

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’
UNOPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

I, Carolyn Hunt 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 and collective litigation in state and federal court.

3. SWCK and the Law Offices of Robert S. Boulter represent Plaintiff Andrew Beissel d/b/a J&B Enterprises (“Plaintiff”) and the Class in this Action against Western Flyer Express, LLC (“Defendant” or “WFX”). I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class and Collective Action Settlement. 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 Joint Stipulation of Settlement and Release of Class and Collective Action (the “Settlement Agreement” or the “Settlement”) is attached hereto as **Exhibit A**. The Notice of Proposed Class and Collective Action Settlement and Hearing Date for Court Approval (“Notice”) is attached to the Settlement as **Exhibit 1**.

QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions, as well as consumer 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 includes: *Huddleston v. John Christner Trucking, LLC*, (Case No. Case No. 4:17-cv-00549-GKF-FHM) (Northern District of Oklahoma) (final approval FLSA collective action, as well as Oklahoma and California Rule 23 classes, asserting identical claims as those at issue in this case on behalf of allegedly misclassified truck drivers); *Hazel v. HImagine Solutions*,

Inc. (Case No. RG20068159) (Alameda County Superior Court, November 2, 2021) (final approval of a California Rule 23 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 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); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (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-clocker 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. *See* ECF No. 2. Plaintiffs alleged that WFX has misled and fraudulently induced its drivers into hauling products for WFX by, among other things, misrepresenting the income they would earn, and failing to disclose key information about WFX's driver program. *See id.* Based on these allegations, Plaintiffs alleged claims under the Oklahoma Consumer Protection Act, 15 Okla. St. §§ 751, et seq.

(“OCA”), Oklahoma Deceptive Trade Practices Act, 78 Okla. St. §§ 52, et seq. (“ODTPA”), in addition to other related common law claims. *See id.*

9. Prior to filing its Answer to Plaintiffs’ allegations, WFX brought a motion to dismiss and a motion to transfer venue. ECF Nos. 24, 25. The matter was opposed and fully briefed. ECF Nos. 26, 27. On September 14, 2021, the Court granted WFX’s motion to transfer, and the matter was transferred to this Court. ECF No. 31, 32. Once venued in this Court, on October 1, 2021, the Court granted WFX’s motion to dismiss Plaintiffs’ claim under the ODTPA, but provided Plaintiffs leave to amend. ECF No. 36.

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. ECF No. 37. WFX again moved to dismiss Plaintiff’s claim under the ODTPA. ECF No. 41. The matter was opposed and fully briefed. ECF Nos. 50 – 56. On December 14, 2021, the Court granted WFX’s motion to dismiss the ODTPA claim. ECF No. 57.

11. Following the Court’s exclusion of the ODTPA claims, WFX filed its Answer containing general and specific denials of Plaintiffs’ allegations.

12. Shortly thereafter, the Parties began to discuss the possibility of settlement. ECF No. 64. The Parties agreed to exchange a wide variety of informal 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. ECF No. 71.

13. During this time, Plaintiffs continued their own independent investigation into the claims at issue, and further investigated whether other potential claims were viable

and should be asserted. Plaintiffs determined there was reasonable argument that WFX's independent contractor drivers were misclassified under the FLSA, and made the decision to pursue these claims. Plaintiffs also determined that WFX's conduct could potentially violate federal trafficking statutes, and determined they would pursue claims under Title 18 of U.S. Code Section 1581 *et seq.* pertaining to debt servitude and/or peonage and involuntary servitude.

14. After a full day of mediation, the Parties reached a tentative settlement on July 19, 2022. In reaching this settlement, Plaintiffs relied on informal discovery provided by WFX, their own independent investigations, and evaluated the strengths and weaknesses of the claims then-pled in the operative first amended complaint, as well as claims under the FLSA and federal trafficking statutes, evaluating the risks and likelihood of success on both certification and merits issues pertaining to each claim.

15. However, there were disputes on many key terms in the drafting of the long-form settlement agreement. 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, meeting, conferring, negotiating, and exchanging drafts of the agreement throughout the process.

