

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Attorneys for Plaintiff SCOTT ALLEN ATHEY,
as an individual and on behalf of all
employees similarly situated

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

SCOTT ALLEN ATHEY, as an individual and
on behalf of all employees similarly situated,

Plaintiff,

v.

WALKER EVANS ENTERPRISES, a
California Corporation; and DOES 1 through
50, inclusive,

Defendant

Case No.: CVRI2301534

[Assigned for all purposes to Hon. Harold W.
Hopp, Dept. 1]

CLASS ACTION

**DECLARATION OF PLAINTIFF SCOTT
ALLEN ATHEY IN SUPPORT OF
MOTIONS FOR APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Reservation ID: 412063266999
Date: May 22, 2024
Time: 8:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Harold W. Hopp

Action Filed: March 27, 2023
Trial Date: Not Set

DECLARATION OF SCOTT ALLEN ATHEY

I, SCOTT ALLEN ATHEY, declare as follows:

1. I am a named Plaintiff and Class Representative in this case. I am a former employee of the named Defendant WALKER EVANS ENTERPRISES ("Defendant"). As such, I have personal knowledge of, or am informed and believe, the following facts herein stated. If called as a witness, I could and would testify competently to the following.

JOB DUTIES AND EXPERIENCES

2. I worked for Defendant during the Class Period as an hourly-paid employee from April 12, 2021 to February 12, 2022. I was paid on hourly basis and classified as non-exempt from overtime.

3. During my employment, I experienced problems with taking all uninterrupted, 30-minute meal periods, taking all of my rest breaks, receiving reimbursement for work-related expenditures, and receiving all pay for all hours that I worked. During my employment, I also experienced problems with unsafe and hostile working environment which I reported to Defendant's management.

DUTIES OF A CLASS REPRESENTATIVE

4. This lawsuit is not an individual lawsuit. It is a proposed class action. I understand that, if approved as a class representative in this matter, I have an obligation to do my best to look out for the interests of other class members, the current and former employees of Defendant who I am seeking to represent. I understand that my obligations to the class exist even when the class is certified solely as part of a class action settlement. It is my understanding that, as one part of this duty to the class, I cannot agree to a settlement to benefit myself to the exclusion of the rest of the class members. I have never asked my attorneys to simply settle this matter at any cost. Rather, I have asked them to obtain the best settlement they could within reason, and I believe that they have attempted to do so.

5. I have been actively involved in this case since I first retained Tunyan Law, APC. I have made myself available whenever my attorneys wanted to discuss aspects of my employment by Defendant, and I remain committed to seeing this matter through to the end.

6. I have conferred with my attorneys about the settlement proposed in this case. I am not an accountant, but I understand the factors and risks that need to be considered when evaluating a settlement. I believe that the Class Action Settlement obtained on behalf of the Class Members is fair

1 and reasonable in view of the issues and risks involved with the case.

2 7. I am asking to be stand-in for other employees of Defendant. Because of that, I
3 cannot quit on the Class, and I cannot put myself and my interests before the Class. I accept these
4 duties and request that I be approved as the class representative for purposes of this amended
5 Settlement.

6 COMMUNITY OF INTEREST: TYPICALITY AND ADEQUACY

7 8. I was an hourly non-exempt employee of Defendant and was subject to the same pay
8 structure and rules as all the other hourly non-exempt employees of Defendant.

9 9. I am not aware of anything special about me that would raise unique defenses to my
10 claims, as opposed to the claims of the class. I am also not suing for anything unique to me. Rather, my
11 claims are based upon the same facts that relate to the rest of the Class.

12 10. I do not believe that I have any conflicts with Class Members included in this proposed
13 Settlement. I do not have any intention to take any action that would place me in a position that is hostile
14 to other Class Members. I also do not believe I have any conflicts of interest with the selected class
15 action settlement administrator and counsel for both parties.

