

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BNVS Transport LLC and MEIN & MEEN  
TRUCKING, INC., individually and on behalf of  
all others similarly situated,

Plaintiffs,

vs.

C&K TRUCKING, LLC,

Defendants.

Case No. 1:20-CV-04305

HON. JOHN ROBERT BLAKEY

HON. M. DAVID WEISMAN

DATE: February 15, 2023

TIME: 11:00 a.m.

LOCATION: Courtroom 1203

219 South Dearborn Street

Chicago, IL 60604

JUDGE: Hon. John Robert Blakey

**DECLARATION OF JOSHUA G. KONECKY IN SUPPORT OF  
PLAINTIFFS' MOTIONS FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

I, Joshua G. Konecky, declare as follows:

1. I am an attorney at Schneider Wallace Konecky LLP, and one of the attorneys of record for Plaintiffs in the above-captioned case. I am submitting this declaration in support of Plaintiffs' Motion for reasonable attorneys' fees and costs and Plaintiffs' motion for service awards in connection with the class action settlement agreement. I am familiar with the file, the documents, and the history related to this case. The following statements are based on my personal knowledge and review of the files. If called upon to do so, I could and would testify competently thereto.

6. I am a member of the Bar of the State of California and have been admitted to various federal District Courts. On July 28, 2020, this Court granted me the opportunity to appear pro hac vice in this case and granted motions for attorneys Sarah McCracken and James Bloom, also of my firm, to appear pro hac vice in this case. *See* ECF 8. Since the beginning of this case, we have been working together with our co-counsel, Stacey Vucko, who has been a member of the Northern District of Illinois trial bar since 2013. Ms. Vucko is submitting herewith a separate declaration in support of the Motions for reasonable attorneys' fees, costs, and service awards.

#### **CONTENTS AND STRUCTURE OF THIS DECLARATION**

2. This declaration is organized into several parts.

3. In the first part, I provide a general overview of the background and procedural history of the case. I go on to summarize the fees and costs we are seeking as Plaintiffs' counsel in this matter.

4. Next, I provide a summary of our firm's experience and expertise in class actions. I then provide a summary of our firm's typical fee arrangements and a discussion of fee percentages we have been awarded in the past for work on class action cases. This includes various federal and state court orders that have repeatedly granted us 1/3 of the common fund as a fee award.

5. I also provide a summary of the total lodestar of Plaintiffs' counsel in this case and the total out-of-pocket costs incurred. I also provide documentation and a discussion of our billing rates showing that they are within the market range of hourly rates charged by attorneys of comparable skill and experience, working on similar matters. This includes various federal and state court orders that have repeatedly approved our firm's rates as reasonable over the past decade. In addition, I provide an overview of our firm's billing practices. I then provide a summary breakdown of the lodestar by individual biller.

4. Next, I discuss the very real and practical need for law firms, such as ours, to receive reasonable fees in cases such as this. I further discuss the value of the proposed class action settlement ("Settlement"), and the risks and uncertainties confronting Plaintiffs and Counsel in achieving the Settlement.

5. I then provide documentation to account for the out-of-pocket costs we incurred in this case.

7. Finally, I provide a summary of the contributions of Ms. Stephens and Messrs. Shurn and Muhammad in support of the service awards they are seeking. Ms. Stephens and Messrs. Shurn and Muhammad are also submitting their own declarations in support of the motion for service awards.

#### **CASE BACKGROUND AND PROCEDURAL HISTORY**

8. In about March or April 2020, our firm began working with our co-counsel, Stacey Vucko of Vucko Law LLP. We began working with Ms. Vucko after she was contacted by Valinda Stephens, Bernard Shurn, and Damien Muhammad, who had contracted with Defendant C&K Trucking, LLC ("Defendant" or "C&K") to provide intermodal drayage services to its customers. Ms. Stephens and Messrs. Shurn and Muhammad had contacted Ms. Vucko concerning complaints

they had regarding underpayments in their pay and a lack of transparency they experienced with respect to C&K's pay processes. We found their complaints to be compelling and reminiscent of similar issues we have encountered in the transportation industry.

9. On July 22, 2020, we filed a class action complaint in this District, identifying Ms. Stephens and Mr. Shurn, d/b/a BNVS Transport LLC and Damien Muhammad, d/b/a Mein & Meen Trucking as the Named Plaintiffs. ECF 1. In the approximately two years since then, we devoted many hours to prosecuting this case and negotiating a beneficial settlement. This included significant written discovery, several depositions, in depth interviews with numerous putative class members, discovery meet and confer sessions with Defense counsel, and bringing a motion for class certification, as well as other motion practice. We also invested extensive time into preparing for and participating in two arms-length mediation sessions, with work between counsel and with Plaintiffs' forensic account expert between sessions, that led to the Agreement now being presented to the Court. Below, I provide an overview of this case history with some more specifics as to the different phases of the case.

10. On September 14, 2020, Defendant filed a motion to dismiss the Complaint based primarily upon the argument that Ms. Stephens and Messrs. Shurn and Muhammad could not sue Defendant in their personal capacities because they signed their contracts with Defendant on behalf of their companies, not on behalf of themselves personally. ECF 19. Without conceding the legitimacy of Defendant's arguments and to efficiently advance the litigation, we filed a First Amended Complaint on October 5, 2020 that substituted BNVS Transport LLC and Mein & Meen Trucking, Inc. as the Named Plaintiffs. ECF 24.

