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Attorneys for Plaintiffs SUSANA ACOSTA
and HAROLD FOX, individually and on behalf
of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

SUSANA ACOSTA, individually and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

EXPRESS MESSENGER SYSTEMS, INC.
dba ONTRAC, a Delaware Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV-DS-1932323

Reservation #

**DECLARATION OF PLAINTIFF SUSANA
ACOSTA IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Date: January 9, 2023
Time: 10:00 AM
Dept. S-26

Judge: Hon. Gilbert Ochoa

DECLARATION OF SUSANA ACOSTA

I, Susana Acosta, declare as follows:

1. I am the named Plaintiff in this action, and commenced this action against my former employer. I have personal knowledge of all the facts in this declaration and, if asked, I would testify to these facts under oath in court.

2. I worked as a non-exempt employee for Defendant Express Messenger Systems, Inc. ("Defendant" or "Express Messenger Systems") in or about 2015 in Santa Ana. Throughout the entirety of my employment, Express Messenger Systems paid me on an hourly basis. At all times, I worked in the warehouse, performing functions as a package sorter.

3. I decided to file this lawsuit because I had a number of grievances against Defendant stemming from their labor policies. These grievances are set forth in detail in the operative Complaint and my letter to California Labor and Workforce Development Agency ("LWDA").

4. Prior to filing the action, my attorneys and their staff and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendant. During those conferences, my attorneys provided me with an overview of how those claims would be litigated and generally educated me about the nature of complex/representative litigation and my role as the representative Plaintiff. After meeting with my attorneys about these issues, I decided to proceed with a lawsuit against my former employer.

5. I understand that I filed two separate lawsuits against my former employer—one on behalf of the employees in a class action and a second on behalf of the state of California to obtain penalties for Defendant's violations.

6. I am not disclosing the specifics of my communications with my attorneys to avoid waiving any attorney-client privilege, but I understand that at some point I could not move forward with the class action because Express Messenger contended that I signed an arbitration agreement so we moved forward with the action on behalf of the state.

7. My attorneys provided me with a draft of each of the Complaints for my review and approval. I closely reviewed the Complaints to ensure accuracy and completeness, and discussed the contents with my attorneys. I believe my claims are typical of those asserted by the other members of

1 the Aggrieved Group during the relevant time period.

2 8. Following the filing of the Complaint initially, I collaborated with my attorneys on the
3 prosecution of my claims, and I regularly contacted my attorneys to stay current on the status of the
4 litigation, and to discuss my attorneys' progress in prosecuting the claims.

5 9. I have worked to the best of my ability to prosecute this action on behalf of the LWDA,
6 always considering the interests of the LWDA just as I would consider my own interests. I believe these
7 types of actions are an important tool to assure compliance with the Labor Code.

8 10. When I agreed to represent the State (LWDA), I understood it was my duty to be readily
9 available and to participate actively in the case. I knew that I needed to keep aware of the status and
10 progress of the lawsuit and assist my attorneys in litigating the case on behalf of the State and the
11 Aggrieved Group. I knew that I would be required to review documents, search for documents and
12 produce them to my attorneys, answer written questions, potentially answer oral questions and testify
13 truthfully under oath, and be available to appear in court, if necessary. At all times, I worked to fulfill
14 these duties.

15 11. I also understood the risks I could face due to my involvement as a named plaintiff. I
16 understood that I could be held responsible for the payment of Defendant's court-awarded litigation costs
17 and potentially attorneys' fees if I did not prevail in litigation. Therefore, I realized that I was taking a
18 significant amount of risk in filing the representative action.

19 12. I also knew my name could easily be located on a search of court records and that any
20 prospective employer may find out that I had sued my former employer. I understand that my
21 participating in this lawsuit could inhibit my ability to seek gainful employment in the future.

22 13. Even though I knew I was taking risks, I knew I had to do what I believed was right and
23 pursue claims on behalf of other employees to vindicate their rights and attempt to recover penalties for
24 Defendant's violations.

25 14. I spent a substantial amount of time and effort pursuing my claims and the claims of the
26 other similarly situated employees from the time I retained my attorneys to this date. I have kept aware
27 of the status of the lawsuit and provided my attorneys with documents and information used by them in
28 the litigation.

1 15. During the litigation I spent considerable time on telephone calls discussing the facts of
2 my case with the attorneys and staff of James Hawkins APLC. I spent hours discussing the facts related
3 to my employment with Defendants, including discussing my job duties and responsibilities as a non-
4 exempt employee, my experiences, my observations, Defendant's policies and practices, the hours and
5 days I worked, and how I and the other employees were compensated. I have also worked to assist my
6 attorneys in moving the case forward. I have also reviewed certain documents produced during the
7 information exchange process in this case to assist my attorneys in prosecuting this case. I constantly
8 remained available in order to assist with any questions that arose throughout the litigation process.

9 16. I also spent hours looking at all documents related to my employment with Defendant and
10 sending them to my attorneys, which included wage statements, personnel documents, emails, text
11 messages, and separation paperwork. I further spent several hours on telephone calls discussing
12 documents I provided to my attorneys and I prepared for a deposition (although it was not taken).

13 17. I also assisted my attorneys in preparing for multiple mediations and in ultimately
14 achieving the Settlement Agreement which we ask the Court to approve now.

15 18. My attorneys provided me with a copy of the proposed Settlement Agreement which I
16 reviewed carefully before signing it. I have discussed the terms and any questions I had with my counsel.
17 As a term of the settlement, I have agreed to give a broad release of all claims that I had or might have
18 against Defendant arising from my employment. No other Aggrieved Employee, except the other
19 representatives, will be required to give such a release. I understand this is sometimes asked of a
20 Representative.

21 19. I accepted the settlement only after I had spent time evaluating the proposed outcome to
22 assure that it was fair. Based on my attorneys' evaluation and recommendation, and my own review, I
23 believe the settlement is fair and reasonable in light of PAGA's policies and purposes.

24 20. In summary, over the course of this litigation I have spent a significant amount of time
25 conferring and working with my attorneys on the prosecution of my claims and evaluating the settlement
26 and related documents. I estimate that I have spent approximately 60 hours assisting my attorneys in the
27 prosecution of this lawsuit.

28 21. Throughout this case, I have not sought individual benefits from the lawsuit.

24. As I have been since March 2017, I am committed to this case and intend to continue to participate as needed until the conclusion of this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2022 in Apple Valley California.

Susana Acosta