16 SERVICE AS A CLASS REPRESENTATIVE

17 11. I believe that were it not for my stepping forward and taking on the duties of protecting
18 the interests of other Defendant's employees, it is likely that the interests of the class would neither
19 have been prosecuted, nor benefited. To my knowledge, other than the litigation encompassed by this
20 proposed Settlement, there is no other pending litigation on a class basis, concerning the claims in this
21 lawsuit nor have Defendant pointed to any.

22 12. **CMO ¶ H.2.c.** I have assumed some long-lasting risk in prosecuting this case. Because
23 it is so easy to search for information online these days, I will face an increased risk that future
24 employers will discover information about this lawsuit online and have a negative reaction to learning
25 that I sued an employer. This may make it harder for me to obtain future employment or change jobs
26 for a better opportunity.

27 13. **CMO ¶¶ H.2.a, b.** I have devoted a substantial amount of my time, both before this
28 lawsuit was filed and also during its litigation to ensure a fair result for the employee class. This

involved ongoing communications and participation with my counsel during the course of this case. My participation began with bringing certain issues that are involved in this matter to my counsel's attention, and explaining the factual background that was used to prosecute the claims in this case. For example, I reviewed documents which I already had, I provided relevant documents to my counsel, and I explained those documents and related facts to my counsel to assist them in their review. I also assisted in identifying potential witnesses, including other employees, who might likewise have been of assistance.

14. **CMO ¶¶ H.2.a, b.** My efforts continued after suit was filed. For example, I have had many discussions with the attorneys at Tunyan Law, APC regarding Defendant's wage and hour policies, my claims in this case, litigation strategy, potential witnesses, discovery, updates on how the case was proceeding, and how I could help the case. I also discussed strategy with my counsel. I remained in regular communication with my attorneys regarding discovery and settlement discussions that the parties had during the course of litigation and mediation. I continued to identify employees and other witnesses to counsel, along with other information as to how they could be of potential use in this matter. I also provided substantial information and documents to my attorneys to assist them in preparing the case. I also made myself available to answer questions during the settlement negotiations.

15. **CMO ¶¶ H.2.a, b.** After the settlement negotiations, a long-form settlement agreement was negotiated, and I reviewed it with my attorneys as well as I was able to ensure that its terms are likewise fair and adequate.

16. **CMO ¶ H.2.c.** I believe that the Class Representative service payment of \$10,000 for me is fair and reasonable since it takes into consideration the fact that I decided to forego pursuing my personal non-wage related claims in a separate lawsuit as I was mandated to terminate my employment with Defendant because of the concerns with hostile working environment and preferred to stand-in for all employees who I represent. I have always considered the interests of the other Class Members just as I have my own interests and understand that I have to put the interests of the other Class Members before my own. I have not filed a separate non-wage related lawsuit and have not negotiated or entered into any undisclosed separate settlement and release agreements for general release of my non-wage related

1 claims, nor have I received any undisclosed compensation in this case. The only compensation I will
2 receive is whatever amount the Court awards as a service payment and for general release of all claims
3 including non-wage related claims as well as my share of the settlement fund as a class member and as
4 an aggrieved employee. Therefore, I believe this service payment for my service as representing Class
5 Members and for general release of wage-and-hour and non-wage related claims, which I decided not to
6 pursue in a separate lawsuit so Class Members could fully benefit from my representation, is fair. I
7 signed a general release, so I am not only giving up my wage and hour claims, but I am also giving up all
8 claims beyond wage and hour claims I had against my former employer. For example, I am giving up my
9 right to sue Defendant for non-wage-and-hour related potential claims of constructive wrongful
10 discharge, harassment and retaliation which Class Members do not release in this action. Since I have
11 signed a general release for any and all claims related to my employment with Defendant, I cannot
12 pursue any other claims against Defendant while Class Members can still pursue other claims not
13 released in this Class Action. Additionally, I also provided a waiver pursuant to Section 1542 of the
14 California Civil Code giving up my right to sue Defendant in future if I find out there were unknown to
15 me claims at the time of settlement agreement execution which could have affected this settlement. Other
16 Class Members do not provide that waiver by this settlement.