11. On October 26, 2020, Defendant filed a motion to dismiss the First Amended Complaint based upon an argument that the companies did not have standing either, as well as the contention

that Plaintiffs' allegations were insufficiently detailed. ECF 26. We prepared and filed Plaintiffs' opposition on November 23, 2020. ECF 34. Defendant filed its reply on December 7, 2020. ECF 37. Plaintiffs prevailed on the motion and the Court ordered Defendant to file an Answer. ECF 39. Defendant therefore filed its Answer to the First Amended Complaint on June 4, 2021. ECF 40.

12. After resolving the pleadings, we prepared and propounded requests for production of documents and interrogatories. Defendant searched for and produced over 20,000 pages of documents, which our offices reviewed and analyzed. After meet and confer, Defendant also produced a class list that enabled us to contact and interview putative class members. We also worked with the Plaintiffs to respond to Defendant's discovery requests. Plaintiffs searched for and produced approximately 1,000 pages of documents. The parties also prepared substantive answers (in addition to objections) to the interrogatories served on each other.

13. On January 12, 2022, I took the deposition of C&K's President, Sean McShane, who appeared as a designee witness pursuant to Federal Rule of Civil Procedure 30(b)(6). Defendant's counsel took the deposition of Valinda Stephens in her individual capacity and as a Rule 30(b)(6) designee witness of BNVS Transport LLC on February 11, 2022, the deposition of Bernard Shurn on February 24, 2022, and the deposition of Damien Muhammad in his individual capacity and as a Rule 30(b)(6) designee witness of Plaintiff Mein & Meen Trucking, Inc. on March 22, 2022.

14. On May 20, 2022, we filed Plaintiffs' motion for class certification, which was supported by excerpts from the foregoing depositions, documents and interrogatory responses, declarations from putative class members we spent significant time interviewing, and a memorandum of points and authorities. ECF 62.

15. Thereafter, we engaged in extensive, arms-length negotiations facilitated by Professor Lynn Cohn, Director of the Center on Negotiation and Mediation at the Northwestern School of

Law. The negotiations were informed by the discovery documents, interrogatory responses, and depositions provided by both sides, as well as the exchange of mediation data and information (including revenue and settlement data produced by Defendant for the time period through May 16, 2021), the exchange of mediation briefs and argument with substantive legal and factual analysis, two mediation sessions conducted by Zoom on June 27 and July 29, 2022, and numerous discussions between counsel and the Plaintiffs' expert before and between the mediation sessions. Both mediation sessions were attended by representatives of the parties, including Sean McShane, President and CEO of Defendant C&K Trucking, LLC, Valinda Stephens and Bernard Shurn, owner-operators of Plaintiff BNVS Transport LLC, and Damien Muhammad, owner-operator of Plaintiff Mein & Meen Trucking, Inc. With Professor Cohn's assistance, we reached an agreement on the material terms of a settlement agreement.

16. The Settlement is based on an evaluation of revenue and compensation data by counsel, the parties, and a forensic accountant who consulted with Plaintiffs' counsel during the mediation process. The parties conducted an arms-length negotiation on the potential value of Plaintiffs' claims in light of what the data shows, as moderated by a vetting of the strengths and risks of prevailing on the claims and the delays of further litigation.

17. Following the close of mediation, we negotiated the remaining details of the settlement. We also worked with Defense counsel to prepare a long-form settlement agreement and notice to the class, among other settlement documents that we have now submitted to the Court.

18. On September 7, 2022, the parties filed a Joint Status Report informing the Court that they had reached a settlement to propose to the Court and anticipated finalizing the agreement and all documents in short order. ECF

19. On September 28, 2022, Plaintiffs filed the motion for preliminary approval of the

proposed class action settlement. ECF 70. On November 15, 2022, the Court issued its Order (1) certifying the class for settlement purposes; (2) preliminarily approving the class settlement; (3) approving the class notice; and (4) scheduling the final approval hearing. ECF 75. Following preliminary approval, the parties worked with the administrator to facilitate notice and address class member inquiries in a timely manner.

20. Notice was issued on December 1, 2022. The court-approved settlement notice informs the Classes of the nature of the case, the terms of the settlement, and the allocation formula for calculating individual settlement shares, among other pertinent details. (ECF No. 70-1 at pp. 54-62). It also is tailored to provide each Class Member with his or her qualifying workweeks and estimated settlement share. *Id.* at p. 54 (Notice at p. 1). It further informs Class Members of the specific amount in attorneys' fees and costs that Plaintiffs' counsel may seek, how Class Members can obtain a copy of this motion, and how Class Members can submit comments or objections to the fees and/or costs sought. *Id.* at pp. 56-57, 61-62 (Notice at pp. 3-4, 8-9). It also informs Class Members of the service awards that Plaintiffs may seek and how they can obtain a copy of the motion and/or comment on the awards sought. (Notice at pp. 4, 6-8).

