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*Counsel for Plaintiffs and Putative Class
Members*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

**AMADO HARO and ROCHELLE
ORTEGA, On Behalf of Themselves and
All Others Similarly Situated,
Plaintiff,
v.
WALMART, INC.,
Defendant.**

Case No. 1:21-CV-00239-NODJ-SKO

**DECLARATION OF DON FOTY IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL**

DECLARATION OF DON FOTY

I, Don J. Foty, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. My name is Don J. Foty. I am of sound mind, at least eighteen (18) years, and have personal knowledge of the facts set forth in this Declaration. I am one of the attorneys representing the Plaintiffs in the above-captioned lawsuit. I make this Declaration based upon my personal knowledge.

1 **A. QUALIFICATIONS OF DON FOTY**

2 2. I graduated in 2003 from The University of Texas at Austin and in 2006 from
3 the University of Houston Law Center. I have been a member of the Texas bar since 2006 and
4 I am admitted to the following federal courts: the United States District Courts for the Northern,
5 Southern, Eastern, and Western Districts of Texas; the United States District Court for the
6 Eastern District of Michigan; the United States District Court for the District of Colorado; the
7 United States District Courts for the Central, Northern, and Southern Districts of Illinois; the
8 United States District Court for the District of North Dakota, the United States District Court
9 for the District of New Mexico, the United States District Court for the Northern District of
10 Ohio, the United States District Court for the Court of Federal Claims, the United States
11 District Court for the Western District of Oklahoma, the United States District Court for the
12 District of Maryland, and the United States Courts of Appeals for the Fifth Circuit.

13 3. I have substantial experience handling wage and hour matters, including class
14 actions and collective actions. Specifically, for the past 15 years, I have regularly litigated
15 wage and hour disputes, including claims involving employee misclassification, regular rate
16 miscalculation, independent contractor misclassification, claims for compensation for working
17 off-the-clock, fluctuating workweek disputes, claims for unpaid meal periods, and claims for
18 unpaid waiting and travel time. I have also served as class counsel in approximately 100 wage
19 and hour class and collective actions in Texas, California, Colorado, New Mexico, New York,
20 Ohio, Pennsylvania, and other States.

21 4. During the past 15 years, I have recovered through settlement or verdict over
22 \$100,000,000 for my clients. Some of these cases include *Larkin, et al. v. EG Systems, Inc.*,
23 No. Civ. A. 1:13-CV-01363 in the Southern District of New York. *Larkin* was a national
24 FLSA collective action that settled for \$8.975 million on behalf of approximately 1,100 class
25 members. I also helped obtain a \$4,000,000 settlement in the District of Colorado in the case
26 of *Power v. Sandbox Logistics, LLC*, No. Civ. A. 1:16-CV-1978-JLK. The *Power* litigation
27 was a class and collective alleging that a group of workers were misclassified as exempt under
28

1 the motor carrier act exemption. Other examples include resolving collective actions under
2 the FLSA for \$5.1 million for misclassifying a group of workers as exempt from overtime,
3 \$4.875 million for misclassifying a group of workers as independent contractors, \$4.35 million
4 for requiring employees to perform work off the clock violations, for \$2.8 for misclassifying
5 workers as independent contractors, and \$2.3 million for misclassifying wage payments as
6 expenses and thereby, failing to pay overtime at the rate of time and one half.

7 5. Several courts have lauded the work that I have performed in wage and hour
8 matters, including the following courts:

- 9 • “Counsel for the plaintiffs has appeared multiple times in this Court with success on
10 most, if not all, occasions.” *Sandras v. Expeditors & Production Serv. Co.*, No. Civ. A.
11 16-0239, 2019 WL 658819, at *3 (W.D. La. Feb. 13, 2019).
- 12 • “Furthermore, both [the named plaintiff] and his counsel have vigorously prosecuted
13 this action on behalf of the California Class, and nothing in the record suggests that
14 they will not continue to do so.” *Swamy v. Title Source, Inc.*, No. Civ. A. 17-01175-
15 WHA, 2018 WL 1586139, at *2 (N.D. Cal. Apr. 2, 2018).
- 16 • “Class counsel’s skill, knowledge, reputation, and experience is well-recognized in
17 FLSA cases such as this.” *Sandras v. Expeditors & Production Serv. Co.*, No. Civ. A.
18 16-0239, 2019 WL 658819, at *2 (W.D. La. Feb. 13, 2019).
- 19 • In granting approval of a \$4,8750,000.00 settlement on behalf of approximately 260
20 drivers who alleged that they were misclassified as independent contractors, the Chief
21 Judge of the Southern District of Texas - Lee Rosenthal - complimented the work that
22 I performed in representing the plaintiffs and class members in *Sterling v. Metropolitan*
23 *Transit Authority of Harris County, Texas, et al.*, 20-cv-00910, Southern District of
24 Texas.