16. The Parties executed the full Settlement Agreement on December 14, 2022. Pursuant to this Settlement Agreement and the Parties' discussions during mediation, Plaintiffs filed a Second Amended Complaint on December 16, 2022, asserting claims under the FLSA and 18 U.S.C. 1581 *et seq.* ECF No. 79. WFX filed its answer to the

Second Amended Complaint denying Plaintiffs' allegations and asserting various affirmative defenses. ECF No. 80.

THE SETTLEMENT

Basic Terms of the Settlement

17. Under the Settlement, WFX will pay a non-reversionary Gross Settlement Amount of Four Million and Nine Hundred Thousand Dollars (“\$4,900,000.00”) to resolve this litigation. Settlement, ¶¶ I.20; III.1. This amount includes all payments to the Class and Collective Members; proposed attorneys' fees and costs; proposed service award; the costs of settlement administration (estimated at \$21,500.00), and any other obligation of WFX under this Settlement. *See* Settlement, ¶ III.1.

18. The Net Settlement Amount, the amount distributed to Class Participants, is approximately \$3,120,166.63. *See* Settlement, ¶ I.23. This amount is the Gross Settlement Amount less costs of settlement administration, proposed attorneys' fees and costs, and proposed service award. Settlement, ¶ I.23.

19. Approximately 2,670 Class Members are eligible to receive a portion of the Net Settlement Amount. The Class and Collective are defined as follows:

- 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 July 19, 2022.” Settlement, ¶ I.5.

- FLSA Collective Members:¹ 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 July 19, 2022, 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.” *Id.*, ¶ I.17.

20. Class Participants will release claims under Oklahoma law, limited to those that were or could have been asserted, whether known or unknown, or arising out of or connected to facts, theories, and claims pled in the initial complaint, first amended complaint, and second amended complaint, that Class Participants hold or have held before the Effective Date (“Released Claims”). *Id.*, ¶ I.30; X.1. Plaintiffs and the FLSA Collective Members will also release any and all claims, known or unknown, under the FLSA, that were pled or could have been pled based on the factual allegations of the Complaint.

21. The Settlement provides that Plaintiffs will seek a service payment to Named Plaintiff Andrew Beissel, of \$25,000 (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.*,

¹ Oklahoma Class and FLSA Collective Members are collectively referred to as “Class Members.”

¶¶ I.32, III.2, X.2. The proposed service award in the amount of \$25,000 for Plaintiff Beissel represents 0.51% of the Gross Settlement Amount.

22. Class Counsel's attorneys' fees and litigation expenses are included in the Gross Settlement Amount. Settlement, ¶ IV.1. The Settlement provides that WFX does not oppose a fee application of up to 33.33% of the Gross Settlement Amount (i.e., \$1,633,170), plus reasonable out-of-pocket costs of up to \$100,000. *See id.*

23. The Parties have agreed to use CPT Group to administer the Settlement, for total fees and costs currently estimated at \$21,500.00, which is to be paid out of the Gross Settlement Amount. Under the Settlement, CPT is to undertake its best efforts to ensure that the settlement checks and notice are provided to the current addresses of Class Members, to provide weekly updates, to perform tax reporting, to create and maintain a settlement website, to create and maintain a toll-free telephone number to field inquiries, process opt-out requests, to calculate and distribute settlement payments, and to be available to respond to administrative queries.

24. Settlement Administrator will send a Notice to all Class Members via U.S. mail. *Id.*, ¶¶ I.8, VI.2, Ex. 1 (Notice of Settlement). The Settlement Administrator will 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. *Id.*, ¶ VI.2.

Allocations and Awards

25. Class Members do not have to submit claims to receive a settlement payment. *Id.*, ¶ VI.3 & VI.4. Each Class Member will have 60 days from the mailing of the Notice of Settlement to request for exclusion (opt-out) or object to the Settlement. *Id.*, ¶¶ VI.3-4.