### **SUMMARY OF FEES AND COSTS SOUGHT**

21. Plaintiffs are seeking a total attorneys' fee award of one-third (1/3) the net settlement amount. The estimated net settlement amount is \$3,196,428,<sup>1</sup> one-third (1/3) of which is \$1,062,636.71.

22. As of December 21, 2022, the total lodestar for our law firm in prosecuting and resolving

---

<sup>1</sup> The net settlement amount is the gross settlement amount of \$3,350,000, less the proposed service awards, the fees and costs of the settlement administrator, and Counsel's costs. We estimate the net amount to be approximately \$3,187,910.14, recognizing that this could change based on the final attorneys' costs, service awards, and settlement administration fees that the Court may award. In any event, one-third of this current estimate of the net settlement amount is \$1,062,636.71.

the class claims in this action was approximately \$1,065,174. Our understanding is that as of the same date, the total lodestar of our co-counsel's firm, Vucko Law LLP, was approximately \$63,945. These amounts do not include the work we have performed and will perform on and after December 22, 2022, such as completing the motion for final approval, working with the settlement administrator, communicating with Class Members, preparing the motion for final approval, and monitoring implementation of the settlement after final approval.

23. Thus, Plaintiffs' request for reasonable attorneys' fees in the amount of one-third (1/3) the net settlement amount is both in line with the preferred Seventh Circuit approach as well as commensurate with Plaintiffs' counsel's lodestar.

24. In addition, Plaintiffs are seeking reimbursement of \$47,780.86 for actual, out-of-pocket costs and litigation expenses. This includes \$47,131.05 incurred by my firm and \$649.81 incurred by our co-counsel's firm. **Exhibit 1** to this Declaration and **Exhibit 1** to the Declaration of our co-counsel, Stacey Vucko, are ledgers of the reasonable out-of-pocket costs incurred by our firms in prosecuting this case.

### **EXPERIENCE OF COUNSEL**

25. Below is information concerning my firm's typical fee arrangements, percentages we have been awarded in past cases, and a chart detailing our lodestar in this case. Before presenting this information, I first provide background on the primary attorneys from my firm who were assigned to this case and the basis for their billing rates.

26. I have been co-counsel for Plaintiffs and the proposed plaintiff class throughout this case. I am a partner at Schneider Wallace Cottrell Konecky LLP, which is a leading private plaintiff firm in employment and civil-rights class actions. More details on the work, experience and accomplishments of the firm can be found at [www.schneiderwallace.com](http://www.schneiderwallace.com).



27. I personally have represented plaintiffs in civil rights and employment class actions since I began practicing law in 1997. For the first five years, my practice focused exclusively on disability access class actions. Since approximately 2002, I have been representing plaintiffs in employment class actions, with a focus on wage and hour cases. I have been named by the Daily Journal as a top labor and employment attorney in California and I have been on the Northern California Super Lawyers list every year since 2011.

28. My practice has involved the representation of plaintiffs under the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and state labor and civil rights laws, including in the transportation industry. I have been lead counsel in many class actions that have achieved significant and beneficial results for the class. A representative list of these cases appears on my curriculum vitae, which is attached as Exhibit 2 to this Declaration. I also have tried several class and complex cases, including two wage and hour class actions that resulted in liability findings in favor of the Plaintiff class.

29. As I mentioned above, my firm is also a leading plaintiff and employment class action firm. Our partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. The Recorder has listed our firm as one of the “top 10 go-to plaintiffs’ employment firms in Northern California.”

30. I received my Juris Doctor degree from New York University School of Law in May 1995. From 1995 to 1997, I served as a judicial law clerk for the Honorable Lawrence K. Karlton, Chief Judge Emeritus for the Eastern District of California. Before joining Schneider Wallace, I litigated national disability rights class actions at Disability Rights Advocates in Oakland, California, as

well as employment discrimination and minimum wage-and-hour class actions at the public interest law firm of Goldstein, Borgen, Dardarian & Ho, also in Oakland. I am a former Skadden Public Interest Law Fellow and a U.S. Fulbright Scholar in Argentina.

31. I am currently on the Board of Directors of Legal Aid At Work, a non-profit law center that works to protect the rights and working conditions of low-income employees. I also am on the advisory board of Directors of Disability Rights Advocates, a not-for-profit law organization that litigates class actions to improve access for people with disabilities. I also am a member of the National Employment Lawyers Association and the California Employment Lawyers Association.

32. My role in this case included working with the lead associate on this case, Sarah McCracken, and our co-counsel, Stacey Vucko, in making decisions about legal strategy, how best to move the case forward, and how best to represent the Classes' interests. In this connection, I closely reviewed and edited pleadings, motions, and other documents, including the complaint, amended complaint, opposition to Defendant's motion to dismiss the first amended complaint, the opening and reply briefs in support of Plaintiffs' motion for class certification, the mediation brief, and discovery requests and responses. Additionally, I took the deposition of Defendant's Person Most Knowledgeable, which required significant preparation time. I worked with our expert to prepare damages models for the settlement discussions and took the lead role in the settlement negotiations during the two mediations as well as related discussions that occurred between and after the formal mediation sessions. I was admitted to the California State Bar in November 1996. My current billing rate is \$1,105 per hour.

