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13 individually and on behalf of all others similarly
14 situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF RIVERSIDE**

17 KENNETH KERNITZKI, individually, and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 QUALITY CAR SHIPPERS, LLC, a California
22 limited liability company; and DOES 1 through
23 50, inclusive,

24 Defendants.

Case No.: CVRI2100564

[Assigned to Harold W. Hopp, Department 10]

Complex Class Action

**DECLARATION OF ROBERT
WEISSMAN OF PUBLIC CITIZEN
FOUNDATION (PLAINTIFF'S
PROPOSED CY PRES RECIPIENT)**

Complaint filed: February 5, 2021
Trial date: None set

DECLARATION OF ROBERT WEISSMAN

I, Robert Weissman, declare as follows:

1. I am the President of Public Citizen Foundation, a section 501(c)(3) non-profit organization based in Washington, DC.

2. Among other things, Public Citizen does both research and litigation related to worker rights and worker safety. Our work is supported by donations from individuals, foundation grants, and court-awarded attorney fees. Public Citizen accepts no corporate or government funding.

3. If awarded cy pres funds in this case, Public Citizen would use the funds to support its research and advocacy supporting strong protections for workers, including workers in California, and its work on cases that involve wage-and-hour rights or worker safety, or that seek to protect workers' access to the civil justice system.

4. Public Citizen conducts research and advocacy on worker protection issues, advocating for rules to protect workers from hazards that may cause illness or injury in the workplace. Public Citizen advocates with regulatory agencies to adopt or maintain worker safety measures, protect workers from unfair wage practices, follow strong enforcement practices. Public Citizen has also done extensive work examining and critiquing the mandatory arbitration clauses increasingly used by employers to bar workers' access to the court system.

5. Public Citizen also works to support a legal system that permits workers and others to pursue remedies effectively. We participate in the rulemaking processes of the federal courts and in that setting seek to protect the class action device established in Federal Rule of Civil Procedure 23 by opposing efforts to alter the rule to limit class actions, while advocating clarifications that ensure the availability of class actions in appropriate cases and the fairness of class settlements. We also seek to counter attacks on the civil justice system by those who would limit legal remedies. For example, in 2016, we issued a report demonstrating that claims in congressional testimony by class action opponents that there has been a recent proliferation of successful class actions involving consumers who did not suffer any actual injury were

incorrect. In these and other ways we seek to educate the public in order to promote informed policies that encourage the proper use of class actions to remedy broadly shared harms to workers and consumers.

6. In addition, Public Citizen, through its nine-lawyer Litigation Group, works on cases in the federal and state courts involving worker and consumer protections, government transparency, class-action standards, administrative law (federal health and safety regulation), and the First Amendment. Since its founding in 1972, the Litigation Group has litigated cases at all levels of the federal and state judiciaries. The Litigation Group's work is all pro bono.

7. Through the Litigation Group, Public Citizen has represented plaintiffs in many cases, including cases from the U.S. Court of Appeals for the Ninth Circuit, involving claims under federal and state wage-and-hour statutes. *See, e.g., AMN Services, LLC v. Clarke*, 142 S. Ct. 710 (2021) (Supreme Court co-counsel for plaintiff opposing a petition for certiorari from a Ninth Circuit decision in a Fair Labor Standards Act case); *Karl v. Zimmer Biomet Holdings*, 140 S. Ct. 110 (2019) (same); *Garda CL Nw., Inc. v. Hill*, 139 S. Ct. 2667 (2019) (same, in case arising under Washington State law). We have also appeared as amicus curiae on behalf of plaintiffs in cases concerning misclassification of employees. *See, e.g., Fischer v. Federal Express Corp.*, 3d Cir. No. 21-1683, pending (amicus curiae); *Bedoya v. American Eagle Express*, 914 F.3d 812 (3d Cir. 2019) (amicus curiae); *cert. denied*, 140 S. Ct. 102 (2019) (co-counsel for plaintiff-respondent); *BeavEx, Inc. v. Costello*, 810 F.3d 1045 (7th Cir. 2016) (amicus curiae), *cert. denied*, 137 S. Ct. 2289 (2017) (co-counsel for plaintiff-respondent).

