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Attorneys for Plaintiffs, Anthony Vasquez, Melvin
Williams, Jaime Furlough, Michael Chen, and
Martha Lopez, individually and on behalf of all
others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY VASQUEZ, MELVIN
WILLIAMS, JAIME FURLOUGH, MARTHA
LOPEZ and MICHAEL CHEN on behalf of
themselves and all similarly situated persons,
and the general public,

Plaintiffs,

vs.

XPRESS GLOBAL SYSTEMS LLC and
DOES 1 through 25, inclusive,

Defendants.

CASE NO. 23CV034375

Assigned for All Purposes to:
Honorable Judge Michael Markman

**DECLARATION OF BRIAN KOWALSKI
IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Motion Hearing:

Date: November 7, 2024

Time: 10:00 am

Dept.: 23

Complaint Filed: May 24, 2023

Trial Date: None Set

I, Brian J. Kowalski, hereby declare and state as follows:

1. I am an attorney licensed to practice law in the State of California. I am the founder of Kowalski Employment Law Corporation, co-counsel for Plaintiffs in this matter. I have personal knowledge as to the matters declared herein and can competently testify thereto if called upon to do so.

2. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' fees, Costs, and Class Representative Enhancement Payments.

FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

3. The Settlement Agreement the Parties reached in this case between Plaintiffs Anthony Vasquez, Melvin Williams, Jaime Furlough, Michael Chen, and Martha Lopez, individually and on behalf of all others similarly situated, ("Plaintiffs") and Defendant Xpress Global Systems, LLC ("Defendant") is fair, reasonable, and adequate, and in the best interest of the Class Members.

ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE ENHANCEMENTS

4. During the litigation of this matter, I maintained records of the time I spent on this case including the type of work performed by my office. The report states the accurate amount to time I spent working on the case and a description of the work performed.

5. The Attorney Work performed by law office in this case includes, but is not limited to, drafting informal and formal discovery requests; drafting of complaints; reviewing Defendant's mediation document production; drafting of mediation brief; legal research; draft and review damage valuations and settlement offers; and drafting of preliminary and final approval motions and supporting documents.

6. The Fees charged in this case are reasonable because of the background of my law office, training and experience in litigating complex wage and hour matters.

7. My law firm represented the Plaintiffs in a wage and hour class action against a national consumer goods packaging company involving failure to pay minimum wage and all wages earned, and other California Labor Code violations on behalf of non-exempt employees. On May 23, 2018, the Court granted final approval of the class and representative action settlement.

The Sacramento County Superior Court Case Number is 2016-00203789. (Also, see Orange County Superior Court Case Number 30-2015-00781730-CU-OE-CXC.)

8. My law firm represented the Plaintiffs in a wage and hour class action against a nutrition goods and services company involving failure to provide meal and rest breaks, failure pay minimum wage and all wages earned, failure to operate a lawful tip pool, and other California Labor Code violations on behalf of non-exempt employees. On July 1, 2016, the Court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is BC575277.

9. My law firm currently represents the Plaintiffs in a wage and hour class action against a national trucking company involving failure to reimburse business expenses, unlawful wage deductions, failure to pay all wages due upon separation, and other California Labor Code violations on behalf of non-exempt employees. The United States District Court, Central District Case Number is 5:21-cv01859-JWH-KK.

10. My law firm currently represents the Plaintiffs in a wage and hour class action against one of the largest private helicopter ambulance fleet in the U.S involving improper meal and rest periods, failure to pay minimum and overtime wages, failure to pay all wages due upon separation, and other California Labor Code violations on behalf of non-exempt employees. The Riverside County Superior Court Case Number is CVRI2101555 / CVRI2104660.

11. While not necessarily required to be demonstrated because the contingent fee is proper for the Settlement, my law office has incurred many hours of work in connection with prosecuting this case. Kowalski Employment Law Corporation has spent a total of one hundred and one (101.2) hours performing tasks on behalf of Plaintiffs and the Class Members. Collectively, Class Counsel has spent a total of 198.3 hours to obtain a recovery on behalf of Plaintiffs and Class Members.

12. My fee request is fair and reasonable under either of these methods. Based on our lodestar, my hourly rate is \$650.00. I was the only attorney from my firm that worked on this case. The hours worked by my firm in covering seven categories are outlined below. I expended a total of 101.2 hours prosecuting this action, totaling \$65,780.00.

Work Categories	Hours
1. Case Investigation and Legal Research; Interview witnesses	8.7
2. Discovery / Communications with Co-Counsel and Defense Counsel	16.8
3. Document/Data Review and Analysis	11.4
4. Case Management/Mediation	24.9
5. Pleadings / Hearings and Motion Practice	25.2
6. Settlement/Preliminary Approval	5.5
7. Final Approval	8.7
TOTAL TIME	101.2
Hourly Rate	\$650.00
LODESTAR	\$65,780.00

13. During the litigation of this matter, I maintained records of the costs in this case, which my firm advanced and incurred. The entries stated include the true and correct description of each cost, the amount of each cost, and the date of each cost. The total costs my firm advanced is **\$4,237.50**. These costs were reasonable and necessary to investigating, litigating, and ultimately reaching a compromised resolution in this case.