33. The lead associate on this case was Sarah McCracken. Ms. McCracken is a sixth-year associate at our firm. She received her Juris Doctorate *magna cum laude* from UC Hastings College of the Law in 2016. Among other accomplishments, Ms. McCracken served on the Hastings Law

Journal, in which she published a Note, received an award for her demonstrated commitment to public service work, and co-founded a women's organization on campus. Following law school, Ms. McCracken served as a judicial law clerk to the Honorable Nancy J. Koppe of the District of Nevada. She then worked at Centro Legal de la Raza in Oakland, California, where she specialized in eviction defense, for approximately three years. She has been an associate at Schneider Wallace Cottrell Konecky LLP since April 2020. Ms. McCracken possesses exceptional legal research, writing, and analytical skills. She has proven to be a strong asset to the firm.

34. Ms. McCracken drafted the complaint, first amended complaint, oppositions to Defendant's motion to dismiss, motion for class certification, mediation brief, and other key documents in this case. She conducted legal research and analysis, regularly participated in meet and confers with opposing counsel, assisted Plaintiffs in responding to Defendant's discovery requests, and prepared Plaintiff's discovery requests to Defendant. She took the lead in preparing Ms. Stephens and Messrs. Shurn and Muhammad for their depositions. She also defended the depositions of Messrs. Shurn and Muhammad. She stayed in regular contact with Ms. Stephens and Messrs. Shurn and Muhammad as well as fielding numerous communications with class members. She supervised and assisted other staff members who interviewed and took the declarations of class members in support of the motion for class certification. She participated in the mediation sessions with Professor Lynn Cohn and our discussions with opposing counsel between sessions. She drafted Plaintiff's motion for preliminary approval and subsequent filings related thereto. She also took the lead in preparing for and appearing at the hearing on the motion for preliminary approval. Ms. McCracken was admitted to the California State Bar in December 2016. Our firm's 2022 billing rate for Ms. McCracken is \$775 per hour.

**COUNSEL TAKE CASES ON A CONTINGENCY BASIS AND ARE FREQUENTLY AWARDED FEES OF 1/3 OF THE COMMON FUND**

35. Our firm takes cases on a contingency basis. In class action cases such as this one, for example, the process is for there to be motion for attorneys' fees and costs made at the end of the case, most often as a percentage of the recovery.

36. In these cases, the state and federal courts frequently award our firm fees amounting to one-third (1/3), and sometimes more, of the common fund. *See, e.g., Exhibit 3, Helmick v. Air Methods Corp.*, Case No. RG13-665373 (Alameda Cnty. Super. Ct. Oct. 19, 2020) (1/3 of gross); **Exhibit 4**, *Shaw v. AMN Healthcare, Inc.*, Case No. 3:16-cv-02816 JCS (N.D. Cal. May 31, 2019) (same); **Exhibit 5**, *Bartoni v. Am. Med. Response W.*, Case No. RG 08-382130 (Alameda Cnty. Super. Ct. Sept. 13, 2019) (same); **Exhibit 6**, *Judd v. Keypoint Gov't Sols., Inc.*, Case No. 1:18-cv-00327 RM (D. Colo. Oct. 16, 2020) (40% of gross); **Exhibit 7**, *Hose v. Wa. Inventory Serv., Inc. d/b/a WIS Int'l*, Case No. 3:14-cv-02869 WQH (S.D. Cal. July 2, 2020) (1/3 of gross); **Exhibit 8**, *Villalpando v. Exel Direct Inc.*, 2016 WL 7740854 (N.D. Cal. Dec. 12, 2016) (same); **Exhibit 9**, *Mitchell v. Acosta Sales, LLC*, Case No. 2:11-cv-01796 GAF (C.D. Cal. Oct. 7, 2013) (same); **Exhibit 10**, *Bond-Hatch v. Quest Diagnostics, Inc.*, Case No. CGC-06-450274, Superior Court of California, County of San Francisco, Order filed April 28, 2011 (same); **Exhibit 11**, *Knapp v. Art.com, Inc.*, No. 3:16-cv-00768-WHO (N.D. Cal. Oct. 24, 2018) (37.7% of gross); **Exhibit 12**, *Janssen v. Square, Inc.*, Case No. CGC-16-549980, Superior Court of California, County of San Francisco, Order dated September 26, 2018 (33.16% of gross); **Exhibit 13**, *Carnes v. Atria Senior Living Inc.*, Case No. 14-cv-02727-VC, ECF 115, at 4-5 (N.D. Cal. July 12, 2016) (33% of gross); **Exhibit 14**, *Meza v. S.S. Skikos, Inc.*, Case No. 3:15-cv-01889-TEH, ECF 58, at 4 (N.D. Cal. May 25, 2016) (1/3 of gross); **Exhibit 15**, *Jeter-Polk v. Casual Male Store, LLC*, Case No. EDCV 14-891-VAP (DTBx) (C.D. Cal. June 29, 2016) (same); **Exhibit 16**, *Williams, et al. v. H&R Block*

*Enterprises, Inc.*, Case No. RG08366506, Superior Court of California, County of Alameda, Order filed November 8, 2012 (34% of gross); **Exhibit 17**, *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at \*43 (N.D. Cal. 2011) (just under 42% of gross).