8. Public Citizen Litigation Group attorneys have also represented workers attempting to defend their right to access the courts to pursue claims under California's Private Attorneys General Act (PAGA). Currently, we serve as Supreme Court co-counsel in *Viking River Cruises v. Moriana*, U.S. No. 20-1573, which raises the question whether the Federal Arbitration Act preempts California's rule prohibiting contractual waivers of PAGA causes of action. In March, a Litigation Group attorney argued the case before the U.S. Supreme Court. Other cases in which we have represented plaintiffs opposing employer's petitions for certiorari

on that issue and related issues under PAGA include *Five Star Senior Living v. Mandviwala*, 138 S. Ct. 2680 (2018) (denying certiorari); *Bloomingtondale's, Inc. v. Tanguilig*, 138 S. Ct. 356 (2017) (denying certiorari), *Bloomingtondale's, Inc. v. Vitolo*, 137 S. Ct. 2267 (2017) (denying certiorari), *ABM Indus. Inc. v. Castro*, 137 S. Ct. 82 (2016) (denying certiorari), *Bridgestone Retail Operations, LLC v. Brown*, 575 U.S. 1037 (2015) (denying certiorari), and *Chase Investment Services Corp. v. Baumann*, 574 U.S. 1060 (2014) (denying certiorari). On the same issue, we served as co-counsel in the California Supreme Court and the U.S. Supreme Court in *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), *cert. denied*, 574 U.S. 1121 (2015).

9. Public Citizen attorneys also represent parties and amici curiae in cases brought by workers that raise issues about class-action standards. For example, we served as co-counsel in *Tyson Foods v. Bouaphakeo*, 577 U.S. 442 (2016), a wage-and-hour case in which the Supreme Court held that the plaintiffs' reliance on representative proof did not defeat class certification because representative proof is allowed in individual wage-and-hour cases, and it would shrink plaintiffs' rights to deny them the opportunity to use such evidence when proceeding as a class.

10. Other cases in which Public Citizen has served as counsel or appeared as an amicus curiae in cases concerning workers' access to the civil justice system include *Molock v. Whole Foods Market Group*, 952 F.3d 293, 295 (D.C. Cir. 2020); *United Airlines v. Hughes*, 565 U.S. 819 (2011) (denying cert.)

11. Public Citizen's litigation also focuses more generally on preserving the ability of consumers and workers to pursue class-action and collective remedies, which are essential to the protection of their interests. For example, Public Citizen served as Supreme Court co-counsel for the plaintiff class in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016). Ruling in our favor, the Supreme Court held that a Rule 68 offer of judgment does not moot a plaintiff's individual claim. Had the defendant prevailed, the ruling would have had a significant detrimental impact on the viability of consumer and worker class actions. Public

Citizen has also addressed closely related issues on behalf of class plaintiffs in a number of federal appellate cases, including *Fulton Dental, LLC v. Bisco, Inc.*, 86 F.3d 541 (7th Cir. 2017); *Mey v. North American Bancard, LLC*, 655 F. Appx. 332 (6th Cir. 2016); *Hooks v. Landmark Indus., Inc.*, 797 F.3d 309 (5th Cir. 2015); and *Keim v. ADF Midatlantic, LLC*, 586 F. App'x 573 (11th Cir. 2014)

12. Other cases in the Supreme Court involving class-action issues in which Public Citizen served as lead Supreme Court counsel include *Shady Grove Orthopedic Associates v. Allstate Insurance Co.*, 559 U.S. 393 (2010); and *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

13. Public Citizen has also worked to ensure that class settlements provide real relief to class members, and we have represented objectors seeking to improve such settlements in several cases, including *Vargas v. Lott*, 2019 WL 4391225 (9th Cir. Sept. 13, 2019); *Fraley v. Batman*, 638 Fed. Appx. 594 (9th Cir. 2016); *Day v. Persels & Associates*, 729 F.3d 1309 (11th Cir. 2013); *In re Katrina Canal Breaches*, 628 F.3d 185 (5th Cir. 2010); *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052 (C.D. Cal. 2010); and *In re TD Ameritrade Accountholder Litigation*, 266 F.R.D. 418 (N.D. Cal. 2009). Our work in this area reflects our commitment to the view that class settlements should be aimed at providing real value for class members and should minimize obstacles to the realization of those benefits by the class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of March 2023, in Washington, DC.



Robert Weissman