

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

JON BODILY, on his own behalf and on the  
behalf of all others similarly situated, and  
NORA SNIDER, on her own behalf and on the  
behalf of all others similarly situated,

Plaintiffs,

v.

SKAGIT TRANSPORTATION, INC., a  
Washington corporation,

Defendant.

NO. 13-2-19306-0 SEA

**PLAINTIFFS' MOTION FOR  
APPROVAL OF PAYMENT OF  
ATTORNEYS' FEES AND COSTS**



1 After conducting extensive informal and formal discovery, thoroughly investigating the  
2 facts, and researching and analyzing their respective legal positions, and assessing potential  
3 damages, Plaintiffs and Defendant began to engage in settlement negotiations during a mediation  
4 held before the Honorable Paris Kallas, (the “Mediator”) on March 2, 2016. *See* Dkt. No. 133 at ¶  
5 2. Unable to reach a settlement that day, the parties continued to engage in adversarial  
6 proceedings. On April 12, 2016, Plaintiffs filed a motion for partial summary judgment. Dkt. No.  
7 103. The Court denied Plaintiffs’ motion on May 10, 2016. Dkt. No. 121. On May 6, 2016,  
8 Defendant filed a motion to decertify the class. Dkt. No. 114. The Court never ruled on  
9 Defendant’s motion because, as described immediately below, the parties agreed to a settlement  
10 shortly thereafter. *See* Dkt. No. 133 at ¶ 2.

12 During the period of March to May 2016, the parties engaged in numerous follow-up  
13 settlement communications through the Mediator, and those communications ultimately  
14 culminated in the parties agreeing to material terms to a settlement agreement on May 25, 2016.  
15 *See* Dkt. No. 133 at ¶ 2. All of the parties’ settlement negotiations have been non-collusive and at  
16 arm’s length. *Id.* at ¶ 3. Through their communications with the Mediator, the parties reached a  
17 class action settlement in this case that Plaintiffs and their counsel believe is fair, adequate,  
18 reasonable, and in the best interests of the Class. *Id.*

20 **B. The Proposed Settlement**

21 The settlement’s details are contained in the Settlement Agreement and Release of  
22 Claims (the “Settlement Agreement”) between Plaintiffs and Defendant. *See* Declaration of  
23 Gregory A. Wolk in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs (“Wolk  
24 Decl.”) ¶ 2, Ex. 1. For purposes of this motion, the following summarizes the Settlement  
25 Agreement’s terms.  
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1           1.     The Settlement Class

2           The proposed settlement class (the “Settlement Class” or “Settlement Class Members”)  
3 includes:

4                     All current and former driver employees who worked for Skagit  
5                     from May 10, 2010, through May 29, 2016, and who did not  
6                     timely opt out of the class that was certified by the Superior  
7                     Court in this Action by order dated May 8, 2015.

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9 Settlement Agreement § II.A.3.

10           2.     Settlement Relief

11           Pursuant to the Settlement Agreement, Skagit will compensate Settlement Class  
12 Members who submit a valid and timely claim (“Eligible Class Members”). The total amount  
13 that will be distributed to Eligible Class Members is \$166,000 (the “Class Fund”). Settlement  
14 Agreement § II.B.1. The calculation of settlement awards to each Eligible Class Member will  
15 represent a pro rata proportion of the Class Fund based on the Member’s payroll information as  
16 produced by Defendant. Settlement Agreement § II.C.

17  
18           In addition to the Class Fund amount, as set forth more fully below, Court-approved  
19 notice and claims administration costs not to exceed \$5,000 will be paid by Skagit. Settlement  
20 Agreement § II.B.3.

21           In addition to the Class Fund amount, the Settlement Agreement provides that Plaintiffs  
22 and Class Representatives Jon Bodily and Nora Snider will each receive a \$2,000 enhancement  
23 award. Settlement Agreement § II.B.2.

1 In exchange for the benefits allowed under the settlement, Settlement Class Members  
2 will release all claims that arise out of or relate to the allegations brought against Defendant in  
3 this lawsuit. Settlement Agreement § III.A.