25 6. I have spoken before the Houston Bar Association on the Fair Labor Standards Act,
26 authored articles for the Houston Bar Association on the Fair Labor Standards Act, written for the
27 Houston Lawyer Magazine about the Fair Labor Standards Act, and I have served as a contributing
28

author to the American Bar Association FLSA Midwinter Report each year since 2016. Below are some of the articles and speeches that I have authored.

- “*Hewitt v. Helix Energy Solutions Group*: An Essay on Textualism” – Houston Lawyer Magazine, January/February 2022 edition.
- “The *Swales* Decision and its Aftermath” – Houston Lawyer Magazine, May/June 2021 edition.
- “A Panel Discussion of FLSA Collective Actions Post-*Swales*” – Houston Bar Association, October 11, 2021.
- “Collective Actions Under the FLSA After *Swales*” – Houston Bar Association, October 11, 2021.
- “Current Trends and Hot Topics Under the Fair Labor Standards Act” - Houston Bar Association, December 3, 2015.

7. Since 2006, I have handled through conclusion at least 300 civil actions in state and federal courts, I have tried 9 cases to verdict, and I have tried several cases in arbitration. In addition, I was recognized from 2012-2020 as a “Rising Star” and as a “Super Lawyer” since 2021 by my peers in the annual survey of Texas attorneys published by Thompson Reuters.

8. Additionally, I was listed as one of the top 40 lawyers under 40 by the National Trial Lawyers’ Association, one of the top 100 civil trial lawyers by the National Trial Lawyers’ Association, and one of the top 100 employment lawyers in the country by the National Advocates.

9. In summary, I have substantial expertise in wage and hour matters, including class action and collective action litigation under the FLSA.

B. BACKGROUND

10. Following the outbreak of the COVID pandemic, Walmart implemented a company-wide policy requiring all hourly paid employees to pass a COVID screening prior to the start of their scheduled shifts. Walmart claims that it automatically paid five minutes of pay per shift to each of its hourly employees, regardless of whether they completed a COVID screening that day. However, Plaintiffs contend that this payment was to only compensate for (1) the time

1 spent waiting in line, and (2) the time spent in the screening. Plaintiffs argued that when adding
2 the time spent off-the-clock for walking from the screening area to the time clock, a five minute
3 payment was insufficient.

4 11. Accordingly, on February 23, 2021, Plaintiffs filed this action alleging that
5 Defendant (1) failed to pay them for all hours worked, (2) failed to pay them overtime wages, (3)
6 provided to them invalid wage statements, and (4) a derivative violation of California Business &
7 Professions Code §§ 17200, *et seq.* (through violation of California Labor Code § 2802 and/or
8 California Labor Code § 226). (*See* Dkt. 1.). Plaintiffs brought this lawsuit as a collective action
9 under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* and as a Rule 23 Class Action under
10 the California Labor Code. *Id.*

11 12. After this lawsuit was filed, the Parties engaged in extensive merits-based and class
12 discovery. Both sides served initial disclosures, document requests and interrogatories.
13 Specifically, (i) the Parties conducted 31 depositions, (ii) Plaintiffs propounded 29 interrogatories,
14 six requests for admission, and 42 requests for production, (iii) Defendant propounded 48 requests
15 for production and 23 interrogatories to Plaintiff Haro and 48 requests for production and 23
16 interrogatories to Plaintiff Ortega, and (iv) Defendant produced thousands of pages of information,
17 including both traditional and electronic discovery. The Parties also produced six expert reports
18 addressing the merits of the case, damages, and class certification. Plaintiffs produced expert
19 reports from Liesl Fox, Ph.D., Richard Drogin, Ph.D., and Steve Hopper. Walmart produced
20 expert reports from Nathan Woods, Ph.D., Brian Grieser, and Robert Crandall. The Parties also
21 deposited each side's experts.

22 13. In addition to the significant discovery that was completed, the Parties also engaged
23 in extensive motion practice. Defendant filed a motion for summary judgment on June 28, 2022.
24 (Dkt. 31). Plaintiffs filed a substantive response to the motion for summary judgment, (Dkt. 36),
25 and a motion to continue the motion for summary judgment. (Dkt. 34). Plaintiffs filed a motion
26 to certify a class under Rule 23, (Dkt. 43), and a motion for conditional certification under the Fair
27 Labor Standards Act. (Dkt. 41). Defendant opposed the motion for conditional certification. (Dkt.
28

59). Defendant also opposed the motion for class certification. (Dkt. 58). Additionally, Defendant filed a motion to strike the expert declaration of Dr. Drogin. (Dkt. 60). Plaintiffs moved to strike the expert declaration of Dr. Woods, (Dkt. 99), and a motion to strike the declarations submitted by Defendant in opposition to Plaintiffs' motion for class certification. (Dkt. 109). Plaintiffs' Counsel also moved to be appointed by the Court as interim class counsel. (Dkt. 72). Findings and Recommendations granting the motion for appointment as interim class counsel were issued on February 27, 2023. (Dkt. 91).