### COUNSEL'S BILLING RATES

37. This portion of my declaration documents the reasonableness of the billing rates charged by my firm in this case.

38. Our lodestar for this case is based on our law firm's billing rates for 2022. We set the billing rates of our attorneys and paralegals/law clerks through a process of continual monitoring of prevailing market rates charged by both defense and plaintiffs' law firms in the San Francisco Bay Area, for individuals with similar levels of skill and experience who are doing comparable work as our attorneys and staff. We gather this information from surveys, the review of other fee applications, and conversations with attorneys in the relevant billing market. We set the billing rates for our firm to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. I understand that these rates may vary from the prevailing market rates in the Northern District of Illinois and do not mean to presume otherwise. Nonetheless, I am providing them here as an additional datapoint showing that an award of attorneys' fees in the amount of one-third (1/3) the net settlement fund would be commensurate with our lodestar and normal billing practices.

39. With that said, federal and state courts in California have consistently approved the rates charged by Schneider Wallace Cottrell Konecky LLP. *See, e.g., Exhibit 3, Helmick v. Air Methods Corp.*, No. RG13-665373 (Alameda Cty. Sup Ct. Oct. 19, 2020); **Exhibit 18**, *Nevarez v. Forty Niners Football Co., LLC*, Case No. 16-CV-07013-LHK (N.D. Cal. July 23, 2020) (approving 2019 rates); **Exhibit 4**, *Shaw v. AMN Healthcare, Inc.*, Case No. 3:16-cv-02816 JCS (N.D. Cal.

May 31, 2019) (approving 2018 rates); **Exhibit 5**, *Bartoni v. Am. Med. Response W.*, Alameda Superior Court, Case No. RG 08-382130 (Sept. 13, 2019) (approving 2018 rates in a contested fee application); **Exhibit 11**, *Knapp v. Art.com, Inc.*, No. 3:16-cv-00768-WHO (N.D. Cal. October 24, 2018) (approving 2018 rates); **Exhibit 12**, *Janssen v. Square, Inc.*, Case No. CGC-16-549980, Superior Court of California, County of San Francisco, Order dated September 26, 2018 (approving 2018 rates); **Exhibit 19**, *Marine v. Interstate Distributor Co.*, Case No. RG07358277, Superior Court of California, County of Alameda, Order dated November 19, 2016 (approving 2016 rates); **Exhibit 8**, *Villalpando v. Exel Direct Inc.*, 2016 WL 7740854, at \*1 (N.D. Cal. Dec. 12, 2016) (approving 2016 rates and observing that “the hourly rates of Lead Counsel Schneider Wallace Cottrell Konecky Wotkyns, [] have consistently and recently been approved as reasonable by the courts.”); **Exhibit 13**, *Carnes v. Atria Senior Living Inc.*, Case No. 14-cv-02727-VC, ECF 115, at 4-5 (N.D. Cal. July 12, 2016); **Exhibit 14**, *Meza v. S.S. Skikos, Inc.*, Case No. 3:15-cv-01889-TEH, ECF 58, at 4 (N.D. Cal. May 25, 2016); **Exhibit 15**, *Jeter-Polk v. Casual Male Store, LLC*, Case No. EDCV 14-891-VAP (DTBx), ECF 60, at 17 (C.D. Cal. June 29, 2016); **Exhibit 20**, *Perez, et al., v. rue21*, Case No. CISCV167815. Superior Court of California, County of Santa Cruz, Order filed March 22, 2013 (approving 2013 rates); **Exhibit 16**, *Williams, et al. v. H&R Block Enterprises, Inc.*, Case No. RG08366506, Superior Court of California, County of Alameda, Order filed November 8, 2012 (approving 2012 rates); **Exhibit 21**, *Ortiz, et al., v. Home Depot U.S.A., Inc.*, Case No.: 5:09-cv-03485-LHK (N.D. Cal.), Order filed February 2, 2012 (approving 2011 rates); **Exhibit 17**, *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at \*22 (N.D. Cal. 2011) (approving 2010 rates of Schneider Wallace Cottrell Brayton Konecky); **Exhibit 10**, *Bond-Hatch v. Quest Diagnostics, Inc.*, Case No. CGC-06-450274, Superior Court of California, County of San Francisco, Order filed April 28, 2011 (approving 2011 rates); **Exhibit 22**, *National*

*Federation of the Blind v. Target Corporation*, Case No. C 06-01802 (N.D. Cal.), Order filed August 3, 2009 (approving our firm's 2009 rates in a contested fee petition).

40. Over the years, there are many other decisions approving our firm's rates using either a lodestar-multiplier approach and/or a percentage of the recovery approach with a lodestar-multiplier cross-check.

### **BILLING PRACTICES AND LODESTAR**

41. We train the lawyers and staff at Schneider Wallace Cottrell Konecky LLP to record their time in tenth-of-an-hour increments and do so as contemporaneously as possible with the expenditure of the time.

