

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

ANDREW BEISSEL, an individual, J&B
ENTERPRISES, INC., a Colorado
Corporation, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WESTERN FLYER EXPRESS, LLC,

Defendant.

Case No. CIV-21-903-R

**DECLARATION OF CAROLYN H. COTTRELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS AND
COLLECTIVE ACTION SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES AND COSTS AND SERVICE AWARD**

I, Carolyn H. Cottrell, hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of California (No. 166977) and am admitted to practice *pro hac vice* before the Court in this action. I am a member in good standing of the State Bar of California and am over the age of eighteen.

2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP ("SWCK"). SWCK specializes in class, Fair Labor Standards Act ("FLSA") collective, and other representative litigation in state and federal court.

3. SWCK and the Law Offices Of Robert S. Boulter ("RB") represent Plaintiffs Andrew Beissel and J&B Enterprises, Inc. ("Plaintiffs") and the Class and Collective in

this action against Defendant Western Flyer Express, LLC (“WFX”). I submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class and Collective Action Settlement and Plaintiffs’ Motion for Attorneys’ Fees and Costs and Service Award. I am familiar with the file, the documents, and the history related to these cases. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.

4. A true and correct copy of the fully-executed Amended Joint Stipulation of Settlement and Release of Class and Collective Action (“Settlement”) was previously submitted to the Court as Exhibit 2 to the Parties’ Stipulation and Joint Motion to Amend Preliminary Approval Order and to Continue Final Approval Hearing. ECF No. 87-2.

QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions and employment class actions. In November 2012, the Recorder listed the firm as one of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.

6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions, including wage and hour and consumer class actions, includes: *Wright, et al. v. Frontier Management LLC, et al.*, (Case No. 2:19-cv-01767-JAM-CKD) (Eastern District of California, March 13, 2023)

(final approval of California, Illinois, Oregon, and Washington class and FLSA collective action settlement); *Campos v. Extra Express (Cerritos) Inc.*, (Case No. BC715057) (Los Angeles Superior Court, Jan. 18, 2023) (final approval of California law wage and hour class action settlement alleging misclassification of short haul delivery drivers); *Huddleston v. John Christner Trucking, LLC*, (Case No. 4:17-cv-00549-GKF-CDL) (Northern District of Oklahoma, October 31, 2022) (final approval of California and Oklahoma class and FLSA collective action settlement where Plaintiff obtained class certification on behalf of misclassified truck drivers); *Tinaco v. Quik Stop Markets, Inc.* (Case No. RG20061119) (Alameda County Superior Court, June 23, 2022) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Ramirez, et al. v. Rite Aid Corp., et al.*, (Case No. CV 20-3531-GW-SKx) (Central District of California, May 19, 2022) (final approval of California class action and PAGA representative action); *Madrigal v. Mission Lakes Country Club, Inc.* (Case No. RIC2003428) (Riverside County Superior Court, May 18, 2022) (final approval of California class action and PAGA representative action); *Hazel v. Himage Solutions, Inc.* (Case No. RG20068159) (Alameda County Superior Court, November 2, 2021) (final approval of a California class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI Management, Inc.* (Case No. 34-2018-

00237315) (Sacramento County Superior Court, October 20, 2021) (final approval of a California Rule 23 class action settlement in action that alleged fraudulent and improper billing for workers compensation charges by an apartment complex management company); *Etcheverry v. Franciscan Health System, et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of Washington, October 19, 2021) (final approval of hybrid Fair Labor Standards Act and Washington class action); *Jean-Pierre, et al. v. J&L Cable TV Services, Inc.* (Case No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021) (final approval of hybrid Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-WQH-AHG) (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Communications CA, Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Villafan v. Broadpectrum Downstream Services, Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California, April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours

worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California

record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under California law); *Vicerol and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law, failure to provide meal and rest breaks, failure

to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clock work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements to retention specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588)

(District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work

performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class

action settlement for off-the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who have tried to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the University of California); *Lopez v. San Francisco Unified School District* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action against school district for widespread disability access violations); *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of*

California (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court) (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County Superior Court) (final approval of class action settlement for misclassification of Siebel's inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior Court) (final approval of class action settlement for failure to provide meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation pay upon end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class action settlement for failure to pay Sears drivers for all hours worked); among many others.

7. Nearly my entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I manage many of the firm's current cases in these areas. I am a member

of the State Bar of California, and have had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and co-chaired its Women’s Caucus. I was named one of the “Top Women Litigators for 2010” by the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my bachelor’s degree from the University of California, and I am a graduate of the University of the Pacific, McGeorge School of Law.

CASE SUMMARY AND PROCEDURAL HISTORY

8. On December 7, 2020, Plaintiffs filed a class-action complaint against WFX in the Northern District of Oklahoma. Plaintiffs alleged that WFX misled and fraudulently induced its drivers into hauling products for WFX by, among other things, misrepresenting the income the drivers would earn, and failing to disclose key information about WFX’s driver program. Based on these allegations, Plaintiffs alleged claims under the Oklahoma Consumer Protection Act, 15 Okla. St. §§ 751, *et seq.* (“OCPA”) and Oklahoma Deceptive Trade Practices Act, 78 Okla. St. §§ 52, *et seq.* (“ODTPA”), in addition to other related common law claims.