14. After engaging in this discovery and motion practice, the Parties decided to attend mediation. On September 11, 2023, the Parties attended a full-day mediation with Antonio Piazza. Mr. Piazza is a well-regarded mediator who has mediated hundreds of class action cases. Based on the extensive discovery and investigation undertaken, Plaintiffs were able to engage in well-informed settlement negotiations with Defendant. Negotiations between the Parties were rigorous and conducted at arms-length. Mr. Piazza played an active role in the settlement negotiations, including identifying each side's strengths, weaknesses, and risks. Mr. Piazza also had the benefit of detailed briefs, dozens of exhibits (including statistical modeling and deposition excerpts), and hours of in-person discussions with the Parties and their counsel. This process culminated in Mr. Piazza making a neutral and informed mediator's proposal, which both sides accepted.

C. SETTLEMENT TERMS

15. The Settlement provides for additional monetary relief to the Class Members, on top of the five minutes of pay per shift they have already received. The Settlement is for \$5,200,000.00 to be divided amongst the Class Members proportionally based on their dates of employment and weeks worked. Walmart also agrees to pay the employer's share of the applicable payroll taxes in addition to the gross settlement amount. There will be no claims process because the Claims Administrator will process checks for everyone who does not properly request to be excluded.

16. The fees and costs associated with retaining a third-party administrator to administer the terms of the Settlement will be deducted from the Settlement. Plaintiffs have

1 obtained settlement administration quotes from several vendors and ultimately selected Rust to
2 administer the Settlement because it provided the lowest bid. Exhibit A is the bid submitted by
3 Rust. In administering the Settlement, the Parties have agreed to use their best efforts to keep the
4 costs as low as possible, including by sending the Notice via electronic mail.

5 17. The Settlement provides for an enhancement award of \$10,000 each to the two
6 named Plaintiffs. The award is to compensate the Plaintiffs for the time, expense, and risks they
7 incurred in litigating this action on behalf of the Class Members.

8 18. Further, Plaintiffs' Counsel will move the Court for an award of reasonable
9 attorneys' fees of up to one-third of the Settlement as well as reimbursement of litigation costs.
10 Any amount of the requested fee and costs award not approved by the Court will be included in
11 the distribution to the Class.

12 **D. THE SETTLEMENT IS FAIR AND REASONABLE**

13 19. The proposed Settlement is fair and reasonable and should be preliminarily
14 approved. There are no unfair terms: (1) the release narrowly covers only those claims asserted in
15 this lawsuit; (2) the Parties have not agreed to any limit on a potential fee award or litigation costs
16 award; (3) the Class Members can easily opt out; (4) there is no claims process to receive a
17 payment; (5) there is no reversion to Defendant; and (6) all Class Members who do not timely opt-
18 out will receive a payment.

19 20. Additionally, during discovery, the Parties heavily disputed the amount of time the
20 Class Members spent waiting-in line and completing the screening. Walmart's expert, Robert
21 Crandall, viewed hundreds of hours of video footage of the COVID screenings and determined
22 that the mean time spent waiting-in line and completing the screening was approximately 29.1
23 seconds. Plaintiffs believe that a conservative range of time spent off-the-clock as a result of the
24 COVID screenings is between 5.18 minutes and 6.22 minutes. The settlement provides a recovery
25 of approximately 5.46 minutes of screening time, when factoring in the 5 minutes that Walmart
26 previously paid.

21. The Settlement is fair and reasonable because it provides for a recovery that is approximately 98% of the amount of unpaid wages owed to the Class Members at nearly one minute of additional time worked off-the-clock as a result of the COVID screenings, assuming unpaid time on every other shift. That is the Settlement allows the Class Members to keep the five minutes that Walmart previously paid them plus additional pay.

22. Finally, the proposed Settlement here is the product of extensive, arm's-length negotiations, which included an all-day mediation session. Indeed, the mediator was forced to make a proposal that both sides accepted to reach a settlement. In light of these facts, the proposed Settlement is fair and reasonable and should be preliminarily approved.

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

Dated this 15th day of December 2023.

By: /s/ Don J. Foty
Don J. Foty
Hodges & Foty, LLP
2 Greenway Plaza, Suite 250
Houston, Texas 77046
Telephone: 713-523-0001
Facsimile: 713-523-1116



Settlement Administration Estimate

Walmart Settlement
November 22, 2023

Prepared By:
Eric Bishop
 SVP
 612-359-2988
 ebishop@rustconsulting.com

EXPERIENCE

With experience on approximately 3,500 labor and employment cases, we are the nation's largest labor and employment settlement administrator. We have managed employment settlements with class sizes ranging from dozens to multi-million class members. In fact, we've been trusted to administer many of the nation's largest settlements, including the nation's top wage-and-hour cases in recent years.