42. The following chart provides a summary of the billing rates and hours worked by the attorneys and paralegals/law clerks at our firm **through December 21, 2022.**

<b>Name and Title of Professional</b>	<b>Bar Admission Date</b>	<b>Hours</b>	<b>Rate (2022)</b>	<b>Lodestar</b>
<b><i>Partners</i></b>				
Joshua Konecky	1996	188	\$1,105	\$207,740
Nathan Piller	2014	7	\$1,105	\$7,735
<b><i>Associates</i></b>				
Sarah McCracken	2016	491.9	\$775	\$381,222.50
James Bloom	2008	30.6	\$935	\$28,611
Leslie Joyner	2008	2.3	\$830	\$1,909
Yuri Chornobil	2018	58.4	\$725	\$42,340
<b><i>Staff Attorneys</i></b>				
Aysegul Williams	2016	117.8	\$775	\$91,295

<b>Name and Title of Professional</b>	<b>Bar Admission Date</b>	<b>Hours</b>	<b>Rate (2022)</b>	<b>Lodestar</b>
Brendan Kelly	1996	.8	\$544	\$544
Edgar Olivares	2008	9	\$680	\$6,120
Moises Jrade	1996	10.6	\$680	\$7,208
Oluwaseun Adeyemi	2015	74.7	\$680	\$50,796
Ryan Bonner	2015	21.4	\$750	16,050
Sunny Sarkis	2008	.4	\$935	\$374
Sarai Gardner	2021	125.4	\$680	\$85,272
<b><i>Paralegals &amp; Law Clerks</i></b>				
Brianda Rodriguez	n/a	.8	\$350	\$280
Benita Harris	n/a	1.3	\$275	\$357.50
Diana Solano-Florez	n/a	1.3	\$400	\$520
Elvira Barajas	n/a	145.9	\$450	\$65,655
Lourdes Castro	n/a	5	\$450	\$2,250
Lori Fuega	n/a	.7	\$500	\$350
Rocio Espinoza	n/a	2.6	\$450	\$1,170
Samuel Crolla	n/a	69.9	\$300	\$20,970
Silvia Carter	n/a	.2	\$450	\$90
Tyler Smith	n/a	7.8	\$500	\$3,900
Tracey McClain	n/a	.6	\$425	\$255
Talal Al-Hindi	n/a	55.7	\$400	\$22,280
Thomas Barnett	n/a	56.8	\$350	\$19,880



<b>Name and Title of Professional</b>	<b>Bar Admission Date</b>	<b>Hours</b>	<b>Rate (2022)</b>	<b>Lodestar</b>
<b>TOTAL HOURS AND LOADSTAR</b>		<b>1,486.9</b>		<b>\$1,065,174</b>

43. The figures stated above were prepared from the contemporaneous computerized time records regularly prepared and maintained by my firm in the ordinary course of business. These records reflect the hours recorded for the work performed on this matter.

### **CONTINGENT RISK**

44. Schneider Wallace Cottrell Konecky LLP takes numerous cases on a contingent fee basis. We rely on awards for attorneys' fees and costs to continue our work for the enforcement of state and federal laws. Indeed, we did not charge Plaintiffs or class members any fees or costs to litigate and bring this case to a successful conclusion. In addition, as referenced above, our offices have to date incurred approximately \$47,131.05 in out-of-pocket costs, which we have not yet recouped. During the course of this litigation, we also had to forego requests by other prospective clients to bring other cases with merit to ensure that we could continue to adequately and successfully represent Plaintiffs and the Classes in this matter.

45. As discussed above, the attorneys working on this matter, including me, have extensive experience in class actions. In addition, over the past several years, we have litigated several wage and hour class actions in the transportation industry. As a result of the cases we have litigated, I have become very familiar with the factual issues regarding pay that tend to arise in this industry, as well as evaluating potential recovery, and costs and fees associated with litigation and trial.

46. In our experience with cases in this industry, we have found that transportation workers tend to work very long hours with low pay and that they are frequently misdirected or misled

regarding how their pay is calculated, or why it is calculated in a certain way. They also generally face a lack of bargaining power relative to the large companies they are providing services for, whether as owner-operators or as employees, which frequently leads to unfulfilled promises and underpayment. This presents a very difficult situation for the transportation workers, especially in circumstances such as those here, where they are attempting to support themselves and their families while also operating small businesses. Indeed, in 1979, Congress authorized the Truth-in-Leasing regulations with “the substantive purpose” of “protect[ing] owner-operators” like those here. *See Owner-Operator Indep. Drivers Ass’n, Inc. v. Comerica Bank (In re Arctic Express Inc.)*, 636 F.3d 781, 795 (6th Cir. 2011) (citation omitted).

47. It is our experience that companies in the transportation industry often fight litigation against them regarding their pay practices very hard. This includes extensive discovery, motion practice, and even trial or pretrial proceedings before the cases can be resolved. While we were able to achieve the Settlement here before the more time-consuming events such as summary judgment, trial and appeal, this case still presented a variety of moving parts and contingencies, which in turn demanded skill and creativity to resolve. Applying the commonly awarded one-third (1/3) of the net fee in a case like this helps to reinforce our commitment toward using this skill and creativity toward resolving cases earlier with cooperation from the Defendant, wherever possible.

48. Like some other important and complex class actions, this case carried a risk of no recovery at all for either the Classes or the attorneys representing them. When we do succeed in vindicating statutory and common law rights on behalf of a class of workers, such as in this case, our firm depends upon the recovery of at least the one-third (1/3) fee. Otherwise, we could not continue to represent workers who are denied pay, but whose cases may be time-consuming and difficult to prove.