9. Prior to filing its Answer to Plaintiffs’ allegations, WFX brought a motion to dismiss and a motion to transfer venue. These motions were opposed and fully briefed. On September 14, 2021, the Court granted WFX’s motion to transfer, and the matter was transferred to this Court. Once venued in this Court, on October 1, 2021, the Court granted

WFX's motion to dismiss Plaintiffs' claim under the ODTPA (without dismissing the other claims) and provided Plaintiffs leave to amend.

10. Plaintiffs filed an amended complaint on October 15, 2021, asserting the same causes of action, but adding additional allegations in support of the claims. WFX again moved to dismiss Plaintiffs' claim under the ODTPA. The matter was opposed and fully briefed. On December 14, 2021, the Court granted WFX's motion to dismiss the ODTPA claim again. Following the Court's exclusion of the ODTPA claims, WFX filed its Answer containing general and specific denials of Plaintiffs' allegations.

11. Shortly thereafter, the Parties began to discuss the possibility of settlement. The Parties agreed to exchange a wide variety of mediation discovery to better understand the relative strengths and weaknesses of the claims and defenses at issue, and scheduled a mediation for July 19, 2022 to take place before Michael Russell, an experienced and well-respected mediator.

12. During this time, Class Counsel extensively analyzed the mediation discovery and continued its independent investigation into the claims at issue, including a comprehensive analysis of WFX's recruiting materials. Class Counsel further investigated whether other potential claims were viable and should be asserted.

13. After a full day of mediation, the Parties reached a tentative settlement on July 19, 2022.

14. In reaching the agreement to settle, Plaintiffs and Class Counsel relied on the substantial discovery provided by WFX and their own independent investigations and evaluated the strengths and weaknesses of the claims pleaded in the then-operative First

Amended Complaint, as well as claims under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201, *et seq.* and other statutes. Plaintiffs and Class Counsel assessed the risks and likelihood of success on both certification and merits issues pertaining to each claim and recognized that the settlement proposal provided a strong result.

15. As the Parties negotiated and drafted the long-form settlement agreement, however, there were disputes on many key terms. Between July 19, 2022 and December 14, 2022, the Parties committed time and effort virtually every week to achieve a mutually agreeable long-form settlement agreement, inclusive of meeting, conferring, negotiating, and exchanging drafts of the agreement throughout the process.

16. The Parties executed the full Settlement on December 14, 2022.

17. Pursuant to the Settlement and the Parties' discussions during mediation, Class Counsel drafted a comprehensive Second Amended Complaint that added claims for misclassification and violation of federal statutes prohibiting trafficking, debt servitude, peonage and involuntary servitude under 18 U.S.C. §§ 1581, *et seq.* Plaintiffs filed the Second Amended Complaint on December 16, 2022.

18. Plaintiffs filed the Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement on January 8, 2023. This detailed motion provided an extensive analysis of the proposed Settlement. The Court granted preliminary approval of the Settlement on January 18, 2023.

19. Following the Court's preliminary approval order, WFX provided class list information to the Court-appointed settlement administrator, CPT Group, Inc. ("CPT").

CPT then undertook calculations to determine the individual awards for each class member.

20. During this process, Class Counsel discerned that the number of class members, under the Class and Collective definitions in the original settlement, exceeded the number reported by Plaintiffs in the preliminary approval papers. Plaintiffs reported that there were approximately 2,670 class members based on information and data used by the Parties at the July 2022 mediation. After preliminary approval, Plaintiffs learned that this figure encompassed class members up to March 11, 2021, when WFX represents it made certain changes to its written agreements with class members. Under the original settlement agreement, however, that the Class and Collective definitions extended through July 19, 2022.

21. Accordingly, the Parties met and conferred and reached an agreement under which the Class and Collective definitions were redefined to run from December 7, 2017 to March 11, 2021. The Parties then executed the amended settlement agreement to implement these changes.

22. The Parties filed the Stipulation to Amend, which sought to amend the preliminary approval order as to the time period of the Class and Collective definitions and Released Claims and attached the Settlement (as amended) in clean and redline formats. The Court granted the Stipulation to Amend on May 19, 2023.

23. The Parties then worked with CPT to implement the Court-approved notice process. WFX provided updated class list information to CPT on June 2, 2023. CPT sent the Notice of Proposed Class Action Settlement and Hearing Date for Final Court

Approval and Class Form (“Class Notice”) to all class members on August 8, 2023.¹ CPT also established a toll-free call center to address questions from class members and a settlement website that provided copies of the long-form Settlement and related case documents.² Class Counsel worked with CPT Group to administer and oversee each stage of this process. After the Class Notice was issued, Class Counsel fielded numerous inquiries from class members relating to the Settlement.

24. The deadline for class members to submit disputes, requests for exclusion, or objections was October 7, 2023.

25. Class Counsel then prepared the final approval papers, including the instant motion and all supporting declarations. Class Counsel will appear at the Final Approval and Fairness Hearing on November 3, 2023. Thereafter, Class Counsel will work with CPT to ensure that the Settlement is fairly administered and implemented, inclusive of ensuring that class members receive their payments and that any residual funds are dispersed in accordance with the Settlement.

26. WFX served notice pursuant to the requirements of the Class Action Fairness Act, 28 U.S.C. §§ 1715 *et seq.* (“CAFA”), which requires that “appropriate state and federal officials” be notified of a pending class-action settlement in federal court. I am informed that WFX issued the requisite CAFA notices on January 27, 2023.