4 3. Attorneys' Fees and Costs

5 As for attorneys' fees and costs, Class Counsel are applying for an award of \$170,000.  
6 *Id.* § II.2.03. Subject to Court approval, Skagit has agreed to pay this amount as statutory  
7 attorneys' fees and costs that are in addition to the relief Skagit is making available to the  
8 Class. *Id.* An award of attorneys' fees and costs will only partially compensate and reimburse  
9 Class counsel for the work they have already performed in this case as well as the work  
10 remaining to be performed in documenting the settlement, securing the Court's approval of the  
11 settlement, making sure that the settlement is fairly administered and implemented, and  
12 obtaining dismissal of the action. *See* Wolk Decl. ¶ 3. Plaintiffs' counsel will provide the Court  
13 with the precise amount of fees and expenses actually incurred in litigating this action when  
14 they apply for final approval, but Plaintiffs' counsel's fees to date exceed \$430,000. *Id.* at ¶ 4;  
15 *see also*, Declaration of Toby Marshall ("Marshall Decl."), ¶¶ 11-18.

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18 4. Settlement Administration and Notice

19 Pursuant to the Order Granting Preliminary Approval, and as set forth in the Settlement  
20 Agreement, Terrell Marshall Law Group PLLC ("TMLG") is administering the settlement. The  
21 Settlement Agreement provides for a payment of \$5,000 to cover the administration expenses;  
22 this is in addition to the Class Fund amount. *See* Settlement Agreement § II.B.3. These expenses  
23 include: 1) mailing notices and claim forms to Settlement Class Members directly via first class  
24 mail, along with stamped, addressed envelopes to return the claim forms; 2) identifying those  
25 Settlement Class Members who have not returned claims forms within 25 days of the initial  
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1 mailing date of the notices and claim forms; 3) assuming the Court grants final approval,  
2 calculating the settlement awards for the Eligible Class Members, which Skagit will prepare and  
3 submit to the administrator; 4) mailing checks to the Eligible Class Members; and, 5)  
4 distributing any uncashed funds to the Legal Foundation of Washington. Marshall Decl. ¶ 19;  
5 Settlement Agreement §§ II.C.3, II.D.2-4, II.E.6, & II.F.

6 5. Preliminary Approval

7 The Court granted preliminary approval to the settlement on September 29, 2016. Dkt.  
8 No. 144.

9  
10 **III. STATEMENT OF ISSUES**

11 1. Whether the Court should grant Class Counsels' application for payment of  
12 attorneys' fees and costs and settlement administration costs?

13 **IV. EVIDENCE RELIED UPON**

14 Plaintiffs rely upon the Declarations of Gregory A. Wolk and Toby J. Marshall, and the  
15 exhibits attached thereto, and all pleadings and papers filed in this action.

16  
17 **V. AUTHORITY AND ARGUMENT**

18 **A. Class Counsel Should Be Awarded Statutory Fees and Costs**

19 Subject to Court approval, Skagit has agreed to pay \$170,000 in statutory attorneys'  
20 fees and costs to Class Counsel above and beyond the relief Skagit is making available to the  
21 Class. *See* Settlement Agreement § II.2.03. As described below, the reasonableness of this  
22 fees and costs payment is supported by the fee-shifting statutes at issue in this action.

23 Plaintiffs pursued claims under RCW 49.48.130 and RCW 49.52.070, both of which  
24 provide for mandatory awards of attorneys' fees and costs to the prevailing party. *See* RCW  
25 49.48.130 (providing for recovery of "wages or salary owed ... [and] reasonable attorneys'  
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1 fees”); RCW 49.52.070 (providing for recovery of “twice the amount of the wages unlawfully  
2 rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable  
3 sum for attorney's fees.”)