17 17. **CMO ¶ H.2.c.** Furthermore, the Class Representative service payment is fair and
18 reasonable as I risk the potential stigma of being a Class Representative in a Class Action labor dispute,
19 which may affect my future employment in this industry while other class members did not undertake
20 that risk but will benefit from this settlement. A Google search with my name and Defendant show that I
21 am a Plaintiff in this Class Action case.

22 18. **CMO ¶¶ H.2.a, b.** I believe that the Class Representative service payment of \$10,000
23 for me is also fair and reasonable as this service payment also takes into consideration the time, effort,
24 risks, stress, and sacrifice of signing a general release of all claims over just wage and hour claims, as
25 well as the benefit provided to all class members as a result of my involvement in this litigation. In sum,
26 in addition to assuming the risks that go along with being a class representative and named plaintiff in
27 litigation, I believe I have also provided well over 30 hours of my time during the course of this litigation
28 to ensure a good outcome for the best interests of the Class. I believe I have been diligent and acted

1 above and beyond that which is expected of a Class Representative throughout all stages of the litigation.
2 I will continue to diligently act as the Class Representative up to and including final approval of the
3 Class Action Settlement.

4 19. **CMO ¶ H.2.c.** It is also my opinion that the service payment is fair and reasonable
5 because in addition to the many hours spent participating in this case, I accepted the potential risk of
6 being liable for the opposing parties' costs if we were unsuccessful in this lawsuit. My attorneys told me
7 these costs could be tens of thousands of dollars or more based on the extent of formal litigation. I
8 believed in this case and was willing to be a Class Representative Plaintiff knowing the risks involved.

9 20. **CMO ¶ H.2.d.** I believe that the Class Representative service payment of \$10,000 for me
10 is also fair and reasonable as this matter has also caused me significant stress and grief. It is often on the
11 back of my mind. After I was mandated to quit my job due to hostile working environment, I was also
12 out of work for almost three months and lost approximately \$15,600.00 as a result of my constructive
13 discharge and that created a severe financial burden on me. During this time, I had financial difficulty
14 with paying my rent and bills.

15 21. **CMO ¶ H.2.e.** The amount that I expect to receive from the Net Settlement Amount as a
16 class and PAGA member is approximately \$296.6 (43 workweeksX\$6.9(payment per workweek)) if the
17 Court approves the settlement. The only compensation I will receive from this settlement is \$296.6 plus
18 whatever the amount the Court awards to me as a Class Representative Service Award.

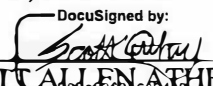
19 22. This litigation has also resulted in a valuable benefit to the Class Members who will
20 participate in the monetary payout of this Settlement because of my involvement.

21 23. Based on the time, risk, stress, sacrifice of signing of a general release, and the great
22 outcome of this case, I believe that the requested service payment for me is fair and reasonable.

23 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
24 true and correct.

25 Executed on 4/4/2024 | 7:31 PM PDT, at Lake Elsinore, California.

DocuSigned by:

26 
27 SCOTT ALLEN ATHEY, "Declarant"
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA

)

) ss

COUNTY OF LOS ANGELES

)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 N. Brand Blvd., Suite 285, Glendale, CA 91203. On April 29, 2024, I served the foregoing document described as:

On the date indicated below, I served the document described as: **DECLARATION OF PLAINTIFF SCOTT ALLEN ATHEY IN SUPPORT OF MOTIONS** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Richard D. Marca
Richard.Marca@varnerbrandt.com
Alisha Maline
Alisha.Maline@varnerbrandt.com
Madison Montgomery
Madison.Montgomery@varnerbrandt.com
Daisy Diaz
Daisy.Diaz@varnerbrandt.com
Christine A. Mitchell
Christine.Mitchell@varnerbrandt.com
VARNER & BRANDT LLP
3750 University Avenue, Floor 6
Riverside, CA 92501
Telephone: (951) 274 -7777
Facsimile: (951) 274- 7770

Attorneys for Defendant Walker Evans Enterprises

[✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 29, 2024 at Glendale, California.

Lilit Tunyan
Name



Signature