¹ There are 2,728 class members in the final tally.

² The URL is <https://www.cptgroupcaseinfo.com/westernflyersettlement>.

THE SETTLEMENT

Key Terms of the Settlement

27. Under the Settlement, WFX will pay a non-reversionary Gross Settlement Amount of \$4,900,000.00 to resolve this litigation. This amount includes all payments to the class members; proposed attorneys' fees and costs; the proposed service award; the costs of settlement administration (\$21,500.00); and any other obligation of WFX under the Settlement.

28. The Net Settlement Amount (the amount distributed to class members) is approximately \$3,214,458.4.

29. The Net Settlement Amount was reported at approximately \$3,120,330.00 in the preliminary approval motion. This figure was based on estimated attorneys' costs of \$100,000. Class Counsel's final costs (\$5,871.55) are considerably less than \$100,000, resulting in a higher final Net Settlement Amount.

30. Under the Settlement, the average net award is approximately \$1,143 per person. 957 class members will receive net individual awards exceeding \$1,000, 261 class members will receive net awards exceeding \$3,000, and 70 class members will receive net awards exceeding \$5,000.

31. The entire Gross Settlement Amount will be disbursed pursuant to the terms of the Settlement, and none of it will revert to WFX. Other key terms of the Settlement include:

- **Oklahoma Class**: A portion of the Net Settlement Amount will be distributed to Oklahoma Class Members, who are defined as "All current and former individuals who provide(d) transportation services for WFX within the United

States, who entered into an Independent Contractor Agreement, or a similarly styled agreement, with WFX, from December 7, 2017 to March 11, 2021.” ECF No. 87-2, p. 2, ¶ I.5.

- **FLSA Collective Members**: A portion of the Net Settlement Amount will be distributed to FLSA Collective Members, who are defined as “all current and former individuals who provided transportation services for WFX within the United States, between December 7, 2017 and March 11, 2021, who (1) entered into an Independent Contractor agreement with WFX (2) were classified as independent contractors, and (3) sign or cash the settlement check(s) they receive as a result of this settlement.”³ *Id.* at p. 4.
- **Class Participants’ Released Claims**: Class Participants (i.e., class members that do not opt out) will release all claims, whether known or unknown, which arose out of, are in any way connected to, or that were made or could have been made based on facts, theories, and claims pled in the Complaint, Amended Complaint, or Second Amended Complaint, from December 7, 2017 to December 31, 2021. *Id.* at pp. 6-7, 29-30, ¶ X.1. The Released Claims include, but are not limited to, all wage and hour claims under the FLSA, 29 U.S.C. §§ 201, *et seq.*, that were alleged, inferred, pled or could have been pled based on the factual allegations in the Second Amended Complaint; all claims for the unlawful sale of business opportunities under the Oklahoma Business Opportunity Sales Act, 71 Okla. Stat. §§ 801, *et seq.*; all claims for deceptive and unfair trade practices under the Oklahoma Consumer Protection Act, 15 Okla. Stat. §§ 752, *et seq.*; all claims for deceptive trade practices under the Oklahoma Deceptive Trade Practices Act, 78 Okla. Stat. §§ 52, *et seq.*; all claims for constructive fraud, fraud, misrepresentation, and negligent misrepresentation; and all claims under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude. *See id.*
- **Plaintiffs’ Released Claims**: In exchange for the Service Award, Plaintiffs will release all claims which they may have had prior to the Effective Date against Defendant arising out of or in any way connected with their alleged employment with Defendant, their contracts with Defendant, including claims alleged in the original complaint, and any and all transactions, occurrences, or matters between the Parties occurring before January 18, 2023. *Id.* at pp. 30-31, ¶ X.2.

³ All Drivers covered by the Settlement are members of both the Oklahoma Class and the FLSA Collective (provided that they cash their settlement check). Thus, each class member will receive a share of the Oklahoma Class allocation and the FLSA allocation as part of their Individual Settlement Amount.

- **WFX's Released Claims**: Subject to Court approval, WFX will release Class Participants from all known or unknown monetary claims for outstanding debts, reimbursements, chargebacks, deposits, or other amounts. *Id.* at p. 31, ¶ X.3. This provides considerable equitable relief for class members.
- **Released Parties**: The Released Claims will apply to the Released Parties, including WFX and its present and former parent or holding companies, subsidiaries, divisions, affiliates of all kinds and degrees, successors, predecessors, related companies or joint ventures, and each of their present and former officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, representatives, consultants, administrators, trustees, general and limited partners, predecessors, successors and assigns. *Id.* at p. 7.
- **Pro Rata Distribution**: Each Class Participant will receive a *pro rata* portion of the Net Settlement Amount based on the number of settlement shares he or she is assigned. *See* ECF No. 87-2, pp. 23-24, ¶¶ VII.2-3. Settlement shares are based on the number of workweeks the individual worked compared to the total number of workweeks all Class Participants worked. *Id.* Class Participants will receive one settlement share per FLSA Workweek and two settlement shares per Oklahoma Workweek. *Id.* The total number of settlement shares for all Class Participants will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. *Id.* That figure will then be multiplied by each Class Participant's number of settlement shares to determine the Class Participant's *pro rata* portion of the Net Settlement Amount. *Id.*
- **Tax Allocation**: The Settlement provides that the Individual Settlement Amount payments to Class Participants will be reported on an IRS Form 1099. *Id.* at pp. 11-12, ¶ III.4.
- **Service Award**: The Settlement provides that Plaintiffs will seek a service payment to Named Plaintiff Andrew Beissel in the amount of \$25,000.00 (subject to Court approval) to compensate him for his time and effort in service of the Class, as well as in exchange for a general release. *Id.* at pp. 7, 11, ¶¶ III.2. The proposed service award in the amount of \$25,000 for Plaintiffs represents 0.51% of the Gross Settlement Amount.
- **Attorneys' Fees and Costs**: Class Counsel's attorneys' fees and litigation expenses are included in the Gross Settlement Amount. *Id.* at pp. 12-13, ¶ IV.1. The Settlement provides that WFX does not oppose a fee application of up to 33.33% of the Gross Settlement Amount plus reasonable out-of-pocket costs. *Id.*