Kowalski Employment Law Corp – Costs

Total - \$4,237.50

<i>Item:</i>	<i>Cost:</i>	<i>Attorney:</i>	<i>Case:</i>
<i>Jams Mediation</i>	<i>\$4,237.50</i>	<i>BJK</i>	<i>Xpress Global</i>
<i>Carl West</i>			
<i>1/2/2024</i>			

14. The range of hourly fees for similar matters in Southern California are \$500 to \$800 per hour. Similarly my own firm, which primarily represents employees in wage and hour and other employee rights cases charges \$650 per hour.

15. My professional background and experience supports a reasonable hourly rate of compensation of at least \$650 per hour for my services provided. The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees in the amount of \$125,000.00, which is thirty three percent (33.3%) of the total recovery as provided for by the Settlement and which is consistent with the contingency-fee agreement with Plaintiffs.

16. The issues presented in this litigation were both difficult and novel and required specific understanding of the laws regarding compensable time for minimum and overtime wages, meal and rest breaks for truck drivers intrastate and interstate that are possibly subject to the FMCSA. Class Counsel has had multiple cases involving these legal issues over the years and have maintained knowledge of the changes in law on this issue over the past several years. Analyzing Plaintiffs' wage statements; Plaintiffs' time records; Plaintiffs' employment records (including personnel file, detailed time and pay records); Class member time punch data; Defendant's various versions of employment agreements, including, but not limited to, multiple employee handbooks from 2021 to present; earnings statements; Defendant's class list; Defendant's meal and rest break policies; and Defendant's cell phone policy required an exceptional amount of time and knowledge to understand how those records established liability in this case.

1 17. The Settlement Agreement is fair, reasonable, and adequate, and in the best interest
2 of the Class Members. From the time the matters were filed, the attorneys worked with Defendant's
3 counsel to investigate and analyze the claims with an eye toward seeing if a reasonable resolution
4 was possible. The Settlement Agreement arises from investigation, informal discovery, and
5 mediation with a qualified wage and hour class action mediator. The Settlement Agreement was the
6 result of mediation and additional communications with the mediator after those mediations. All
7 these efforts were for the purpose of determining a reasonable resolution of Plaintiffs' disputed
8 claims.

9 20. Counsel and the parties actively litigated the action since the filing of *Anthony*
10 *Vasquez, Melvin Williams, Jaime Furlough, and Michael Chen v. Xpress Global Systems, LLC*,
11 Alameda County Superior Court Case No 23CV034375, filed May 24, 2023. Counsel for the
12 parties used the pre-mediation time period and time period after mediation to obtain documents,
13 investigate the veracity, strength, and scope of the claims. Class Counsel were actively preparing
14 the matter for class certification and trial. The parties conducted significant informal discovery
15 and investigation into the facts of the cases, and informally exchanged information and data in
16 preparation for mediation and negotiations. Class Counsel obtained information from Plaintiffs
17 and Defendant throughout the case. Class Counsel interviewed and obtained information from
18 Plaintiffs and reviewed and analyzed a volume of documents and data produced by Defendant and
19 obtained through other sources. The documents and data reviewed and analyzed by Class Counsel
20 included, and were not limited to:

- 21 a) Plaintiffs' wage statements;
- 22 b) Plaintiffs' time records;
- 23 c) Plaintiffs' employment records (including personnel file, detailed time and pay
24 records);
- 25 d) Class member time punch data;
- 26 e) Defendant's various versions of employment agreements, including, but not
27 limited to, multiple employee handbooks from 2021 to present;
- 28 f) earnings statements;
- g) Defendant's class list;

h) Defendant's meal and rest break policies; and

i) Defendant's cell phone policy.

21. Class Counsel also researched applicable law, developed damages / valuation models in preparation for mediation, and met and conferred with Defendant's counsel on numerous occasions to discuss issues relating to the pleadings, motion practice, status reports for the court, informal discovery, and production of various documents and data prior to the mediation and negotiations.

22. The parties engaged in extensive settlement negotiations, and participated in private mediation conducted by Honorable Carl West., a well-respected mediator who is experienced in mediating wage-and-hour class actions. Prior to and during mediation, the Parties discussed all aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification and/or trial, the law relating to off-the-clock compensation claims, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, and the evidence produced and analyzed. Class Counsel prepared this case for Class Certification and trial, as well as the possibility of reaching a resolution of the claims via settlement discussions.

23. During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position. Defendant contended that it maintained lawful policies, that some Class Members are subject to different employee manuals, and working at different terminals in California with different policies, terms and conditions of employment. Defendant and its counsel consistently argued Defendant would prevail on the merits and at certification, while Plaintiffs and Class Counsel claimed that class certification would be obtained, and Plaintiffs would prevail at trial. After conducting extensive investigations and settlement negotiations, and with the aid of the mediator's evaluations and input, the parties agreed that the action was well-suited for settlement given the factual and legal issues relating to Plaintiffs' principal claims and Defendant's defenses, and the costs and risks to the parties of further litigation.