26. 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 the number of settlement shares they are assigned. Settlement, ¶¶ 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.*, ¶¶ VII.2-3. FLSA Collective Members will receive 1 settlement share per workweek (FLSA Workweeks). *Id.*, ¶ VIII.2.b. To reflect the applicable value of Oklahoma state law claims and federal trafficking claims, Class Members will receive: 2 settlement shares per 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.*, ¶ VII.3.c. 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.*

27. The Notices of Settlement will provide the estimated Settlement Award and number of workweeks for each Class Member, assuming full participation in the settlement. Settlement Award and eligibility determinations will be based on workweek information that WFX will provide to the Settlement Administrator.

28. 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. Settlement, ¶ 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.

THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

29. 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 and consumer-related issues – have agreed to settle this action after months of negotiation under the guidance of a respected mediator.

30. 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. The negotiation process was hard-fought and protracted over months. Plaintiffs submitted comprehensive mediation statements and preliminary damages studies, which were thoroughly prepared by Class Counsel and based on years of discovery, documents, data, research, and dozens of interviews.

31. The Parties engaged in extensive formal and informal discovery that have enabled Class Counsel to assess the claims and potential defenses in this action. Class Counsel was able to accurately assess the legal and factual issues that would arise if the cases proceeded to trial(s). In addition, in reaching this Settlement, Class Counsel relied on their substantial litigation experience in similar wage and hour class and collective actions. Class Counsel's liability and damages evaluation was premised on a careful and extensive analysis of the effects of WFX's independent contractor operator agreements, lease agreements, and other policies and practices. Ultimately, Plaintiffs used this information and discovery to fairly resolve the litigation.

32. Class Counsel believes that the settlement amount is fair and reasonable in light of their extensive investigation, the risks of continued litigation, the amounts obtained for Class Members, and their overall experience.

33. 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 this claim that ultimately went to a jury – assuming the Class claims remained certified – would have reflected Plaintiffs' "best case scenario." 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.

34. 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 exceptional. Here, there are 2,670 Class Members, who will receive an average gross recovery of \$1,835.21. This amount *exceeds* the per-class member recovery obtained in *Huddleston*, a case that was litigated for six years, including dozens of motions, a successfully certified class and collective, and subsequent appeal. *Huddleston v. John Christner Trucking, LLC*, Case No. 4:17-cv-00549-GKF-FHM (N.D. Okla.) (settled for \$9,250,000 on behalf of 5,647 drivers, for a recovery of \$1,638 per class member). That Plaintiffs were able to obtain a greater per-class member recovery in this case than was obtained in the hard-fought *Huddleston* litigation confirms the settlement in this case is more than adequate.

35. In an effort to ensure fairness, the Parties have agreed to allocate the settlement proceeds amongst Class Members in a manner that recognizes that amount of time that the particular Driver worked for WFX in the applicable limitations period. The allocation method, which is based on the number of workweeks, will ensure that longer-tenured Drivers receive a greater recovery.

36. 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 succeeded on those fronts, misclassification is not inherently unlawful – wage

and hour violations would still have to be proven. And 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.

37. 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.

38. These are serious questions of law and fact that create great uncertainty in Class Members' ability to recover anything. Moreover, the complexity, uncertainty, additional expense, and likely duration of further litigation also favor preliminary approval of the Settlement.

39. 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 should be considered to 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.

40. 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. The Settlement was further endorsed by the mediator.

SERVICE AWARD

41. The enhancement payment of up to \$25,000 for Plaintiff Beissel is intended to compensate him for a broader release and for the critical role he played in this case, and the time, effort, and risks he undertook in helping secure the result obtained on behalf of the Class Members.

42. In agreeing to serve as Class and Collective representative, Plaintiff formally agreed to accept the responsibilities of representing the interests of all Class Members.

43. WFX indicated it does not oppose the requested payments to the Plaintiff as a reasonable service award.

ATTORNEYS' FEES AND COSTS

44. In their fee motion to be submitted with their final approval papers, Class Counsel will request up to 33.33% of the Gross Settlement Amount, (i.e., \$1,633,170), plus reasonable out-of-pocket costs of up to \$100,000. Class Counsel will provide their updated lodestar information with their fee motion, which will demonstrate the reasonableness of Class Counsel's rates. One-third of a global class fund is a standard fee request in the Tenth Circuit and Oklahoma District Courts.