4         Where a fee-shifting statute applies, “parties to a class action may simultaneously  
5 negotiate merits relief and an award of attorneys’ fees under a fee-shifting statute, and may  
6 condition the entire settlement upon a waiver of fees.” *Staton v. Boeing Co.*, 327 F.3d 938,  
7 971–72 (9th Cir. 2003) (citing *Evans v. Jeff D.*, 475 U.S. 717, 720 (1986)). “In the course of  
8 judicial review, the amount of such attorneys’ fees can be approved if they meet the  
9 reasonableness standard when measured against statutory fee principles.” *Id.* at 972. To  
10 determine such reasonableness, courts rely on the “lodestar/multiplier method.” *Id.* at 966.  
11 Under the lodestar/multiplier method, the trial court first calculates the “lodestar” by  
12 multiplying the reasonable hours expended by a reasonable hourly rate. *See generally Bowers*  
13 *v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597-99, 675 P.2d 193 (1983).

14 When examined through this lens, the attorneys’ fees and costs payment of \$170,000 called for  
15 by the settlement is shown to be fair and reasonable. The rates on which Class Counsel’s fees  
16 are based are established rates charged to billing clients; thus, they are presumed reasonable.  
17 *See Bowers*, 100 Wn.2d at 597; *see also* Wolk Decl., ¶¶ 9-12; Marshall Decl. ¶¶ 14-15. Since  
18 before filing this case in May 2013, Class counsel have spent more than 1500 hours prosecuting  
19 the case on behalf of the class. *See* Wolk Decl. ¶ 13; Marshall Decl. ¶¶ 13, 16. At Class  
20 counsels’ current hourly rates, Class counsels’ lodestar is more than \$430,000. Wolk Decl. ¶  
21 13; Marshall Decl. ¶ 13.

22         Class counsel will also spend additional hours of attorney work (based on normal  
23 hourly rates) to obtain final approval. Wolk Decl. ¶ 14; Marshall Decl. ¶ 18.  
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1 Class counsel have also expended approximately \$17,600 in costs to date. Wolk Decl.  
2 ¶ 14; Marshall Decl. ¶ 17. The litigation expenses Class Counsel incurred in this case include  
3 the following: (1) filing and service, (2) copying, mailing, and messenger expenses; (3)  
4 computer research expenses; (4) expert expenses; and (5) factual investigation expenses. *See*  
5 Wolk Decl. ¶ 14; Marshall Decl. ¶ 17. These out-of-pocket costs were and are necessary to  
6 secure the resolution of this litigation. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d  
7 1166, 1177-1178 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel  
8 expenses, postage, telephone and fax costs, computerized legal research fees, and mediation  
9 expenses are relevant and necessary expenses in a class action litigation).  
10

11 The total fees and costs that Class counsel will have incurred by the end of this case are  
12 therefore more than \$430,000. *See* Wolk Decl. ¶¶ 13-14; Marshall Decl. ¶¶ 11-17.  
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14 In light of the excellent value of the settlement and Class counsels' knowledge and  
15 experience, the attorneys' fees and costs and the settlement administration expenses are  
16 exceedingly reasonable.

17 **B. Class Counsel Should Be Awarded Settlement Administration Fees and Costs**

18 As noted above, the Settlement Agreement calls for a payment of \$5,000 for settlement  
19 administration fees and costs in addition to the award of statutory attorneys' fees and costs. To  
20 date, TMLG has incurred \$258.60 in costs and \$5,595.00 in fees related to notice mailing and  
21 settlement administration. Marshall Decl. ¶ 19. TMLG expects to incur an additional \$250.00  
22 in costs and \$1000.00 in fees in order to complete the settlement administration process,  
23 including check distribution. *Id.* Thus, an award of \$5,000 for settlement administration fees  
24 and costs is reasonable.  
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**VI. CONCLUSION**

For all of the foregoing reasons, Plaintiffs respectfully request the Court approve the payment of \$170,000 in statutory attorneys' fees and costs to Class Counsel, and an additional \$5,000 to the Settlement Administrator, to be paid in accordance with the terms of the Settlement Agreement upon final approval of the Settlement by the Court.

**VII. PROPOSED ORDER**

Plaintiffs will submit a proposed order at the time they submit their motion for final approval of the settlement.

RESPECTFULLY SUBMITTED AND DATED this 25th day of October, 2016.

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*Attorneys for Plaintiffs and Class Members*

I certify that this memorandum contains 2,187 words, in compliance with the Local Civil Rules.