DATA SECURITY

Our internal data and system security practices meet or exceed today's exacting industry standards. We have received system accreditation under the Federal Information Security Management Act (FISMA), comply with and adhere to Safe Harbor Principles, and undergo an annual SSAE 16 SOC 1 Type II Report audit of our data security and information technology controls designed to demonstrate our substantial level of data and system security.

DEDICATED SPECIALISTS

Our labor and employment case team is strictly dedicated to managing settlement administration for cases involving matters such as wage-and-hour, FLSA, discrimination and ERISA. They're specialists, not generalists, with an industry reputation for responsiveness and expertise in relevant areas such as the applicable banking and tax regulations. We are confident that Rust is the best choice for the administration of your settlement.

Project Summary

Estimated Class Size	290,000
<u>Project Cost</u>	
Mailed Notice	\$ 73,166
Telephone Support	\$ 36,845
Website	\$ 4,300
Processing and Administration	\$ 1,450
Fund Distribution & Tax Reporting	\$ 306,261
Project Management	\$ 17,195
Other Out-of-pocket Expenses	\$ 1,250
Total Project Cost	\$ 440,466
	Discount
	\$ (7,944)
Total Project Cost w/ Discount	\$ 432,522

Key Assumptions

Email Notice to All
Mailed Notice to Missing/Bounced Emails - 4 Pgs
Dynamic Website for Opt-Outs & Objections
No Claims Process
Telephone Support Included
1 State Tax ID - California Only
180 Day Void Period on Payments
NO Reminder Mailings
NO Redistribution
Uncashed Payments Sent to Cy Pres

Thank you for considering Rust Consulting, Inc. as your administrator -- we appreciate the opportunity to submit this estimate.

EXHIBIT "A"



Settlement Administration Estimate

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ebishop@rustconsulting.com

Key Assumptions Used to Prepare this Estimate

Class Size	290,000		Standard Hourly Rates*	
Initial Notice:			SVP	\$175-\$275
Emailed Notice	261,000	90.0%	Program Manager	\$160-\$180
Mailed Notice - Missing Emails	29,000	10.0%	Project Manager	\$100-\$140
Mailed Notice - Email Bounces	39,150	15.0%	Technical Consultant	\$110-\$180
Forwarded Notices	1,704	2.5%	Call Center Manager	\$125
Undeliverable Notices	8,178	12.0%	CSR	\$ 43-\$ 50
Re-Mailed Notices after Trace	6,542	80.0%	Processor	\$ 43-\$ 50
			Other	\$ 43-\$125
Telephone Support:			<i>*Subject to change</i>	
Number of Telephone Contacts	20,300	7.0%		
Number of Telephone Contacts - CSR	10,150	50.0%		
Connect Minutes per Call - IVR	1.0			
Connect Minutes per Call - CSRs	4.0			
Claimant Communications:				
Exclusions Received	725	0.25%		
Payments	289,275	100.0%		

Additional Administration Assumptions Used to Prepare this Estimate:

Database Development: Receive and Process Database assumes that the data provided is complete with respect to the data components needed to mail and calculate settlement payments. Data that includes multiple records for individuals or work history that needs to be accumulated and totaled by individual generally requires additional efforts to bring to a point where it is final settlement data. These additional efforts can take a significant amount of time and should be considered when setting key settlement dates, especially the mailed notice deadline. Data must be provided in a complete, consistent, standardized electronic format. Rust's standard format is ASCII fixed width complete with field layout. Other formats may be accepted at Rust's discretion. Resources used to enhance or further develop non-standardized data will be billed on a time and materials basis according to Rust's Current Standard Hourly Rates.

CASS/NCOA/LACS: CASS - Coding Accuracy Support System; NCOA - National Change of Address; LACS - Locatable Address Conversion System.

Notice Package: Print and Mail per unit price is estimated. Actual prices will be provided after form is finalized prior to mailing.

Telephone Support included.

Processing & Administration: Receipt and Process Forms includes open, date stamp, label and data capture a 1-page form with up to five fields.

Project Management: Project Management fees are estimated and will be billed on actual time expended based on the rates found in the Current Standard Hourly Rates section above. The rates included in the estimate are a blended estimate of the rates listed above.

Out of Pocket Expenses: Includes post office box rental, overnight shipments, postage, labels, travel, long distance and other miscellaneous charges and expenses.

Pricing good for 90 days.