49. As discussed in Plaintiffs' Motion for Preliminary Approval (ECF 70), the road to success in this case was far from certain.

50. While we remained committed to Plaintiffs' case throughout the litigation, we also were realistic regarding the risks going forward. This would have included the risks of having class certification denied in whole or in part. Simultaneously, there also would have been other motion practice (including motions for summary judgment), and the likelihood of a trial on some or all issues. This would have carried substantial risks for both sides on the overarching liability questions of whether Defendant was paying owner-operators less than it promised them, whether provisions of its standard contract violated the TILA regulations and relatedly whether multiple categories of deductions it took from owner-operators' pay were unlawful, whether Defendant knowingly misled owner-operators as to its pay practices, and whether owner-operators relied on Defendant's alleged misrepresentations in making business decisions.

51. With respect to their TILA and breach of contract claims, for example, Plaintiffs faced a series of risks and uncertainties due to the possibility of differing interpretations of the standardized owner-operator agreements and the complexities of the revenue and pay data, which the could also be interpreted differently.

52. In addition, the common law fraud claim in this case presented the issue of reliance, a showing that could be difficult to make on a class basis. Similarly, an argument might be presented that Plaintiffs need to show reliance on their other claims as well, including the TILA claim. While Plaintiffs would dispute whether that is correct, such an argument presented yet another layer of potential risk and complication.

53. Further, while this case was pending, Defendant required existing owner-operators to sign a new contract with it that purported to waive their ability to participate in *any* class action

proceeding. While Plaintiffs dispute the validity of this waiver, it created the risk that even if Plaintiffs were to prevail on class certification, Class Members could be discouraged from participating (or forced not to participate, depending on the outcome of any pertinent motion practice) in the case. The Agreement that the court preliminarily approved expressly stipulates that no Class Member shall be barred from participating in the settlement by such an agreement.

54. Moreover, assuming Plaintiffs prevailed on liability as to one or more of their claims, the measure of damages still would have been hotly contested. Assuming Plaintiffs prevailed on some or all claims, the measure of damages presented further risk.

55. Furthermore, one or more appeals would be likely given the nature of this case and quantity of disputed issues. Assuming we prevailed on class certification and liability, Defendant might appeal any number of determinations regarding class action status, liability, evidentiary rulings, and damages, causing potentially years of further delay. Throughout it all, Defendant would maintain that its pay practices complied with the Truth in Leasing Act regulations and Illinois common law, that it was not short-changing or misleading the owner-operators, and that it had already remedied any acknowledged shortfalls in pay.

56. In sum, the result after trial and appeals was highly uncertain, except for the fact that it would potentially mean years of delay. In the face of this uncertainty, we remained committed to the cause and ultimately secured a meaningful class action settlement for the owner-operators.

### **COSTS**

57. We have incurred costs of suit of approximately \$47,131.05 as of December 21, 2022. **Exhibit 1** is a ledger identifying each individual charge for this action. The date corresponding to each individual charge may reflect the date the charge was entered into our accounting system, rather than the date when the charge occurred.

58. The expenses incurred by our firm consist of (1) filing fees, court fees, and service of process; (2) mediation fees; (3) legal research; (4) overnight and bulk mail; (5) copies and postage; (6) court reporter and transcript fees for depositions; (7) e-discovery fees; (8) fees incurred to travel to and appear for the hearing on Plaintiffs' motion for preliminary approval; and (9) expert fees.

59. The legal research charges correspond to the actual costs incurred in conducting legal research specific to this case, rather than a pro-rata or other share of our firm's generalized legal research costs.

60. These expenses were necessary to the prosecution and successful resolution of the case.

### **PROPOSED SERVICE AWARDS**

61. Ms. Stephens and Mr. Shurn, owner-operators of BNVS Transport LLC, and Mr. Muhammad, owner-operator of Mein & Meen Trucking, Inc., provided an invaluable service in the prosecution of this case. They worked with counsel regularly, frequently taking multiple phone calls a day, and provided important information, documents, and insight regarding Defendant's policies and practices. All three prepared for and sat for deposition as well as working with counsel to provide substantive responses to interrogatories propounded on them. Collectively, they produced approximately 1,000 pages of documents.

62. Crucially, Ms. Stephens and Messrs. Shurn and Muhammad also participated in the mediation efforts in this case, attending and actively participating in both mediation sessions. Their input during these mediation sessions proved invaluable to helping the mediator better understand the issues at hand and achieving a strong result for the class. They also worked with us after the mediation to assist in drafting certain provisions of the long form settlement agreement and then reviewing the long form settlement agreement on behalf of the Classes.

63. Ms. Stephens and Messrs. Shurn and Muhammad missed out on work to attend their

depositions and participate in the mediation efforts. Further, they have agreed to a release that is broader than the class release. Ms. Stephens and Messrs. Shurn and Muhammad also took time out of their workdays to travel to and attend the preliminary approval hearing.

64. Ms. Stephens and Messrs. Shurn and Muhammad are submitting concurrently herewith declarations attesting to their service.