Plaintiffs seek attorneys' fees in the amount of \$1,633,170.00 and costs in the amount of \$5,871.55.

- ***Cy Pres***: Any funds still remaining after the 180-day check cashing period will be redistributed to Class Participants on a prorated basis, and any additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed funds prior to redistribution. ECF No. 87-2, p. 27, ¶ VII.8. Following this redistribution, any remaining funds will be paid via *cy pres* in equal portions to: (1) St. Christopher Truckers Relief Fund, (2) Meals for 18 Wheels, and (3) Truckers Final Mile, the Parties' agreed-upon *cy pres* beneficiaries. *Id.* These organizations bear a substantial nexus to the interests of the Class Members, as they are all committed to supporting and aiding truck drivers.

Allocations and Awards

32. Class members do not have to submit claims to receive a settlement payment.

Each class member had 60 days from the mailing of the Class Notice to request exclusion from (opt-out) or object to the Settlement.

33. Each Class Participant (class members who do not validly opt-out of the Settlement) will receive a *pro rata* portion of the Net Settlement Amount based on based on the number of settlement shares he or she is assigned. Settlement Shares are based on the number of workweeks the individual worked compared to the total number of workweeks all Class Participants worked. Class Participants will receive one settlement share per FLSA Workweek and two settlement shares per Oklahoma Workweek. The total number of settlement shares for all Class Participants will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Class Participant's number of settlement shares to determine the Class Participant's *pro rata* portion of the Net Settlement Amount.

34. The Class Notices provide the estimated Individual Settlement Amount and number of workweeks for each class member, assuming full participation in the settlement. Settlement award and eligibility determinations are based on workweek information that WFX provided to the Settlement Administrator.

35. Settlement Awards will be paid to Class Participants by the Settlement Administrator within 14 days after the occurrence of the “Effective Date.” Settlement Award checks will remain valid for 180 days from the date of their issuance.

36. Any funds still remaining after the 180-day check cashing period will be redistributed to Class Participants on a prorated basis, and any additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed funds prior to redistribution. Following this redistribution, any remaining funds will be paid via *cy pres* in equal portions to: (1) St. Christopher Truckers Relief Fund, (2) Meals for 18 Wheels, and (3) Truckers Final Mile, the Parties’ agreed-upon *cy pres* beneficiaries. These organizations bear a substantial nexus to the interests of the Class Members, as they are all committed to supporting and aiding truck drivers.

Class Notice

37. Pursuant to the Court’s order and the Settlement, the Settlement Administrator, CPT, was required to send the Class Notice to all class members via first-class U.S. Mail. CPT was also required to re-mail undeliverable mailings to those with a forwarding address, and further conduct skip-tracing or other computer searches to ensure an updated address is found for any further re-mailings. CPT was further required to

establish a toll-free call center to address questions from class members and a settlement website that provided copies of the long-form Settlement and related case documents.

38. I am informed the total number of class members in the finalized class list provided by WFX to CPT was 2,728 Class Members.

39. I am informed that CPT disseminated the Court-approved Class Notice to the class members on August 8, 2023, in accordance with the terms of the Settlement pursuant to the Court's preliminary approval order.

40. The deadline for Class Members to opt-out, object, and dispute their reported workweeks expired on October 7, 2023. To date and to my knowledge, with the notice period complete, there have been no requests for exclusion and one objection regarding an unrelated matter.

THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

41. The Gross Settlement Amount is a negotiated amount that resulted from substantial arm's-length, non-collusive negotiations and significant investigation and analysis by Class Counsel. Class Counsel and WFX's counsel – law firms with great experience in complex class litigation, particularly in truck driver misclassification cases – have agreed to settle this action, only after substantial discovery, intensive investigation, and months of negotiation under the guidance of an experienced mediator.

42. This action has been litigated for approximately three years. During this time, Class Counsel has conducted substantial motion practice, obtained extensive informal discovery, performed investigations into WFX's recruiting practices, interviewed Drivers,

and performed legal research regarding the laws applicable to the claims and defenses at issue.

43. Following dispositive motion practice on the pleadings, the Parties began settlement discussions and negotiations, which were conducted at arm's length and with the assistance of a highly experienced mediator, Michael Russell. The negotiation process was hard-fought and protracted over months. Plaintiffs submitted a comprehensive mediation statement and performed a comprehensive damages estimate, which were thoroughly prepared by Class Counsel and based on substantial informal discovery, documents, data, research, and investigations.