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Administrative Task	Estimated Quantity		Per Unit	Task Amount	Total
Database Development					
Receive and Process Database	12	Hours @	\$ 180	\$ 2,160	\$ 2,160
Additional Efforts to Finalize Settlement Data				<i>As Incurred</i>	
Initial Notice					
CASS / NCOA / LACS Processing				\$ 750	
Setup and Deploy Emails	261,000	Emails @	\$ 0.03	\$ 7,830	
Print and Mail Notice Package - Missing and Bounced Emails	68,150	Notices @	\$ 0.20	\$ 13,630	
Postage - 1 Ounce First Class	68,150	Notices @	\$ 0.54	\$ 36,801	\$ 59,011
Follow-up to Initial Notice					
Receive Undeliverable Notices and Update Database	8,178	Notices @	\$ 0.25	\$ 2,045	
Address Trace	8,178	Traces @	\$ 0.40	\$ 3,271	
Remail Notice Package	8,246	Notices @	\$ 0.18	\$ 1,484	
Remail Postage - 1 Ounce First Class	8,246	Notices @	\$ 0.63	\$ 5,195	\$ 11,995
Telephone Support					
Setup IVR System	3	Hours @	\$ 175	\$ 525	
Live Telephone Support	10,150	Calls @	\$ 2.25	\$ 22,838	
IVR System Charges	20,300	Minutes @	\$ 0.25	\$ 5,075	
800# Charges	81,200	Minutes @	\$ 0.11	\$ 8,932	\$ 36,845
- a minimum charge of \$400 per month will be charge for live telephone support					
Website					
Develop Dynamic Website w/ Ability to File Opt Outs	20	Hours @	\$ 185	\$ 3,700	
Monthly Hosting & Maintenance	8	Months @	\$ 75	\$ 600	\$ 4,300
Processing and Administration					
Receipt, Process, and Validate Forms	725	Forms @	\$ 2.00	\$ 1,450	\$ 1,450
Additional Administrative Services Requested by Client					<i>As Incurred</i>
Fund Distribution					
Print and Mail Payments	289,275	Payments @	\$ 0.12	\$ 34,713	
Postage - 1 Ounce First Class	289,275	Payments @	\$ 0.63	\$ 182,243	
Check Processing	289,275	Payments @	\$ 0.20	\$ 57,855	
Reissues	28,928	Payments @	\$ 0.20	\$ 5,786	
Postage - 1 Ounce First Class	28,928	Payments @	\$ 0.63	\$ 18,224	
FDIC Charges				\$ 3,290	
Monthly Bank Account Fee	6	Months @	\$ 200	\$ 1,200	\$ 303,311
Tax Reporting					
Annual Fee -Qualified Settlement Fund	1	Year @	\$ 2,000	\$ 2,000	
Setup and Maintain State Tax IDs	1	State @	\$ 200	\$ 200	
Individual Income Tax Reporting (W2 & 1099)	1	Year @	\$ 750	\$ 750	\$ 2,950
Project Management					
Senior Vice President	2	Hours @	\$ 225	Waived	
Project Management	75	Hours @	\$ 175	\$ 13,125	
Technical Consulting	22	Hours @	\$ 185	\$ 4,070	\$ 17,195
Other Charges and Out-of-pocket Costs					
					\$ 1,250
Total Settlement Administration Estimate					\$ 440,466



Settlement Administration Estimate

Walmart Settlement
November 22, 2023

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 ebishop@rustconsulting.com

Terms and Conditions

All claims administration services to be provided by Rust Consulting to Customer shall be subject to the following terms and conditions:

1. **Services.** Subject to the terms hereof, Rust Consulting agrees to provide the Customer with claims administration services (hereinafter, "Claims Services") as specified in the Proposal provided to Customer to which these Terms and Conditions are attached.
2. **Term.** The terms of this agreement will remain in effect until completion of the Claims Services, unless earlier terminated in accordance with Section 10 hereof.
3. **Charges for Services.** Charges to the Customer for Claims Services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Customer to Rust Consulting. Actual fees charged by Rust Consulting to Customer may be greater or less than such estimate, and Customer shall be responsible for the payment of all such charges and expenses in accordance with Section 4 hereof. Furthermore, Customer will be responsible for payment of all state and local sales and use taxes, if any, levied upon the charges payable by the Customer hereunder. Rust Consulting may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.
4. **Payment of Charges.** Payment by Customer of Rust Consulting's monthly invoices shall be due upon receipt thereof. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Customer's liability to Rust Consulting for payment of Claims Services. Claims Services are not provided on a contingency fee basis.
5. **Confidentiality.** Rust Consulting agrees to implement and maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Customer data provided to Rust Consulting by Customer in connection herewith. Should Rust Consulting ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Customer, Rust Consulting will promptly notify the Customer, unless prohibited by applicable law. The Customer shall have the option to (1) provide legal representation at the Customer's expense to avoid such access or (2) promptly reimburse Rust Consulting for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If Rust Consulting is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, Rust Consulting will not be liable for breach of said obligation.
6. **Standard Banking Procedures.** In accordance with Rust Consulting's standard banking procedures, Rust Consulting will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. When directed to invest funds in an interest bearing or investment accounts, Rust Consulting intends to invest all funds in U.S. government backed securities, unless directed by the parties in writing or the settlement agreement or distribution plan to invest in other types of securities; however, even in cases where funds are temporarily placed in interest bearing or investment accounts, funds will eventually be migrated to a demand deposit checking account prior to a fund distribution.
7. **Rights in Data.** Rust Consulting does not convey nor does the Customer obtain any right in the programs, system data, or materials utilized or provided by Rust Consulting in the ordinary course of business in the performance of this Agreement.
8. **Document Retention.** Unless directed otherwise in writing by Customer, Rust Consulting will destroy undeliverable notification on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust Consulting will retain all bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
9. **Limitation of Liability: Disclaimer of Warranty.** Rust Consulting warrants that our services will be performed with reasonable care in a diligent and competent manner. Our sole obligation will be to correct any non-conformance with this warranty. Rust Consulting shall not be liable, whether under theories of contract, negligence or other tort, statutory duty or other theories of liability in an amount exceeding the total charges to the Customer for the specific work affected by the error or omission. Rust Consulting will not be liable for any incidental, special, indirect, consequential or exemplary damages of any kind; or for any lost profits, lost opportunities, business interruption or for any liability incurred by the Customer or others to any third party. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR PARTICULAR PURPOSE.
10. **Termination.** The Claims Services to be provided under this Agreement may be terminated, at will by the Customer upon at least 30 calendar days' prior written notice to Rust Consulting. The Customer's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. Rust Consulting may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Customer is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Customer.
11. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of Rust Consulting or the Customer, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.
12. **Force Majeure.** To the extent performance by Rust Consulting of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Rust Consulting's reasonable control, then such performance shall be excused and this Agreement, at Rust Consulting's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
13. **Nonwaiver of Rights.** No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.
14. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Court.
15. **Survival.** All accrued payment obligations hereunder, any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 7 (Rights in Data); Section 5 (Confidentiality); Section 9 (Limitation of Liability; Disclaimer of Warranty); and Section 14 (Jurisdiction).
16. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.



Qualifications Summary

This document outlines Rust Consulting's qualifications to serve as the administrator for class action, mass tort, and regulatory settlements, as well as to perform other similar, complex and time-sensitive matters such as remediation programs, data breach responses, and product recalls. It includes summary information categorized as follows:

- Firm Overview
- Practice Area Organization
- Personnel
- Services
- Representative Case Experience
- Data and System Security

Firm Overview

Rust, an Exela Technologies brand, is an industry-leading consulting and administration firm that provides public and private sector clients a full complement of services required to administer legal settlements and similar programs. These services include consulting; project management; data management; notification; contact center and websites; claims processing; and fund management, distribution, and tax reporting.

Rust grew out of the litigation support firm the Rust Consulting Group, which was founded in 1976. In 1988, the Group administered its first class action settlement, eventually leading in 1995 to the formation of Rust Consulting, Inc. as a separate entity focused on legal settlement administration. Since then, Rust has administered 8,000 settlements and projects.

Headquartered in Minneapolis, Rust also has an office in Faribault, Minnesota. Our subsidiary Kinsella Media maintains a Washington, D.C., location. Rust and Kinsella are wholly owned subsidiaries of Exela Technologies, Inc. (NASDAQ: XELA, XELAW and XELAU), one of the largest global providers of transaction processing solutions and enterprise information management.

Practice Area Organization

Rust administers programs spanning diverse subject matter. The depth and breadth of our legal settlement administration experience spans all prominent practice areas, such as antitrust, consumer, finance, insurance and healthcare, labor and employment, product liability, and securities matters on behalf of private sector clients and governmental agencies at all levels. Our services also lend themselves to our clients' non-settlement needs, including data breach responses, recalls, and remediation programs.

Our leadership and certain operations and client services personnel focus on specific practice areas relevant to our clients, deepening their subject matter expertise and directly relevant experience.

Personnel

Our permanent staff of approximately 200 includes professionals with backgrounds and disciplines including project management, information technology, finance, law, and operations. This cross-functional, innovative team includes experts in their respective disciplines, such as CPAs, Ph.D.s, attorneys, and PMPs.

Rust's team includes some of the most experienced practitioners in the industry, with much of that experience Rust-specific. Our senior vice presidents average over 17 years of Rust experience and our functional directors average over 22 years.

Services

The Rust team provides high quality administrative services for matters of any size and scope. Specific approaches may vary depending upon the requirements of each individual matter; however, the below services are typical of our engagements.

Preliminary Consulting

Rust consults with clients prior to settlement to help set expectations based on our experience with similar matters and to anticipate otherwise identified issues that may arise in administration based on a settlement or program's characteristics.

