served Defendant with his informal discovery requests requesting, among
18 other things, (1) information about the putative class, including the total number of class members
19 and the number of full time equivalent employees (“FTEs”), as well as each class member’s dates of
20 employment with Defendant; (2) the average hourly rates of pay for the members of the putative class
21 when they were paid, if at all, separately and hourly for non-productive work; (3) relevant rest break
22 policy and compensation policy related documents; (4) confirmation of pay changes as of January 1,
23 2016 to pay all truck drivers on an hourly basis; and (5) information in connection with the gross W-
24 2 wage paid out to the Class Members during the Class Period for purposes of calculating the 3% cure
25 pursuant to Labor Code Section 226.2.

26 26. In response to Plaintiff’s expansive informal discovery requests, Defendant produced
27 class-wide electronic data for the entire statutory period. The payroll data included, *inter alia*, (1) the
28 class size including figures for current and former drivers; (2) the total amount Defendant paid out in

1 W-2 wages from July 1, 2012 to December 31, 2015; (3) Defendant's rest break policy; and (4)
2 Defendant's drivers' percentage of time worked in California. Defendant's counsel advised that the
3 Class size is approximately 79 drivers.

4 27. Along with co-counsel and the assistance of Plaintiff, we were able to analyze the
5 electronic data, and prepare a detailed analysis of the claims and potential exposure. In addition,
6 Defendant produced pay codes, compensation policies, pay schedules, relevant compensation and
7 wage information for the class members, and compensation guides for its truck drivers. The pre-
8 mediation discovery confirmed that Plaintiff's minimum wage class claims for time spent on
9 inspections, paperwork, and rest breaks (and his derivative claims) were somewhat uncertain. After
10 a series of discussions between Plaintiff and his counsel, and after we and Plaintiff thoroughly
11 reviewed the materials produced by Defendant, and during mediation, the parties agreed that the
12 statutory cure of at least 4% provided for both a fair and reasonable settlement benchmark. The gross
13 W-2 wages paid out to the class during the class period was approximately \$4,579,134; 4% of
14 \$4,579,134 is \$183,165.36; 3% of \$4,579,134 is \$137,374.02. After weeks of negotiations and after
15 a full day mediation session with experienced wage-and-hour mediator Alan Berkowitz, Esq., and
16 after reviewing the mediator's proposal, the parties decided to settle the matter for the Gross
17 Maximum Settlement Amount of \$200,000, which was the statutory safe harbor amount at the 4%
18 level, plus a reasonable amount for attorneys' fees and costs minus appropriate deductions for all of
19 Defendant's Defenses. The parties further agreed that the Gross Settlement Amount would be paid by
20 Defendant in three installments and that the Class Period would from September 28, 2012 through
21 Preliminary Approval.

22 28. The agreement lead to the execution of the long form Settlement Agreement attached
23 hereto as **Exhibit A** in August 2017.

24 *Fairness and Adequacy Of The Proposed Settlement*

25 29. As described further below, I believe that the Gross Maximum Settlement Amount of
26 \$200,000 for the 79 Class Members is reasonable given the risk, expense, complexity, and likely
27 duration of litigation. The Settlement provides that individual Settlement Shares will be distributed
28 pro-rata based on the number of Covered Workweeks that each Class Member worked in the Class,

1 as a percentage of all Class Members' weeks employed during the same time period. The formula
2 relies upon objective evidence of each Class Member's employment history, which Class Members
3 can easily review and confirm for themselves. This information is readily available from Defendant's
4 records, and the Settlement Administrator can apply the formula in a fair and transparent manner.

5 30. The Settlement is fair and reasonable, and was negotiated at arm's length between
6 experienced employment class action attorneys. Counsel for both parties were thoroughly familiar
7 with the complex legal and factual questions at issue in this litigation. The Settlement is a product of
8 intensive negotiations, supported by extensive investigation and direct exchanges of information
9 through the informal discovery process and during the course of settlement negotiations and
10 mediation.

11 31. Although we (and Mr. Grumm) believed that there was a possibility of certifying the
12 claims, we also recognized the potential risk, expense, and complexity posed by litigation, such as
13 class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal
14 that can take several more years to litigate.

15 32. Based on the informal discovery and data that we obtained (which established the
16 gross W-2 wages for the statutory cure period), our firm was able to estimate the value of the
17 settlement to a certain degree of accuracy.

18 33. Defendant presented a number of compelling defenses, and denied and continues to
19 deny generally the claims and contentions alleged in the Complaint. Defendant contends, among
20 other things, that it complies with and has complied at all times with the California *Labor Code*, the
21 *Business & Professions Code*, and all applicable California laws. Defendant also denies that, for any
22 purpose other than settling this lawsuit, this Action is appropriate for class treatment.

23 34. As a preliminary matter, Defendant contended that drivers have no legal or contractual
24 right to receive hourly pay higher than minimum wage for inspection time, cleaning/fueling time,
25 work-related paperwork or rest breaks (prior to December 31, 2015).

26 35. In addition, Defendant contends that its piece rate compensation system compensates
27 drivers at hourly rates well above minimum wage for all hours worked. Thus, at issue is whether
28 Defendant owes minimum wage (i.e., \$9/hour prior to 2016 and \$10/hour after January 1, 2016) to its

1 drivers for Non-Driving Tasks and rest periods.

2 36. Defendant contended that the answer is “no” for a number of reason. First, all of
3 Defendant’s truck drivers agreed to Defendant’s piece-rate compensation system, and Defendant
4 contended that such agreements are valid under California law.¹ Second, Defendant maintains that
5 their piece-rate pay structure lawfully includes statutory rest breaks. Although Plaintiff cites *Bluford*
6 and *Labor Code* Section 226.2 in support of his contention that piece rate employees must receive
7 separate hourly pay for rest breaks, Defendant contends that *Bluford* did not address important
8 provisions of IWC Wage Order No. 9 that conflict with *Bluford*.²

9 37. Third, Defendant maintained that all drivers received their rest breaks and,
10 accordingly, no missed rest break premiums would be payable since Defendant substantially complied
11 with its obligation to authorize rest breaks. Plaintiff would therefore not be able to recover on his
12 claim for rest break premiums under Section 226.7 of the *Labor Code*, even if the rest periods were
13 unpaid, since the rest breaks were provided and taken. Defendant also denied that Plaintiff and the
14 putative Class could “double-dip” and somehow recover both rest break premiums and pay for rest
15 breaks. At most, Plaintiff and the putative class could recover unpaid wages for non-paid rest breaks,
16 but not both unpaid wages and missed rest break premiums.

17 38. Fourth, Defendant could have asserted a federal preemption defense to Plaintiff’s
18 claims that Plaintiff’s rest break and wage/hour claims are subject to federal preemption based on the
19 Federal Aviation Authorization Administration Act (“FAAAA”).³ At the time that the parties reached

20 ¹ Defendant contends that the drivers experienced no minimum wage violations because the mileage rates lawfully
21 compensated them for all tasks associated with completing the trips (including loading and unloading time, vehicle
22 inspections mandated by the Department of Transportation (“DOT”), and completing paperwork to document a trip). The
23 Division of Labor Standards Enforcement (“DLSE”) has explained that employers with incentive compensations systems
24 may run afoul of California minimum wage law “if, as a result of the directions of the employer, the compensation received
25 by piece rate...workers is reduced because they are precluded, by such directions of the employer, from earning...piece
26 rate compensation during a period of time...” 2002 Update of the DLSE Enforcement Policies and Interpretations Manual
27 (“DLSE Manual”), § 47.7. Therefore, Defendant contended that the mileage rate lawfully compensated drivers for
28 activities other than driving that are essential to completing trips. The cases cited by Plaintiff were, in Defendant’s view,
not applicable because they did not have an agreement whereby the employees agree that tasks such as those referenced
above would be included in the piece-rate and help to generate the piece. For this reason, Defendant questioned whether
Labor Code Section 226.2 applied to its compensation system at all.

² The Wage Orders prohibit deductions from wages for rest breaks and permit employers not to record rest breaks. See
Industrial Welfare Commission, Wage Order No. 9-2001, § 12 (eff. July 1, 2002) (“Authorized rest period time shall be
counted as hours worked for which there shall be no deductions from wages”).

³ The FAAAA provides that a state “may not enact or enforce a law...related to a price, route, or service of any motor

1 a negotiated settlement, certain Congressional Republicans were continuing to advance legislation
2 containing language restricting a state from enacting or enforcing a law or regulation requiring a motor
3 carrier that compensates employees on a piece-rate basis to pay those employees separate or additional
4 compensation, provided that the motor carrier pays the employee a total sum that when divided by the
5 total number of hours worked during the corresponding work period is equal to or greater than the
6 applicable hourly minimum wage of the state.

7 39. The proposed legislation covers the time period at issue in this case, and, if passed,
8 would preempt all claims at issue in this case. *See, e.g.,* [https://www.congress.gov/amendment/114th-](https://www.congress.gov/amendment/114th-congress/house-amendment/794/text)
9 [congress/house-amendment/794/text](https://www.congress.gov/amendment/794/text).⁴

10 40. Finally, Defendant maintained that individualized issues would predominate among
11 putative class members in that Defendant did not maintain rest break records (which were not required
12 until Labor Code 226.2 became effective in January 2016), and some drivers took rest breaks, while
13 others did not. As a result, there would no simple way to ascertain who was part of the class, either
14 for liability or damages purposes. Moreover, the Court may have to examine whether drivers agreed
15 to have the piece-rate include non-driving time, which may raise further individualized contract
16 issues.⁵

17 _____
18 carrier...with respect to the transportation of property.” 49 USC § 14501(c)(1). Although the 9th Circuit, in *Dilts v Penske*
19 *Logistics LLC et al.*, 819 F.Supp.2d 1109 (2011), has rejected FAAA preemption of California wage and hour claims,
20 there are legislative initiatives in Congress seeking to overturn *Dilts* through a retroactive expansion of FAAAA
21 preemption.

22 ⁴ Although the legislation passed the House of Representatives in November 2015, it failed to survive the Senate
23 Conference. There are ongoing efforts to pass the same legislation.

24 ⁵ At least one state court decertified a class of piece-rate drivers based on Defendant’s argument that individualized issues
25 predominate where there is evidence that drivers may have agreed to have the piece-rate be all-inclusive. *See Carson v.*
26 *Knight Transportation, Inc.*, No. VCU234186 (Sept. 12, 2012, Tulare County Superior Court) (Judge Lloyd Hicks)
27 (decertifying a class of California truck drivers who alleged that it is illegal to have a combined “piece-rate” that covers
28 both driving and non-driving duties when compensation for the piece is generally on the number of miles driven).
Ackermann & Tilajef, PC were co-counsel for the plaintiff class in *Carson*. In another similar case, however, the
California Court of Appeal reversed a denial of class certification, holding that whether the piece-rate was intended to
cover non-driving time is irrelevant. *See, Bluford*, 216 Cal. App. 4th at 872-73 (“The trial court’s denial of the rest period
certification class is not supported by substantial evidence. Issues common to all drivers and Safeway pre-dominate
plaintiff’s claim for rest period compensation. Indeed, the common proof demonstrates Safeway did not separately
compensate drivers for their rest periods in the manner required by California law.”); *see also Anderson v. Andrus*
Transportation, San Bernardino County Superior Court, Case No. CIV DS 915878, August 16, 2011 Order (class
certification granted following contested motion to class of over 550 truck drivers with claims for unpaid minimum wages
and derivative claims). Ackermann & Tilajef, PC were co-counsel for the plaintiff class in *Anderson*. A federal district
court also denied certification recently of similar claims on a contested motion. *See, Burnell et al. v. Swift Transportation*
Co of Arizona, LLC, Order Denying Class Certification, Case No. EDCV 10-809-VAP (SPx) (E.D. Cal, May 4, 2016).

1 41. Based on these arguments, evidence and defenses, Defendant argued that (1) it could
2 defeat class certification; (2) it could win on the merits either on summary judgment or at trial; (3)
3 and/or (4) litigation, trial and appeals would all take several more years to litigate.

4 42. Nonetheless, Defendant concluded that further litigation of the Action would be
5 protracted and expensive, and that it is desirable that the Action be fully and finally settled in order to
6 limit further expense, inconvenience and distraction, to dispose of burdensome and protracted
7 litigation, and to permit the operation of Defendant's business without further expensive litigation and
8 the distraction and diversion of its personnel with respect to matters in issue in the Action. Defendant
9 also took into account the uncertainty and risks inherent in any litigation, especially in complex cases
10 such as this Action. Defendant has, therefore, determined that it is desirable and beneficial to it that
11 the Action be settled.

12 43. Whereas proceeding with litigation would impose significant risk of no recovery as
13 well as ongoing, substantial additional expenditures of time and resources, the settlement achieved
14 confers a benefit on Plaintiff and Class Members. If settlement were not achieved, continued litigation
15 of the claims would take substantial time and possibly confer no benefit on Class Members. By
16 contrast, the settlement will yield a prompt, certain, and substantial recovery for Class Members,
17 which also benefits the parties and the Court. Counsel on both sides share the view that this is a fair
18 and reasonable settlement in light of the complexities of the case, the state of the law, and uncertainties
19 of class certification and litigation. Given the risks inherent in litigation and the defenses asserted,
20 this settlement is fair, adequate, and reasonable and in the best interests of Class Members, and should
21 be preliminarily approved. On March 12, 2016, in the case of *Velasco v. Knight Port et al.*, Case No.
22 CIV DS 1513403 (San Bernardino Superior Court), the Honorable Donna Garza granted final
23 approval to a settlement of a class of truck drivers challenging a piece-rate system of compensation
24 with claims for inter alia unpaid wages for rest breaks and non-driving time, as in the instant case. In
25 *Velasco*, the total settlement amount was \$293,000 for approximately 700 drivers, 100 current and
26 600 former, where the average recovery was estimated at \$462.72 and the maximum recovery was
27 \$3,753.01. Here, the average payout per Class Member is estimated to be \$1,409.28 (\$111,333.34
28 Net Settlement Amount / 79 Class Members = 1,409.28) and the maximum payout per class member

1 is \$2,368.79 ($\$111,333.34/47 \text{ FTEs} = \$2,368.79$). These results are comparable or better to the results
2 in *Velasco* and *Andrus*.

3 *Fairness Of The Proposed Enhancement Fee*

4 44. Moreover, the proposed Enhancement Award of \$5,000 for Plaintiff Grumm is fair
5 and reasonable. Plaintiff Grumm's claims were reasonably coextensive with those of the Class.
6 Specifically, Plaintiff Grumm, was employed by Defendant as a truck driver during the summer of
7 2014. During his employment, Plaintiff Grumm was paid on a "per mile" piece rate with no separate
8 and hourly pay for time spent on rest breaks, inspections and paperwork. Additionally, Plaintiff was
9 instrumental in prosecuting this lawsuit and was an important source of information and documents
10 during the course of this litigation. Moreover, Plaintiff has no interests antagonistic to the interests
11 of the Class. Plaintiff has also agreed to a general release of all claims against Defendant, which is
12 significantly broader than the release to be given by the Class Participants.

13 45. Furthermore, Plaintiff provided invaluable assistance to Class Counsel and the Class
14 in this case, including providing factual background for the mediation and the Class Complaint;
15 speaking with other potential class members about their experiences working for Defendant;
16 reviewing the relevant documents, and Complaint; providing documents about Defendant's
17 compensation plan (including his paystubs); participating in phone calls to discuss litigation and
18 settlement strategy; participating telephonically throughout the day of mediation; and reviewing the
19 settlement documents and instant motion. Plaintiff agreed to participate in this case with no guarantee
20 of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as Class
21 Representative and exposed himself to the risk of negative publicity by anyone who opposed this case.
22 Moreover, the requested \$5,000 Incentive Payment for the Named Plaintiff falls within the range of
23 incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond*
24 *v. Ferguson Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30,
25 2011) (approving \$11,250 service award to each of the two class representatives in a trucker meal
26 break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at
27 *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement award to Class Representative in
28 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.

482, 493 (E.D. Cal. 2010) (approving service awards in the amount of \$10,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) (“the court finds plaintiffs’ enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class”).

46. The Settlement Class would have received no benefit had it not been for the contributions of Plaintiff Grumm. Moreover, Plaintiff faced and accepted the significant risk in bringing this litigation—namely, that had he lost, Plaintiff could have been ordered to pay Defendant’s costs. In contrast to the more limited class release, Plaintiff also agreed to a more robust general release of all his claims.

47. I believe the requested Enhancement Award of \$5,000 for Plaintiff Erick Grumm is reasonable and well within precedent for Preliminary and Final Approval.

Attorneys’ Fees And Costs

48. Through my practice, I have gained significant experience regarding the obligations and burdens of representing a class. This knowledge has allowed me and my firm, Ackermann & Tilajef, P.C., to successfully represent plaintiffs in many class actions in the past years. As noted, numerous state and federal courts in California have found that my firm is competent and capable of representing as Class Counsel large classes similar to the one here at issue.

49. Under the terms of the Settlement Agreement, Class Counsel is requesting \$66,666.67 in attorneys’ fees. This amount is equal to 1/3 of the Gross Maximum Settlement Amount of \$200,000. This fee amount is fair, reasonable and consistent with, or less than, awards obtained in

1 similar class action cases preliminary approved by courts in California. *See e.g., Stuart v. RadioShack*
2 *Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of
3 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee award of
4 1/3 of the total settlement was “well within the range of percentages which courts have upheld as
5 reasonable in other class action lawsuits.”); Memorandum & Order, *Monterrubio v. Best Buy Stores,*
6 *L.P.*, Case 2:11-cv-03270-MCE-AC, ECF No. 47, at 23 (E.D. Cal. Nov. 20, 2013) (approving fee
7 award of 30%); *Wilson v. Kiewit Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012)
8 (approving fee award of 1/3 of the common fund and noting that such award is fair, reasonable and
9 appropriate); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-IEG (BLM), 2010 WL 2196104, at
10 * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Romero v.*
11 *Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14,
12 2007) (awarding fees of 1/3 of common fund in a wage and hour class action, noting: “[f]ee awards
13 in class actions average around one-third of the recovery.”); *Martin v. FedEx Ground Package System,*
14 *Inc.*, No. C 06-6883 VRW, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (approving attorneys’
15 fees of 1/3 of common fund). Moreover, if it becomes necessary to litigate this matter further, my firm
16 and our co-counsel have the financial resources and are prepared to devote whatever time and effort
17 are required to zealously advocate on behalf of Plaintiff and the Class. Significantly, the Retainer
18 Agreement in this case provides fees up to 1/3 of the amount obtained.

19 50. If the Court grants Preliminary Approval to the settlement here and authorizes the
20 dissemination of notice of the settlement to the class, Class Counsel anticipates filing a Motion for
21 Attorneys’ Fees and Costs that will be scheduled to be heard and will be filed concurrently with the
22 Motion for Final Approval and Fairness Hearing following the notice process. Of course, if the
23 Settlement is given preliminary approval by the Court, our firm will need to expend additional hours
24 coordinating with the settlement administrator, answering calls and questions from Class Members,
25 and preparing and filing the motion for final approval of the class action settlement and the motion
26 for attorneys’ fees and reimbursement of litigation costs. Class Counsel thus anticipates that at least
27 45 additional hours of work will be needed to shepherd the settlement through final approval.

28 51. To date the litigation costs incurred by our firms amount to approximately \$7,945.08

1 consisting of costs for legal research, in-house copying, filing and service costs, and mediation costs.
2 Plaintiffs anticipate that they will incur approximately \$1,000 in additional costs through final
3 approval, bringing the total expected likely litigation costs for all of Plaintiff's counsel to
4 approximately \$8,945.08.

5 The Settlement Administrator

6 52. The parties propose that the Court appoint CPT Group to serve as the Settlement
7 Administrator. CPT Group is experienced in administering class action settlements, and has estimated
8 its fees and costs for this settlement at no greater than \$9,000.00. A true and correct copy of CPT's
9 quote for the administration of this settlement is attached as **Exhibit B** hereto.

10 I declare under penalty of perjury under the laws of the United States and the State of
11 California that the foregoing is true and correct.

12 Executed on this 28th day of September, 2017 in Los Angeles, California.

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Craig J. Ackermann, Esq.