1 24. The Settlement Agreement accounts for the strengths and weaknesses of each side's
2 position and the uncertainty of how the cases might have concluded at certification, trial and/or on
3 appeals. The Settlement was based on this large volume of facts, evidence, and investigation
4 performed over years of litigation between the parties.

5 25. If the cases had settled after further litigation, the settlement amount would have
6 taken into account the additional costs incurred, and there might have been less money available for
7 the Class Members. The risks and expenses of further litigation outweighed any benefit that might
8 have been gained otherwise. These risks of further litigation include a determination that the claims
9 were unsuitable for class and/ or representative adjudication, failure to obtain certification, class de-
10 certification after certification of a class, and allowing a jury to decide the claims asserted in the
11 cases. The parties were moving into the phase of the litigation where they would have to take
12 depositions throughout the State of California and engage experts, which would have substantially
13 increased the costs in this case. Discovery disputes would have likely arisen, which would have cost
14 the parties additional time and money. In contrast, the Settlement provides real and significant
15 benefits for the Class Members here and now, while avoiding the further expenses, risks, and delay
16 of prolonged litigation with only the possibility of recovery.

17 26. It would be grossly inefficient for such a large class of current and former employees
18 to bring individual actions to recover from Defendant for the alleged California Labor Code
19 violations. The potential individual recovery that could be obtained by an individual Class Member
20 would not necessarily be significant enough to provide him or her with the incentive to engage in
21 litigation. By granting final approval of the Settlement Agreement, the Court can provide the
22 Claimants with a certain and substantial recovery.

23 27. I am informed and believe from the Settlement Administrator, Phoenix Class Action
24 Administration Solutions, that no Class Member objected to the settlement or requested to be
25 excluded from the Settlement upon receiving notice of the settlement. No objections have been
26 made to any part of the Settlement Agreement, including the Gross Settlement Fund, or request for
27 attorneys' fees, reimbursement of litigation costs and expenses, enhancement awards,
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Administration Costs, or allocation for PAGA penalties, all of which were fully disclosed to Class Members in the Notice Packet.

28. The law firms of Kowalski Employment Law Corp and Nathan & Associates APC have been appointed class counsel in numerous complex wage-and-hour cases and have obtained substantial financial recoveries for employees in California. Class counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the cases and in the context of a private, consensual settlement agreement.

29. The skill required to properly litigate the cases is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained experienced, well-regarded counsel to represent it. Achieving the Settlement required knowledge of the wage and hour laws, class action and representative action procedures, civil litigation procedures, rules of evidence, understanding of the determinative factors on the cutting-edge issues in employment law. Class Counsel have years of class action litigation experience, have obtained substantial recoveries for employees in California, and have successfully handled numerous wage-and-hour class action and complex cases.

30. The Settlement represents a substantial value for the Class Members given the risks inherent in litigating the cases through certification proceedings, trial, and/or appeals. Defendant disputed all the claims alleged in the cases and disputed that the claims were appropriate for class or representative treatment. Class Counsel spent a substantial amount of time investigating, analyzing, and pursuing the claims in this case.

31. The requested enhancement awards in the amount of \$10,000 each to Plaintiffs are fair and appropriate because they spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations. Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Class. Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, gathering and reviewing documents, and attending mediation. These services and

1 efforts on behalf of the Class Members merit the requested enhancement awards to Plaintiffs, who
2 have not received any compensation for their efforts on behalf of the Class Members to date.

3 32. Each of the Plaintiffs, Anthony Vasquez, Melvin Williams, Jaime Furlough, Michael
4 Chen, and Martha Lopez, provided exceptional service as a class representative. The Plaintiffs
5 searched their files for documents in response to the substantial informal discovery conducted in
6 this case. The Plaintiffs provided all information in response to the Class Counsel's request and
7 reviewed all the documents Class Counsel provided. The Plaintiffs provided their input and
8 explanation about all the documents provided and answered Class Counsel's questions about the
9 documents and Defendant's employment practices and procedures. Plaintiff also devoted a day to
10 mediation, in addition to meetings preparing for the mediation. This required the Plaintiffs to
11 perform duties on their days off work or to take the days off work to attend mediation. Plaintiffs
12 have always been aware of their duties to put the interests of the class ahead of their own personal
13 interests as the Class Counsel explained. Plaintiffs remained available and in communication with
14 Class Counsel throughout the litigation and were always willing to make themselves available by
15 telephone or in person if necessary.

16 I declare the above is true and correct under the penalty of perjury of the laws of the state
17 of California.

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19 Executed on October 16, 2024, in Corona, California.

20 DocuSigned by:
21 *Brian Kowalski*
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Brian J. Kowalski