Project Management

Our project management personnel prepare plans of notice and administration, create or customize project tracking tools and reports, and oversee the creation of project-specific databases designed to house and capture appropriate information for use in claims administration. Throughout the administration process, project management personnel coordinate all activities between the parties, vendors, and internal Rust departments to ensure work is completed accurately and according to any service level agreements, internal standards, settlement documents, etc. We provide regular and on-demand reports and statistics to the appropriate parties and raise potential issues requiring their attention, as necessary. Upon completion of each major phase of administration, or as required, we prepare declarations or affidavits attesting to the scope and results of our work.

Data Management

The secure and efficient handling of data underlies all aspects of claims administration; Rust creates and customizes data management processes, databases, applications to meet the unique needs of each settlement or project. Tasks associated with data management throughout administration may include:

- Intaking original client data.
- Normalizing data for cross-platform usability, such as meeting mailing or other outreach requirements.
- Consolidating and deduplicating data from multiple sources.
- Extracting data for standard or customized trace services.
- Extracting data for mailing or other outreach.
- Calculating awards.



Notification

Rust disseminates hundreds of millions of notices annually by mail and email. We also work with our subsidiary Kinsella Media, the leading provider of notice to unidentified audiences and the only firm in the nation with qualified, court-recognized notice expertise, to develop and implement notice plans.

With respect to legal settlements, these notice programs notify class members or other affected individuals of their legal rights and options. With respect to data breach responses, recalls, or remediation, these programs inform affected individuals about the situations and any options those affected individuals may have.

Among our notification-related services are:

- Designing notice programs (through Kinsella Media).
- Drafting plain language materials (through Kinsella Media).
- Designing and proofreading notice materials.
- Locating unidentified individuals and updated addresses.
- Printing and mailing.
- Processing and forwarding undeliverable mail.
- Opining about notice program adequacy (through Kinsella Media).

Contact Center

Rust supports the programs we administer through an assortment of contact center services including call center, websites, and email support up to 24/7 and for class members and other affected individuals worldwide.

Our call center services include inbound and outbound calls in our own domestic, in-house call center. The call center is located in our Minneapolis headquarters and is readily expandable to meet the needs of specific programs of any size.

All customer service representatives (CSRs)—permanent or temporary—undergo background checks and training on Rust's policies and technology, customer service fundamentals, and project-specific information. Typical engagements include English- and Spanish-speaking CSRs, while we provide support in additional languages, as required. In one case, Rust CSRs took live inbound calls in 10 languages.

In lieu of or in conjunction with live customer service, Rust builds and maintains automated Interactive Voice Response (IVR) systems that provide 24/7 service to toll-free numbers and include menus of prerecorded options such as program overviews, frequently asked questions and answers, and options for requesting forms or filing claims. Rust's IVR systems regularly support English- and Spanish-language speakers and can be programmed to support other languages, as required. In one case, Rust managed IVR support including translations of information pre-recorded by native speakers in 67 languages.



Claims Processing

Rust develops or executes claims processing or adjudication programs as required by the diverse terms of our engagements. We use several proprietary software applications and tested, streamlined processes to provide the most appropriate solutions for each engagement's needs, whether for paper or online claims. Our systems automate the claims administration process:

- Receipt.
- Link to class member database record.
- Data capture.
- Review of supporting documentation.
- Initial adjudication.
- Deficiency processing.
- Final adjudication.
- Rejection letters.
- Reporting/affidavits.

To meet the needs of each engagement, our systems can be configured to give clients or authorized parties secure online access to claimant data and reporting, or to class members to facilitate online claims filing.

Fund Management, Distribution, and Tax Reporting

Rust annually distributes billions of dollars associated with settlements and similar programs. Our Bank and Tax group is responsible for day-to-day banking and tax reporting functions for all settlement funds.

Banking Services	Tax Reporting Services
▪ Account setup. ▪ Online bank reporting. ▪ Escrow, investment and distribution accounts. ▪ Escrow agent services. ▪ Positive Pay – all claimant checks are issued with Positive Pay verification. ▪ Check images. ▪ Wire transfers. ▪ Account reconciliation (daily, weekly or monthly). ▪ Balance inquiry and reporting.	▪ Tax identification numbers (federal and state). ▪ Qualified Settlement Fund (QSF) determination. ▪ Claimant award taxability and reporting. ▪ W-9 review. ▪ Annual 1120 SF tax returns and quarterly tax deposits. ▪ IRS and state 1099 and 1042S reporting and transmission. ▪ Backup withholding deposits and 945 annual reporting. ▪ Employment payroll taxes: 941, 940, SUTA, SIT, and local income taxes.



Representative Case Experience

Having administered 8,000 projects, a complete listing of our experience is voluminous. However, the below tables demonstrate the scope of our experience and capacity.