45. In this case, given the excellent results achieved, this standard one-third fee 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. Defendant'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 committed themselves to developing and pressing Plaintiffs' legal claims to enforce the Drivers' rights and maximize the class and collective recovery. During the litigation, counsel had to turn away other less risky cases to remain sufficiently resourced for this one.

46. 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.

47. For these reasons, Class Counsel respectfully submits that a one-third recovery for fees is modest and appropriate. The lodestar amount will increase with preparation of the final approval papers, preparation and attendance at remaining hearings, correspondence and communications with Class Members, and settlement administration

and oversight.

48. Class Counsel also requests reimbursement for their litigation costs.

49. The fee and costs award should be preliminarily approved as fair and reasonable.

THE NOTICE OF SETTLEMENT AND RELATED ADMINISTRATION

50. The Notice of Settlement, attached as **Exhibit 1** to the Settlement Agreement, and manner of distribution negotiated and agreed upon by the Parties are “the best notice practicable.”

51. All Class Members have been identified and the Notice of Settlement will be mailed directly to each Class Member. In addition, the Parties will provide a settlement website that provides a generic form of the Notice, the Settlement Agreement, and other case related documents and contact information.

52. The proposed Notice fulfills the requirement of neutrality in class notices. It summarizes the proceedings necessary to provide context for the Settlement Agreement and summarizes the terms and conditions of the Settlement, including an explanation of how the settlement amount will be allocated between Plaintiff Beissel, Class Counsel, the Settlement Administrator, and the Class Members, in an informative, coherent and easy-to-understand manner, all in compliance with the Manual for Complex Litigation’s recommendation that “the notice contain a clear, accurate description of the terms of the settlement.”

53. The Notice clearly explains the procedures and deadlines for requesting exclusion from the Settlement, objecting to the Settlement, the consequences of taking or

foregoing the various options available to Class Members, and the date, time and place of the Final Approval Hearing. The Notice clarifies that the failure to submit a written objection may be excused upon a showing of good cause. Pursuant to Rule 23(h), the proposed Class Notice also sets forth the amount of attorneys' fees and costs sought by Plaintiffs, as well as an explanation of the procedure by which Class Counsel will apply for them. The Class Notice clearly states that the settlement does not constitute an admission of liability by WFX. It makes clear that the final settlement approval decision has yet to be made.

54. Furthermore, reasonable steps will be taken to ensure that all Class Members receive the Notice. Before mailing, WFX will provide to the Settlement Administrator a database that contains the names, last known addresses, and social security numbers of each Class Member, along with the applicable number(s) of Workweeks for calculating the respective settlement shares. The Notices of Settlement will be sent by United States Mail. The Settlement Administrator will make reasonable efforts to update the contact information in the database using public and private skip tracing methods. Within 7 days of receipt of the Class List from WFX, the Settlement Administrator will mail the Notices of Settlement to each Class Member.

55. With respect to Notices returned as undeliverable, the Settlement Administrator will re-mail any Notices returned to the Settlement Administrator with a forwarding address within three business days following receipt of the returned mail. If any Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator will undertake reasonable efforts to search for the correct

address, and will promptly re-mail the Settlement Notice to any newly found address.

56. Class Members will have 60 days from the mailing of the Notices of Settlement to opt-out or object to the Settlement. Any Class Member who does not submit a timely request to exclude themselves from the Settlement will be deemed a Class Participant whose rights and claims are determined by any order the Court enters granting final approval, and any judgment the Court ultimately enters in the case.

57. Administration of the Settlement will follow upon the Court's issuance of final approval of the Settlement. The Settlement Administrator will provide Class Counsel and WFX's Counsel with a report of all Settlement payments at least 7 days prior to the Court's Final Approval and Fairness Hearing. Because the proposed Notice of Settlement clearly and concisely describe the terms of the Settlement and the awards and obligations for Class Members who participate, and because the Notice will be disseminated in a way calculated to provide notice to as many Class Members as possible, the Notice of Settlement should be approved.

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 6th day of January, 2023, in San Rafael, California.

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell