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Attorneys for Plaintiffs ASHLEY CABALLERO,
AMERICA CABALLERO, and LUIS VENEGAS,
Others Similarly Situated, Other Aggrieved
Employees, and the General Public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ASHLEY CABALLERO, an individual, on
behalf of herself, all other aggrieved
employees, and the general public,

Plaintiffs,

v.

FIDELITONE LAST MILE, INC., a
Delaware corporation; and DOES 1 through
25, inclusive,

Defendant.

Case No. CIVSB2102002

**DECLARATION OF MICHAEL H.
BOYAMIAN IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING
OF FINAL APPROVAL HEARING DATE**

Date: February 10, 2022

Time: 10:00 a.m.

Judge: Hon. David S. Cohn

Dept.: S26

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1 4. Since January 2013, I have been closely involved in a significant number of wage and
2 hour and consumer class and representative matters. Many of these cases have resulted in
3 substantial recoveries for employees and consumers across California. Examples of these recoveries
4 include the following matters:

- 5 a. *Mendez v. R+L Carries, Inc.*, Case No. C 11-2478 CW (N.D. Cal., 2013), wage and
6 hour class action involving California truck drivers, which settled for \$9,500,000.
- 7 b. *Meneses v. CVS Pharmacy, Inc., et al.*, Case No. BC 489739 (2014), filed in Los
8 Angeles County on behalf of pharmacists, which settled for \$2,800,000.
- 9 c. *Stovall-Gusman v. W.W. Grainger, Inc.*, Case No. 13-cv-02540-HSG (N.D. Cal.
10 2015), which settled for \$715,000.
- 11 d. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case No.
12 BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action
13 involving California Labor Code violations relating to restaurant workers, settled for
14 \$2.2 million.
- 15 e. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx)
16 (C.D. Cal 2015) wage and hour class action involving misclassification of
17 independent contractors, which settled for \$4 million.
- 18 f. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action for
19 unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.
- 20 g. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS*
21 *Pharmacy, Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016)
22 wage and hour class action involving Labor Code overtime violations on behalf of
23 pharmacists (\$7,461,600 settlement).
- 24 h. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-GHK-
25 FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime
26 violations on behalf of pharmacists (\$2,937,600 settlement).
- 27 i. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC (N.D.
28 Cal. 2016) wage and hour class action involving Labor Code overtime violations on

1 behalf of pharmacists (\$2,350,800 settlement).

2 j. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431,
3 BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour
4 class action involving Labor Code travel time violations on behalf of pharmacists
5 (\$2,000,000 settlement).

6 k. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and hour
7 class action involving Labor Code overtime violation on behalf of home health nurses
8 and other home health professionals (\$1,500,000.00).

9 l. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017) wage and hour
10 class action involving Labor Code off-the-clock, overtime, meal and rest break, and
11 unreimbursed business expense violations on behalf of restaurant servers
12 (\$1,300,000).

13 m. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour class
14 action involving Labor Code overtime violation on behalf of Car Haulers
15 (\$2,900,000).

16 n. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class action
17 involving Labor Code overtime violations on behalf of school bus drivers (\$475,000
18 settlement).

19 o. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and
20 hour class action involving Labor Code overtime, meal and rest break, and
21 unreimbursed business expense violations on behalf of home-based service
22 technicians (\$1,500,000).

23 p. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D. Cal.
24 2017) wage and hour class action involving misclassification of independent
25 contractors (\$1,550,000 partial settlement).

26 q. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal. 2018)
27 wage and hour class action involving misclassification of independent contractor
28 newspaper carriers (\$500,000 settlement).

- 1 r. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County
2 Superior Court Case No. CIVDS1809319 (2019), wage and hour class action
3 concerning overtime and meal and rest break violations in re a commission-only
4 compensation plan (\$2,000,000).
- 5 s. *Malone, et al., v KAG West, LLC, et al.*, County of Alameda Superior Court, Case
6 No. RG15784137 (2019) wage and hour class action involving Labor Code overtime
7 violations on behalf of delivery truck drivers (\$1,600,000) settlement.
- 8 t. *Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*, Case No. 2:16-CV-06965-DSF-
9 FFM (C.D. Cal. 2019) wage and hour class action involving Labor Code off-the-
10 clock, overtime, meal and rest break, and unreimbursed business expense violations
11 on behalf of restaurant servers (\$900,000).
- 12 u. *Miranda, et al. v. R&L Carriers Shared Services, LLC*, Case No. 2:18-cv-10063-
13 SVW-JC (C.D. Cal. 2020), wage and hour class and PAGA action involving failure
14 to provide meal and rest breaks and reimbursement of necessary expenditures to
15 California-based truck drivers (\$375,000).
- 16 v. *Delores Humes, et al. v. First Student, Inc.*, Case No. 1:15-cv-01861-BAM (E.D. Cal.
17 2020), wage and hour class action involving Labor Code wage statement violations
18 on behalf of school bus drivers (\$650,000 settlement).
- 19 w. *Rita Khatchadourian, et al. v. Sterling Bank and Trust*, FSB, Alameda County
20 Superior Court Case No. RG19003028 (2020), wage and hour PAGA action
21 concerning overtime, meal break, rest break, and commission agreement violations
22 for bank employees (\$300,000 settlement).
- 23 x. *Garcia v. Macy's West Stores, Inc., et al. ("Garcia IP")*, Case No. 3:16-cv-04440-
24 WHO (N.D. Cal. 2020) wage and hour class action involving misclassification of
25 independent contractors (\$3,500,000 partial settlement).
- 26 y. *Espinoza v. Williams-Sonoma, et al.*, LASC Case No. BC693245 (2021) wage and
27 hour class action involving misclassification of last-mile delivery drivers as
28 independent contractors. (\$2,250,000).

1 z. *Perez v. The Roman Catholic Archbishop of Los Angeles*, LASC Case No. BC714164
2 (2021) wage and hour class action involving Labor Code off-the-clock, overtime,
3 meal and rest break, and unreimbursed business expense violations on behalf of
4 cemetery groundskeepers (\$1,300,000).

5 aa. *Walker v. CPM LTD d/b/a Manpower Temporary Services, et al.*, San Diego Sup. Ct.
6 Case No. 37-2020-0017281-CU-OE-CTL (2021) wage and hour class action
7 involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed
8 business expense violations on behalf of IT workers (\$2,000,000).

9 bb. *Kim v. Korea Times of Los Angeles, Inc.*, LASC Case No. BC643503 (2021) wage
10 and hour class action involving Labor Code off-the-clock, overtime, meal and rest
11 break, and unreimbursed business expense violations on behalf of newspaper
12 employees (\$550,000).

13 cc. *Gonzales v. San Gabriel Transit, Inc.*, L.A.S.C. Case No. BC536584, California
14 Court of Appeal Case No. B282377, California Supreme Court Case No. S259027 -
15 class of misclassified taxi cab drivers certified by Court of Appeal after published
16 opinion, *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App. 5th 1131, 1149 (2019),
17 review dismissed, cause remanded sub nom., 481 P.3d 1144 (Cal. 2021).

18 5. I have also been a speaker or panelist at various Wage and Hour Seminars hosted by
19 CELA and Los Angeles County Bar Association: *Fool's Errand or Fish in a Barrel? Piece Rate,*
20 *Commission, and Trucking Cases in 2017* (CELA; May 2017); *Nuts & Bolts of Labor and*
21 *Employment Law Program; A Life of a PAGA Claim* (LACBA; Dec. 2018).

22 6. In addition, I have also been certified as class counsel following contested class
23 certification motions: *Tyrer v. First Student, Inc.*, L.A.S.C Case No.: BC459305 (June 2014), *Chavez*
24 *v. Teavana Corporation*, L.A.S.C. Case No.: BC475921 (May 2014); *Clark v. Quest Diagnostics*
25 *Clinical, et al.*, L.A.S.C. Case No. BC594022 (May 2019); *Zarate, et al. v. La Pizza Loca, Inc., et*
26 *al.*, L.A.S.C. Case No. BC642714 (Mar. 2021); *Ornelas v. Tapestry, Inc.*, N.D. Cal., Case No. 3:18-
27 cv-06453-WHA (Aug. 2021).
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7. My office is currently lead counsel on no less than 20 class action/representative cases.

HISTORY OF THIS LITIGATION

8. I am fully familiar with the facts and history of this case as I have been lead counsel on since the inception of the representative class and PAGA actions filed by Plaintiffs Ashely Caballero and America Caballero.

9. Plaintiff Ashely Caballero electronically filed her notice and sent a notice to both Defendant and the Labor and Workforce Development Agency (“LWDA”) on July 29, 2020 indicating her intent to seek civil penalties under PAGA for all last-mile delivery drivers based on Defendant’s misclassification of delivery drivers as independent contractors and the resulting failure to pay for all hours worked, including overtime, failure to indemnify or reimburse for necessary business expenditures, failure to provide meal and rest breaks, failure to pay all earned wages upon discharge, and failure to provide accurate wage statements. Upon filing with the LWDA, Plaintiff Ashely Caballero’s PAGA Notice was assigned the internal case number of LWDA-CM-807940-20.

10. Following exhaustion of the sixty (60) day period, and having not heard from the LWDA, on January 7, 2021, Plaintiff Ashley Caballero filed a complaint in San Bernardino Superior Court on behalf of all last mile delivery drivers who tendered freight for Defendant Fidelitone Last Mile, LLC, at any time from July 27, 2019, and continuing while this action is pending. The complaint in this Action seeks to collect civil penalties for (1) unpaid wages (Cal. Lab. Code §§ 216, 1194); (2) failing to pay minimum wages (Cal. Lab. Code §§ 1194, 1197, 1197.1); (3) failing to pay overtime wages (Cal. Lab. Code §§ 510, 1194, Industrial Wage Commission (“IWC”) Order No. 4-2001); (4) failing to provide meal and rest breaks (Cal. Lab. Code §§ 218.5, 226.7, 512, 1198, IWC Order No. 4-2001); (5) failing to pay wages upon termination (Cal. Lab. Code §§ 201-203); (6) failing to reimburse necessary business expenditures (Cal. Lab. Code § 2802) all stemming from Plaintiff’s central contention that she and other similarly situated aggrieved delivery drivers have been misclassified as independent contractors. Plaintiff has electronically submitted her Complaint to the LWDA.

