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Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RICHARD TOBIN, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

RYDER TRUCK RENTAL, INC., a
Florida corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 5:20-cv-01569-JGB-SHK

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: April 12, 2021
Time: 9:00 A.M.
Location: Courtroom 1
3470 Twelfth Street
Riverside, CA 92501

1 **DECLARATION OF NICHOLAS ROSENTHAL**

2 I, Nicholas Rosenthal, declare as follows:

3 1. I am an attorney at law, duly licensed to practice before all Courts in
4 the State of California, and am with the law firm Diversity Law Group, P.C.,
5 counsel of record for Plaintiff Richard Tobin (“Plaintiff”). I have personal
6 knowledge of the facts set forth below and if called to testify I could and would do
7 so competently.

8 2. On June 1, 2020, Plaintiff filed a putative class and representative
9 action complaint in the Superior Court of California, County of Riverside,
10 asserting claims against Defendant for alleged violation of the California Labor
11 Code for failure to provide accurate itemized wage statements. Specifically,
12 Plaintiff alleged that whenever “Premium” and/or “ONCALPAY” wages were
13 paid, the corresponding wage statements failed to show the applicable hourly rates
14 of pay and number of hours worked, in violation of Labor Code § 226(a). The
15 complaint is the operative Complaint (“Complaint”).

16 3. On August 7, 2020, Defendant filed a Notice of Removal of Civil
17 Action to Federal Court in the United States District Court, Central District of
18 California, alleging that the United States District Courts have original jurisdiction
19 over actions under 28 U.S.C. § 1332(a) and 29 U.S.C. § 141, *et seq.*, LMRA.

20 4. The Parties subsequently agreed to private mediation with Steve
21 Rottman, Esq. on November 23, 2020. Following the exchange of information and
22 arm’s-length negotiations, the Parties were able to reach an agreement in principle
23 and entered into a memorandum of understanding.

24 5. Plaintiff contends the common issues include, among other things,
25 whether Defendant failed to provide accurate itemized wage statements.

26 6. Plaintiff submits that no conflict exists between Plaintiff and the Class
27 because Plaintiff allegedly has suffered the same alleged violations as all Class
28 Members and has the incentive to fairly represent all Class Members’ claims.

1 7. It is Plaintiff's position that his claims are typical of the Class as a
2 whole because they arise from the same factual basis and are based on the same
3 legal theory as those applicable to the Class Members.

4 8. Based on discovery, Plaintiff believes and asserts that Defendant
5 committed these violations as to Plaintiff in the same manner as to all Class
6 Members.

7 9. Defendant denies any liability or wrongdoing of any kind associated
8 with the claims alleged by Plaintiff.

9 10. The Parties have served their Initial Disclosures and engaged in an
10 extensive meet and confer process regarding the data necessary to perform a
11 damage analysis and engage in a meaningful mediation. In connection with the
12 mediation, Defendant provided class payroll data for Plaintiff to review and
13 analyze.

14 11. Further, Class Counsel conducted significant investigation and
15 discovery in furtherance of the prosecution of this action. This investigation and
16 discovery included, among other things: (a) exchanging initial disclosures; (b)
17 inspection and analysis of wage statements including revised wage statements that
18 were rolled out by Defendant after the Action was initiated; and (c) conducting an
19 exposure analysis.

20 12. Plaintiff was provided with the class data in Excel spreadsheet which
21 contained anonymized information for the entire Class. The spreadsheet included
22 the number of wage statements reflecting "Premium" and "ONCALPAY" wages
23 that were issued to each of the Class Members. Utilizing this information, Plaintiff
24 was able to calculate that there were 8,260 wage statements issued to 358 Class
25 Members.

26 13. Plaintiff currently estimates that after deduction for Settlement
27 Administration Costs, attorneys' fees and costs, PAGA penalties, and Plaintiff's
28 representative enhancement, the Net Settlement Amount of approximately

1 \$231,000.00 will be distributed between approximately 358 Class Members based
2 on the number of wage statements containing payment of “Premium” and/or
3 “ONCALPAY” wages received by Participating Class Members during the Class
4 Period, as reflected by Defendant’s payroll data.

5 14. Based on the approximately 358 Class Members, each Class Member
6 will receive a raw average of approximately \$645.25 after deduction for attorneys’
7 fees, class representative enhancement award, payment of penalties to the LWDA,
8 settlement administration costs, and litigation costs. Each individual Class
9 Member’s settlement amount may be more or less than this raw average,
10 depending on each respective Class Member’s number of wage statements
11 containing payment of “Premium” and/or “ONCALPAY” wages received during
12 the Class Period and the number of opt-outs received. Class Members who do not
13 opt-out will automatically receive a check.

14 15. Any funds remaining uncashed after 180 days shall be distributed to
15 the California State Controller’s Office, to be held in the names of the individual
16 Participating Class Members whose checks were not cashed. The entire Net
17 Settlement Amount will be paid to Participating Class Members, and no funds will
18 revert back to Defendant.

19 16. Based on their own respective independent investigations and
20 evaluations, the Parties and their respective counsel are of the opinion that
21 settlement for the consideration and on the terms set forth in their Settlement
22 Agreement is fair, reasonable, and adequate and is in the best interests of the Class
23 and the Defendant in light of all known facts and circumstances and the expenses
24 and risks inherent in litigation.

25 **ATTORNEY QUALIFICATIONS**

26 17. I am one of the primary attorneys on this matter. My qualifications are
27 as follows: I received my JD from University of Southern California Gould School
28 of Law in 2009. Upon graduation, I practiced law as an associate at Seyfarth Shaw

1 LLP, representing corporate clients in both single-plaintiff and wage hour class
2 actions. In 2014, I began as an associate at Diversity Law Group.

3 18. I have handled a number of wage and hour matters including class
4 actions and multiple-plaintiff actions. I have been named as Class Counsel in a
5 number of class actions that have been granted certification or preliminary or final
6 approval by the Superior Courts of Los Angeles County, Orange County, Alameda
7 County, and Monterey County, the United States District Court for the Central
8 District of California, and the United States District Court for the Northern District
9 of California. These cases include, but are not limited to: *Diller v. Under Armour*
10 *Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Dall v.*
11 *Post Alarm Systems*, Los Angeles County Superior Court Case No. BC598528,
12 *Lopez v. Imperial Body Shop, Inc.*, Orange County Superior Court Case No. Case
13 No. 30-2015-00816193-CU-OE-CXC, *Hughes v. Lincare, Inc., et al.*, Monterey
14 County Superior Court Case No. M124764, *Pittman v. Martinez Steel Corporation*,
15 San Bernardino County Superior Court Case No. CIVDS1823132, *Della Maggiora*
16 *v. Watsonville Community Hospital*, Santa Cruz County Superior Court Case No.
17 18CV00191, *Randolph v. Pacific Racing Association*, Alameda County Superior
18 Court Case No. RG18908139, *Morones v. Bimbo Bakeries USA, Inc.*, Sacramento
19 County Superior Court Case No. 34-2018-00245481-CU-OE-GDS, *Chavez v.*
20 *Converse, Inc.*, United States District Court – Northern District of California Case
21 No. 15-cv-03746-NC, and *Rodriguez v. Nike Retail Services, Inc.*, United States
22 District Court – Northern District of California Case No. 5:14-CV-1508 BLF.

23 19. My current billing rate is \$650.00 per hour, which is typical of
24 attorneys in the Los Angeles community who have been practicing for 11 years.
25 Further, I have been approved at this rate by various courts, including: *Foaad*
26 *Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No.
27 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court
28 Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*,

1 Santa Cruz County Superior Court Case No. 18CV00191; *Pittman v. Martinez*
2 *Steel Corporation*, San Bernardino County Superior Court Case No.
3 CIVDS1823132; *Michael Randolph v. Pacific Racing Association*, Alameda
4 County Superior Court Case No. RG18908139; *Markham v. Quik Stop Markets,*
5 *Inc.*, Santa Clara Superior Court Case No.19CV341582; *Siron v. Raypak, Inc.*,
6 Ventura Superior Court Case No. 56-2019-005279959-CU-OE-VTA; and *Carter v.*
7 *Kline Services, Inc.*, San Bernardino Superior Court Case No. CIVDS1828867.

8 20. My co-counsel and I will seek an award of attorneys' fees of not more
9 than one-third of the Gross Settlement Amount and costs up to \$12,500.00. Based
10 on my hourly rate of \$650.00 per hour, and the average hourly rate of my co-
11 counsel, I believe the collective lodestar will exceed the requested fees.

12 21. Plaintiff has received a bid from Phoenix Settlement Administrators
13 and Simpluris, Inc., while Defendant's counsel obtained quotes from ILYM and
14 Rust Consulting. The lowest quote received was from Simpluris, Inc. for
15 \$9,000.00. Given that Simpluris, Inc. provided the lowest quote, the Parties agreed
16 to use Simpluris, Inc. Further, notice by U.S. mail along with the skip trace for
17 undeliverable mail has been approved by numerous courts, and thus, the Parties
18 agreed to notice by U.S. mail.

19 22. I believe that \$9,000 to administer the settlement is reasonable in
20 relation to the value of the settlement since the administration cost is only 2% of
21 the Gross Settlement Amount.

22 23. I have no conflicts with the Class and will adequately represent the
23 class.

24 24. My only relationship with Plaintiff is the attorney client relationship
25 in this matter.

26 25. I caused the Notice of Motion and Motion for Preliminary Approval
27 of the Class Action Settlement and Class Action Settlement Agreement to be
28 uploaded to the California Labor and Workplace Development Agency's website.

1 Attached hereto as **Exhibit A** is a true and correct copy of the confirmation.

2 I declare under penalty of perjury under the laws of the State of California
3 that the foregoing is true and correct.

4 Executed on this 12th day of March, 2021, at Los Angeles, California.

5 /s/ Nicholas Rosenthal

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7 Nicholas Rosenthal
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EXHIBIT A