44. The Parties zealously advocated their respective positions throughout the settlement process. The Settlement is a product of serious, informed, and non-collusive negotiations among experienced counsel and an experienced private mediator, and warrants final approval.

45. Numerous, serious questions of law and fact exist in this action, all of which are the subject of considerable risk if this case were to continue to be litigated. For example, while Plaintiffs believe WFX misclassified its drivers, it cannot be denied that plaintiffs rarely succeed in prosecuting independent contractor misclassification cases under the FLSA – both as to certification and merits issues. And of course, even if Plaintiffs were to succeed on those fronts, misclassification is not inherently unlawful – wage-and-hour violations would still have to be proven. Because the FLSA exempts Class Members from overtime requirements and allows paid and unpaid time to be averaged

together for minimum wage purposes, it is exceedingly difficult to prove damages, even if misclassification claims are both certified and proven on the merits.

46. Similarly, while Plaintiffs are confident in their ability to certify and prove claims under Oklahoma consumer protection statutes, the fact of the matter is these theories of liability are relatively new, and different Courts may come to different conclusions. Indeed, it is notoriously difficult to certify nationwide classes who would assert claims based on misrepresentations, because different class members often receive different (even if subtly) representations.

47. These are serious questions of law and fact that create great uncertainty in the class members' ability to recover anything.

48. This Settlement represents not only a meaningful, immediate recovery for the Class, but also one without any risk or additional expenses of further litigation. This benefit must be considered in light of the risk that the Class may recover nothing after certification proceedings, summary adjudication, appeals, contested trial, and most likely, further appeals, many years into the future, or that litigation would deplete funds available to satisfy a judgment.

49. Class Counsel and WFX's counsel – law firms with great experience in complex class litigation, particularly in truck driver misclassification cases – have agreed to settle this action after serious arm's-length negotiations, extensive exchange of discovery, and many months of discussions.

50. Class Counsel believes that the settlement amount is fair and reasonable in light of their extensive investigation, motion practice, the risks of continued litigation, and

their overall experience. Plaintiffs and Class Counsel further recognize the great expense and length of proceedings necessary to continue this litigation against WFX through formal discovery, certification, summary judgment, trial, and inevitable appeals.

51. Based on Class Counsel's estimates, the Gross Settlement Amount of \$4,900,000.00 represents a significant portion of the total calculated exposure at trial. There are myriad ways to calculate economic damages in these types of cases, and all of them would have been the subject of substantial and costly economic expert discovery. It is far from certain that the economic measure of damages for Plaintiffs' claims if they were to go to a jury (assuming the Class claims were certified and remained so) would have reflected Plaintiffs' "best case scenario."

52. Nevertheless, Class Counsel estimates that WFX's maximum potential exposure is no more than \$31,000,000.00. In other words, even on Plaintiffs' best day at trial, this settlement – at this early stage – represents over 15% of the calculated exposure at trial.

53. Importantly, when comparing the settlement in this case to settlements in virtually identical cases that have been approved, it is clear that the settlement in this case is much more than reasonable and adequate: it is exceptional.

54. Here, there are 2,728 Class Members, who will receive an average gross recovery of approximately \$1,796 per Class Member. This amount exceeds the per-class-member recovery obtained in *Huddleston v. John Christner Trucking, LLC*, a case that was litigated for six years and included dozens of motions, a successfully certified class and collective, and a subsequent appeal.

55. The Settlement further provides equitable relief to Class Participants, who are released from any monetary claims WFX may have against them for outstanding debts, reimbursements, chargebacks, deposits, or other amounts. The Settlement thus represents, in addition to the \$4,900,000.00 monetary relief represented by the Gross Settlement Amount, significant equitable relief to Class Participants.

56. Given the risks, delays, and uncertainty inherent in continued litigation, Plaintiffs and Class Counsel believe that the Settlement is fair and reasonable to avoid the cost and uncertainty of continuing litigation.

CLASS COUNSEL'S FEES

57. Prosecuting this matter to a successful settlement for the benefit of the class members required Class Counsel to expend a significant amount of time, including substantial legal and factual research, briefing novel and complex issues, and months of settlement negotiations with the assistance of a highly experienced mediator.

58. Plaintiffs successfully negotiated the Settlement on behalf of a nationwide group of Drivers across two aggregate forms of claims: a national Oklahoma Class, for which Plaintiffs assert Oklahoma law claims grounded in consumer protection statutes and other laws (*e.g.*, OCPA, ODTPA, common-law fraud, common-law negligence *per se*), and an FLSA Collective under federal wage and hour laws. The claims pursued by these distinct groups were all permeated with their own sophisticated legal challenges, ranging from issues such as consumer standing, reliance and presumptions relating thereto, injury, employee vs. independent contractor classification, the presumption against extraterritorial application of state laws, pre-emption issues, Commerce Clause

restraints, and countless other substantive and procedural issues. The record in this case – containing considerable motion practice and two amended complaints – leaves no doubt that the novelty and difficulty of the questions presented in this case were substantial, and exceptional skill was required by Class Counsel to prevail on virtually every one of these questions.

59. SWCK vigorously litigated this case, engaging in a carefully crafted litigation strategy to effectively prosecute the Class and Collective claims, while also demonstrating willingness to participate in good-faith attempts to settle the action. Class Counsel’s efforts culminated in the Settlement, which provides significant monetary benefits for the class members.

60. Recovery of the damages and penalties at trial would require complete success of all of Plaintiffs’ claims, an uncertain feat to say the least.