1 11. In addition to Ashley Caballero’s complaint, Plaintiff America Caballero filed a class
2 action in Alameda Superior Court on July 31, 2020, Case No. RG20069582, entitled *America*
3 *Caballero v. Fidelitone Last Mile, Inc.* (“*Caballero Class Action*”) Defendant then removed the class
4 action to the Northern District of California on individual diversity grounds. Plaintiff America
5 Caballero filed a motion to remand the case due to subject matter jurisdiction, and the case was
6 remanded to the Alameda Superior Court on or around December 15, 2020. Similarly, Plaintiff Luis
7 Venegas submitted notice to the LWDA of his intent to pursue civil penalties pursuant to PAGA on
8 April 28, 2020. Plaintiff Luis Venegas then filed both his class and PAGA actions in Contra Costa
9 Superior Court on August 3, 2020, Case No. Case No. C20-01469, entitled *Luis Venegas v.*
10 *Fidelitone Last Mile, Inc.* (“*Venegas Class Action*”). Defendant then removed the class action to the
11 Northern District of California on individual diversity grounds. Plaintiff Luis Venegas filed a
12 motion to remand the case due to subject matter jurisdiction, and the case was remanded to the
13 Alameda Superior Court on or around December 16, 2020.

14 12. Your Declarant’s investigation into this matter revealed that Defendant Fidelitone
15 Last Mile, Inc. (“Defendant”) is in the business of transporting freight for their customers. Further,
16 in order to transport its customers’ freight, Defendant: 1) contracts directly with drivers who enter
17 into independent contractor agreements with Defendants (“primaries”) to provide the trucks and
18 equipment to facilitate transport; and 2) utilizes drivers and helpers who do not contract with
19 Defendant directly, but who are tendered freight by Defendant through the independent contractor
20 agreements to deliver to Defendant’s customers (“secondaries”). Plaintiffs America Caballero and
21 Ashley Caballero drove for Defendant as primaries, and Plaintiff Luis Venegas drove for Defendant
22 as a secondary. Plaintiffs contend that primaries and secondaries are misclassified as independent
23 contractors when they are really employees. Venegas’ Class Action and legal theories and facts
24 were consistent with the claims and legal theories alleged in the Caballero Class Action and this
25 Action and sought to represent the same putative class of individuals that Plaintiffs Ashley Caballero
26 and America Caballero sought to represent in their actions.

27 12. The Parties then agreed to mediate a resolution of all litigation based on the claims in
28 this Action, and the mediation took place on August 24, 2021. In advance of the mediation,

1 Defendant provided my co-counsel and I with records in an effort to develop a damages model. The
2 items provided included data and information concerning the number primaries and secondaries at
3 issue throughout the relevant time period and a spreadsheet detailing all the routes driven by the
4 primaries and secondaries for Defendant throughout the class period. Plaintiffs then prepared a
5 detailed mediation brief outlining the overall strengths and merits of their claims. The mediation
6 was then conducted by Mark Rudy, an experienced wage and hour mediator. In an effort to reach a
7 global resolution for all pending class and representative cases against Defendant, the Parties
8 eventually worked out the terms of this Settlement Agreement, and now respectfully seek Court
9 approval.

10 13. As a result of the mediated settlement in this Action, the Caballero Class Action and
11 Venegas Class Action, and thus by agreement of the Parties, on October 12, 2021, Plaintiffs filed a
12 stipulation and proposed order requesting the Court's approval to consolidate the actions brought by
13 Plaintiffs Caballero and Plaintiff Venegas.

14 14. I support the analysis provided by co-counsel, David Mara in his concurrently filed
15 declaration explaining the background and events of this action, the contribution of Plaintiffs, the
16 investigation and discovery completed by the parties, and Plaintiffs' counsel's calculation of the
17 maximum potential liability and damages in this action.

18 15. The conclusion to be drawn from co-counsel's analysis is that neither liability, nor
19 damages was clear-cut – which is why the parties elected to settle this matter. Defendant contends
20 that class certification is not appropriate because individualized inquiries would overwhelm common
21 issues. Defendant further argued that the claims advanced by Plaintiffs were largely of indeterminate
22 value. Plaintiffs' counsel had to apply appropriate discounts as a result even independent of the
23 discounts necessitated by settling pre-certification because they posed a real risk to recovery. Thus,
24 this Settlement, like most others, was the product of compromise. Nevertheless, the settlement
25 amount is fair and reasonable in light of the strengths and weaknesses of the case, and in the best
26 interests of Settlement Class Members.

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1 I declare, under penalty of perjury of the laws of California, the foregoing to be true and
2 correct. Executed this 18th day of January 2022, in Glendale, California.

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