65. In light of the efforts of Ms. Stephens and Messrs. Shurn and Muhammad, and the favorable impact on the litigation that resulted from those efforts, we are proposing a \$20,000 service award for each of them. We believe that these service awards fairly reflect the time, risks, and significant contributions they made to achieving this settlement on behalf of the Classes.

#### EXHIBITS

66. Attached hereto as **Exhibit 1** is a true and correct copy of a ledger of the reasonable out-of-pocket costs our firm incurred in prosecuting this case.

67. Attached hereto as **Exhibit 2** is a true and correct copy of my curriculum vitae.

68. Attached hereto as **Exhibit 3** is a true and correct copy of the court's order in *Helmick v. Air Methods Corp.*, Case No. RG13-665373 (Alameda Cnty. Super. Ct. Oct. 19, 2020).

69. Attached hereto as **Exhibit 4** is a true and correct copy of the court's order in *Shaw v. AMN Healthcare, Inc.*, Case No. 3:16-cv-02816 JCS (N.D. Cal. May 31, 2019).

70. Attached hereto as **Exhibit 5** is a true and correct copy of the court's order in *Bartoni v. Am. Med. Response W.*, Case No. RG 08-382130 (Alameda Cnty. Super. Ct. Sept. 13, 2019).

71. Attached hereto as **Exhibit 6** is a true and correct copy of the court's order in *Judd v. Keypoint Gov't Sols., Inc.*, Case No. 1:18-cv-00327 RM (D. Colo. Oct. 16, 2020).

72. Attached hereto as **Exhibit 7** is a true and correct copy of the court's order in *Hose v. Wa. Inventory Serv., Inc. d/b/a WIS Int'l*, Case No. 3:14-cv-02869 WQH (S.D. Cal. July 2, 2020).

73. Attached hereto as **Exhibit 8** is a true and correct copy of the court's order in *Villalpando v. Exel Direct Inc.*, 2016 WL 7740854 (N.D. Cal. Dec. 12, 2016).

74. Attached hereto as **Exhibit 9** is a true and correct copy of the court's order in *Mitchell v. Acosta Sales, LLC*, Case No. 2:11-cv-01796 GAF (C.D. Cal. Oct. 7, 2013).

75. Attached hereto as **Exhibit 10** is a true and correct copy of the court's order in *Bond-Hatch v. Quest Diagnostics, Inc.*, Case No. CGC-06-450274, Superior Court of California, County of San Francisco, Order filed April 28, 2011.

76. Attached hereto as **Exhibit 11** is a true and correct copy of the court's order in *Knapp v. Art.com, Inc.*, No. 3:16-cv-00768-WHO (N.D. Cal. Oct. 24, 2018).

77. Attached hereto as **Exhibit 12** is a true and correct copy of the court's order in *Janssen v. Square, Inc.*, Case No. CGC-16-549980, Superior Court of California, County of San Francisco, Order dated September 26, 2018.

78. Attached hereto as **Exhibit 13** is a true and correct copy of the court's order in *Carnes v. Atria Senior Living Inc.*, Case No. 14-cv-02727-VC, ECF 115, at 4-5 (N.D. Cal. July 12, 2016).

79. Attached hereto as **Exhibit 14** is a true and correct copy of the court's order in *Meza v. S.S. Skikos, Inc.*, Case No. 3:15-cv-01889-TEH, ECF 58, at 4 (N.D. Cal. May 25, 2016).

80. Attached hereto as **Exhibit 15** is a true and correct copy of the court's order in *Jeter-Polk v. Casual Male Store, LLC*, Case No. EDCV 14-891-VAP (DTBx) (C.D. Cal. June 29, 2016).

81. Attached hereto as **Exhibit 16** is a true and correct copy of the court's order in *Williams, et al. v. H&R Block Enterprises, Inc.*, Case No. RG08366506, Superior Court of California, County of Alameda, Order filed November 8, 2012.

82. Attached hereto as **Exhibit 17** is a true and correct copy of the court's order in *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at \*43 (N.D. Cal. 2011).

83. Attached hereto as **Exhibit 18** is a true and correct copy of the court's order in *Nevarez v. Forty Niners Football Co., LLC*, Case No. 16-CV-07013-LHK (N.D. Cal. July 23, 2020).

84. Attached hereto as **Exhibit 19** is a true and correct copy of the court's order in *Marine v. Interstate Distributor Co.*, Case No. RG07358277, Superior Court of California, County of Alameda, Order dated November 19, 2016.

85. Attached hereto as **Exhibit 20** is a true and correct copy of the court's order in *Perez, et al., v. rue21*, Case No. CISCV167815. Superior Court of California, County of Santa Cruz, Order filed March 22, 2013.

86. Attached hereto as **Exhibit 21** is a true and correct copy of the court's order in *Ortiz, et al., v. Home Depot U.S.A., Inc.*, Case No.: 5:09-cv-03485-LHK (N.D. Cal. Feb. 2, 2012).

87. Attached hereto as **Exhibit 22** is a true and correct copy of the court's order in *National Federation of the Blind v. Target Corporation*, Case No. C 06-01802 (N.D. Cal.), Order filed August 3, 2009.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and is based upon my personal knowledge. Executed on December 22, 2022, in Quintana Roo, Mexico.

/s/ Joshua G. Konecky  
Joshua G. Konecky