61. While Class Counsel are confident in their ability to successfully litigate the alleged claims on the merits, Plaintiffs assert complex, hybrid Rule 23 Class and FLSA Collective claims. Moreover, Plaintiffs and Class Counsel faced the possibility that the Court could rule against Plaintiffs on summary judgment or at trial. After all, developments in wage-and-hour and consumer protection laws in addition to the legal and factual grounds that WFX have asserted to defend this action create risks of denial of certification and an inability to win on the merits at trial. The risk of Plaintiffs and the Class and Collective receiving *no* recovery, or significantly less than the proposed Gross Settlement Amount after years of further delay, was substantial.

62. In this case, although the risks were front and center, Plaintiffs and Class Counsel committed themselves to developing and pressing Plaintiffs' legal claims to enforce class members' rights and maximize the recovery despite WFX's robust defense.

63. I focus my practice on and have extensive experience in representing workers in wage and hour litigation nationwide, including class and collective action cases. I have extensive experience in trucking actions and consumer class actions as well.

64. Judge Gregory K. Frizzell of the United States District Court for the Northern District of Oklahoma recently praised the skill of Class Counsel as class action litigators in the trucking class action *Huddleston v. John Christner Trucking, LLC* (N.D. Okla., No. 4:17-cv-00549-GKF-CDL, October 31, 2022, ECF 285). At final approval, Judge Frizzell found that "Class Counsel have extensive experience, reputation, and ability that propelled the excellent result obtained for the Class Members" and that, prior to settlement, "Class Counsel successfully certified three groups of class members on distinct theories of liability, representing significant novelty and difficulty and requiring substantial skill."

65. Over the nearly three years that this case was litigated, well over a dozen individuals were collectively required to expend over 615 hours to obtain this excellent outcome. SWCK has devoted a total of over 485 hours to the prosecution of this action, for a total lodestar of approximately \$425,233.00. I am informed that RB further devoted a total of 130.8 hours, representing a lodestar of approximately \$120,336.00. In total, SWCK and RB devoted a total of over 615 hours to the prosecution of this action, for a

total lodestar of over \$545,569.00, which does not account for all work Class Counsel will need to perform to bring this Settlement to a close.

66. The requested attorneys' fee award represents a multiplier of approximately 2.99 of Class Counsel's lodestar, which does not account for all work Class Counsel must perform to complete the approval process and otherwise bring the Settlement to a close. Class Counsel anticipates that follow-up work to communicate with class members, oversee the settlement process, and attend the Final Approval and Fairness Hearing, will increase the lodestar amount listed here, and will cause the multiplier to decrease.

67. Class Counsel spent significant time and resources reaching this Settlement. I have reviewed my firm's billing records organized by categories of work done in this case, and a true and correct summary SWCK's billing is attached hereto as Exhibit 1. The hourly rates are the usual and customary rates for each individual in all of our cases.

68. SWCK uses an electronic time-keeping system where attorneys and staff members record time contemporaneously as they complete case tasks. Attorneys and staff at SWCK record their time in tenth-of-an-hour increments, and do so as contemporaneously as possible with the expenditure of time.

69. Due to the amount of privileged information contained in SWCK's detailed billing records, such detailed records are not attached here, but could easily be provided for this Court's *in camera* review should the Court wish to review them.

70. SWCK's hourly rates for the partners, attorneys, and professional staff are the same as would be charged in non-contingent matters and/or which have been accepted and approved in other recent class and collective action wage and hour litigation by federal

and state courts around the country. *See, e.g., Etcheverry v. Franciscan Health System, et al.*, Case No. 3:19-cv-05261-RJB-MAT, ECF 85 (W.D. Wash., Oct. 19, 2021) (finding SWCK’s hourly rates for purposes of a lodestar cross-check “reasonable, and that the estimated hours expended are reasonable”); *Amaraut v. Sprint/United Mgmt. Co.*, 2021 WL 3419232, 2021 U.S. Dist. LEXIS 147176, at *18 (S.D. Cal. Aug. 5, 2021) (approving a one third fee award, and in August 2021, finding that “the fee award is further supported by a lodestar crosscheck, whereby it finds that the hourly rates of Schneider Wallace Cottrell Konecky LLP ... are reasonable, and that the estimated hours expended are reasonable.”); *Villafan v. Broadpectrum Downstream Services, Inc., et al.*, Case No. 3:18-cv-06741-LB, ECF 150 (N.D. Cal. April 9, 2021) (finding SWCK’s 2021 rates “[a]s to the lodestar cross-check, the billing rates are normal and customary (and thus reasonable) for lawyers of comparable experience doing similar work.”).

Summary of Work Performed by SWCK

71. I am a partner at SWCK, and I actively litigated this case from its inception. In particular, I developed and implemented case strategy and tactics; developed and implemented litigation and discovery strategy; reviewed voluminous documents; appeared at the mediation; negotiated the terms of the settlement; and oversaw the attorneys and professionals working on the case for SWCK.