Note: All numbers are rounded

Notices	Case
183 million	<i>In re Domestic Airline Travel Antitrust Litigation</i> , MDL 2656 (D.D.C.).
83 million	<i>In re Target Corporation Customer Data Security Breach Litigation</i> , MDL 2522 (D. Minn.).
31 million	<i>In re Lawnmower Engine Horsepower Marketing and Sales Practices Litigation</i> , No. 2:08-md-01999 (E.D. Wis.).
24 million	<i>Microsoft I-V Cases</i> , J.C.C.P. No. 4106 (Cal. Super. Ct. San Francisco County).
15.7 million	<i>Blessing v. Sirius XM Radio</i> , No. 09-cv-10035 (S.D.N.Y.).

Distributed	Case
\$3.6 billion	Independent Foreclosure Review
\$1.5 billion	National Mortgage Settlement
\$800 million	<i>Naef v. Masonite Corp.</i> , No. CV 944033 (Ala. Cir. Ct. Mobile County).
\$800 million	<i>Microsoft I-V Cases</i> , J.C.C.P. No. 4106 (Cal. Super. Ct. San Francisco County).
\$762 million	<i>In re American International Group, Inc. Securities Litigation</i> , No. 04 Civ. 8141 (S.D.N.Y.). (PwC, Company, Starr, and Gen Re Settlements)

Claims	Case
3.5 million	<i>In re Compact Disc Minimum Advertised Price Antitrust Litigation</i> , MDL No. 1361 (D. Me.).
3.2 million	<i>In re American International Group, Inc. Securities Litigation</i> , No. 04-cv-8141 (S.D.N.Y.) (Company, PwC, Starr, and Gen Re settlements).
3 million	Abbott Infant Formula Settlements
2.8 million	<i>Fogel v. Farmers Group, Inc.</i> , No. BC300142 (Cal. Super. Ct. Los Angeles County).
1.2 million	National Mortgage Settlement

Calls	Case
3.6 million	Independent Foreclosure Review
1.5 million	<i>Dyson v. Flagstar</i> , No. DKC93-1503 (D. Md.).
1.4 million	National Mortgage Settlement
1.3 million	Abbott Infant Formula Settlements
1 million	<i>Naef v. Masonite</i> , No. CV 94-4033 (Ala. Cir. Ct. Mobile County).



Data and System Security

The security of systems and applications and confidentiality of data are of utmost importance to Rust, our clients, the parties to engagements we administer, and members of the public impacted by our operations. Thus Rust actively protects its systems and mitigates potential threats by adhering to a comprehensive assortment of security best practices, certifications, and audits that we refer to collectively as our “unified compliance posture.”

As part of our unified compliance posture, Rust:

- Has received from two federal agencies (CFPB and FTC) Authority to Utilize Controlled Unclassified Information under the guidelines of FISMA, NIST 800-171, and NIST 800-153, and Authority to Operate under FISMA from the SEC.
- Undergoes an annual SSAE18 SOC 2 Type II Report audit of our data and system security controls and protocols.
- Complies with applicable laws, such as the Sarbanes-Oxley Act (SOX), Gramm-Leach-Bliley Act (GLBA) and the Health Insurance Portability and Accountability Act (HIPAA).
- Continues to adhere to the (now invalidated) controls formerly known as the U.S.-E.U. Privacy Shield Framework.
- Adheres to documented and audited processes.
- Maintains a business continuity plan to ensure uninterrupted, secure service.
- Has implemented controls to prevent unauthorized access or disclosure, maintain data accuracy, and ensure the appropriate use and confidentiality of information, either for its own purposes or on behalf of our clients.
- Has put in place appropriate physical, electronic, and managerial procedures to safeguard and secure the information we process.
- Processes personal information only in ways compatible with the purpose for which it was collected or subsequently authorized to do.





An Exela Technologies Brand

Labor and Employment

No matter how large the matter or how many concurrent smaller ones, Rust has the scalability to meet your needs.

With experience on over 3,700 labor and employment cases in all -- involving **wage-and-hour**, **FLSA**, **discrimination**, **ERISA**, and **PAGA** matters -- Rust is the nation's leading labor and employment settlement administrator.

3700+ Cases

Representative Experience

- *Wal-Mart Wage and Hour Employment Practices Litigation*
- *Alexander v. FedEx Ground Package System*
- *Dynaburksy v. AlliedBarton Security Services*
- *Lann v. Trinity Health*
- Hundreds of settlements involving federal agencies: the U.S. Dept. of Labor, the Equal Employment Opportunity Commission, and the Office of Federal Contract Compliance Programs.

Contact an Expert



Eric Bishop consults with clients and oversees settlement administration strategies while assisting with oversight of Rust's marketing and market research teams, as well as the business development team across various practice areas. He has been with Rust since 2006.

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