72. Below, I provide a summary description of the work performed by SWCK’s other lead attorneys on this case.

73. David C. Leimbach is a partner at SWCK and is the lead attorney on this matter. He has been practicing for over 12 years and graduated *magna cum laude* from

California Western School of Law in 2009 before being admitted to the California Bar that same year. Mr. Leimbach has actively litigated this action and worked on this case in all capacities, with particular focus on development of case strategy. He drafted, reviewed and edited the complaints; drafted, reviewed and edited trial court briefs, including Plaintiffs' oppositions to WFX's motions to dismiss; argued Plaintiffs' case at hearings; reviewed voluminous documents and developed Plaintiffs' theories at mediation; appeared at the mediation; drafted, reviewed, and edited the mediation statement and damages analyses; negotiated the terms of the Settlement; and drafted, reviewed, and edited the Settlement and Settlement approval motions.

74. Scott L. Gordon is an associate attorney at SWCK and assisted Mr. Leimbach with prosecuting this action. Mr. Gordon, a graduate of Temple University School of Law, has been practicing law since January 2018 and has been an associate at SWCK for that complete period. Prior to becoming an associate, he worked for SWCK as a law clerk from January 2014 to January 2018. Mr. Gordon has been selected as a Super Lawyers Rising Star for each year from 2021 to 2023. Mr. Gordon drafted the Class Notice; oversaw the settlement administration process and served as the point of contact with CPT; communicated with class members regarding inquires related to the Settlement; and drafted, reviewed, and edited the final approval motion and fee motion and supporting papers.

75. The other attorneys on this case were primarily involved in class outreach efforts, document review, and various research and writing assignments.

76. All of the work described above was reasonable and necessary to the prosecution and settlement of this case. Class Counsel conducted an extensive factual investigation and engaged in substantial mediation discovery and motion practice during the prosecution of this action. Through this comprehensive evaluation of the facts and law, Class Counsel was able to settle this case for a substantial sum. Class Counsel achieved this result in a very timely fashion, providing class members with substantial and certain relief much sooner than if litigation continued in this matter.

77. I staffed the case as efficiently as I could in light of the difficulty of the case and the vigorous defense presented. Mr. Leimbach throughout this case, and he expended much of his time on litigation strategy, editing and drafting briefs, arguing at hearings, and exchanging informal discovery in advance of the mediation. Having this staffing continuity on the case benefited the institutional memory on the matter and increased efficiency. During discrete periods of time, I also had several staff attorneys with lower billing rates working on research and writing assignments and other matters.

78. The Settlement reached with WFX, as a result of mediation and months of negotiation, involves complex provisions that are specific to wage-and-hour and consumer protection litigation. The Settlement and the result achieved are a reflection of Class Counsel's skill and experience. The Settlement provides members of the Class with substantial benefits without having to wait for years of drawn-out litigation.

79. As part of the negotiations that led to the Settlement, Defendant agreed not to object to an award of one-third of the Gross Settlement Amount of \$4,900,000.00 for attorneys' fees (*i.e.*, \$1,633,170.00), plus reasonable costs.

80. The request attorneys' fees are fair and reasonable and should be approved.

Contingent Risk

81. SWCK takes its cases on a contingent-fee basis. Because we do not have regularly paying clients, we rely on awards for attorneys' fees and costs in order to continue our work for the enforcement of labor and consumer protection standards.

82. In this case, given the excellent results achieved, the effort expended litigating the action, including the difficulties attendant to litigating this case, an upward adjustment is warranted. There was no guarantee of compensation or reimbursement. Rather, counsel undertook all the risks of this litigation on a completely contingent fee-basis. These risks were front and center. WFX's vigorous and skillful defense further confronted Class Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case. Nevertheless, Plaintiffs and Class Counsel have committed themselves to developing and pressing Plaintiffs' legal claims to enforce the employees' rights and maximize the class and collective recovery.

83. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent-

fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be better able to obtain qualified counsel.

84. For these reasons, Class Counsel respectfully submits that a one-third recovery for fees is appropriate.

SWCK'S COSTS

85. This litigation required my firm to advance costs. Because the risk of advancing costs in this type of litigation is significant, doing so is often prohibitive to many attorneys.

86. SWCK has advanced a total of \$5,871.55 in out-of-pocket expenses. A true and correct breakdown of the costs is attached hereto as Exhibit 2.

87. The expenses incurred pertaining to this action are reflected in the books and records of this firm. These books and records are prepared from invoices, expense vouchers and check records and are an accurate record of the expenses incurred. All of these expenses were reasonable and necessary for the successful prosecution of this case.

88. Pursuant to the terms of the Settlement, WFX does not object to the request for costs.

SERVICE AWARD

89. The Settlement provides for an incentive award up to \$25,000 for Plaintiffs Andrew Beissel and his company, J&B Enterprises, Inc., for their considerable time,

effort, and risks incurred in bringing and prosecuting this matter and, in addition, for their general release of all waivable claims against WFX.

90. The requested service award is particularly warranted because (1) Plaintiffs went above and beyond to provide extensive documents and information to Class Counsel, particularly at the pleadings and mediation states, and (2) Plaintiffs incurred significant and very real risks as to future trucking opportunities as Plaintiff Beissel continues to work as a truck driver and continues to use his company (J&B Enterprises, Inc.) in the trucking industry.

91. Plaintiffs have been fully committed to pursuing the class and collective claims in this action against WFX for nearly three years. Mr. Beissel spent long hours during the complaint-drafting process completing interviews with Class Counsel and searching for and providing extensive documentation. He again devoted significant time to the lawsuit at the mediation stage, providing a host of further documents and additional factual information. He was actively involved in the settlement decision and reviewing the long-form agreements.

92. Moreover, Plaintiffs have also undertaken very real risks as to future trucking opportunities. Mr. Beissel is named as a plaintiff in both his personal name and his company name. This information may be discerned with a simple web search. Mr. Beissel continues to work as a driver and to use his company in this line of work. Plaintiffs have undertaken great risks as to future trucking and employment opportunities to make this Settlement a reality for thousands of class members.

93. The requested Service Award represents less than 0.51% of the Gross Settlement Amount.

94. In agreeing to serve as the representative for the Class and Collective, Plaintiffs formally agreed to accept the responsibilities of representing the interests of all class members. Plaintiff Beissel worked with Class Counsel at length, providing background information about his employment, about WFX's policies and practices, and about the allegations in this lawsuit.

95. The incentive award to Plaintiffs is to be paid in addition to the recovery as a class member. It is justified by the considerable time and efforts expended by Plaintiff Beissel, by the significant risks he undertook in standing up to represent the interests of his fellow drivers, by the general release to which he has agreed, and by the critical role that he played in making this Settlement a reality.

96. WFX does not oppose the requested payments to the Plaintiffs as a reasonable incentive award.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and is based on my own personal knowledge.

Executed this 13th day of October 2023 in Auburn, California.

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell

Exhibit 1

Beissel et al. v. Western Flyer Express, LLC

Lodestar Summary

Schneider Wallace Cottrell Konecky LLP

Name	Title/Role	Hourly Rate	Hours	Amount
Carolyn Cottrell (CMH)	Partner	\$1,295	2.3	\$2,978.50
David Leimbach (DCL)	Partner	\$1,155	216.1	\$249,595.50
Scott Gordon (SLG)	Attorney	\$800	91.3	\$73,040.00
Justin Quin (JPQ)	Attorney	\$800	36	\$28,800.00
Travis Smith (TAS)	Attorney	\$685	34.6	\$23,701.00
Kyle Bates (KGB)	Attorney	\$725	9.5	\$6,887.50
Sean Litteral (SLL)	Attorney	\$680	3.7	\$2,516.00
Bryant Daniels (BCD)	Attorney	\$680	3.4	\$2,312.00
Tyler Smith (TBS)	Office Manager/Paralegal	\$500	3.1	\$1,550.00
Sarah Price (SQP)	Case Manager	\$500	1.5	\$750.00
Elisa Guevara (EIG)	Paralegal	\$450	34.7	\$15,615.00
Sarah King-Cash (SKC)	Paralegal	\$450	7.3	\$3,285.00
Tracey McClain (TLM)	Intake Manager	\$425	5.3	\$2,252.50
Michael Garcia (MEG)	Docketing Specialist	\$325	28.8	\$9,360.00
Thomas Barnett (TRB)	Outreach Supervisor	\$350	7.4	\$2,590.00
TOTAL			485.00	\$425,233.00

Exhibit 2

**CASE COSTS****Beissel, Andrew, et al. v. Western Flyer Express, LLC****Matter No. 102149****Date: 10/11/2023**

DATE	VENDOR	DESCRIPTION	AMOUNT
10/19/2020	Neilson & MacRitchie	Investigation (background check)	\$ 527.50
12/30/2020	One Legal LLC (Info Track)	Service of process for complaint and summons	\$ 250.00
02/11/2021	Pacer	Pacer - Document Retrieval - QTR 4 2020	\$ 3.70
03/01/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 02/01/21 - 02/28/21	\$ 51.14
05/06/2021	Pacer	Pacer - Document Retrieval - QTR 1 2021	\$ 5.10
08/12/2021	Pacer	Pacer - Document Retrieval - QTR 2 2021	\$ 4.60
11/01/2021	Rachel Lawrence Mor, P.C.	Reimbursement PHV Fees WD of OK - David Leimbach, Carolyn Cottrell, T. Smith	\$ 150.00
11/01/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 10/01/21 - 10/31/21	\$ 36.68
11/08/2021	Pacer	Pacer - Document Retrieval - QTR 3 2021	\$ 5.00
12/01/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 11/01/21 - 11/30/21	\$ 76.26
01/10/2022	Pacer	Pacer - Document Retrieval - QTR 4 2021	\$ 12.00
05/06/2022	Pacer	Pacer - Document Retrieval - QTR 1 2022	\$ 7.60
07/20/2022	Miles Mediation & Arbitration S	Mediation Deposit	\$ 4,450.00
08/09/2022	Pacer	Pacer - Document Retrieval - QTR 2 2022	\$ 8.20
10/01/2022	Pacer	Pacer - Document Retrieval - QTR 3 2022	\$ 15.00
01/01/2023	Pacer	Pacer - Document Retrieval - QTR 4 2022	\$ 15.40
01/11/2023	New Data Discovery Inc.	Printing / Binding	\$ 89.86
01/20/2023	FedEx	01/12/23 FedEx to Judge David L. Russell from Lourdes Castro	\$ 59.65
01/31/2023	SWCK	Copies and Printing from Shared Printing (2021-2023)	\$ 31.75
04/01/2023	Pacer	Pacer - Document Retrieval - QTR 1 2023	\$ 7.80
05/19/2023	FedEx	05/16/23 FedEx to Cindy Risi, Judicial Assistant to from Elisa Guevara	\$ 55.41
06/30/2023	Pacer	Pacer - Document Retrieval - QTR 2 2023	\$ 8.90
			\$ 5,871.55