

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

THE HONORABLE JOHN R. RUHL  
Department 8  
Noted for Consideration: November 7, 2019; 3:30 pm  
With Oral Argument

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

KEVIN SNIDER, on behalf of himself and all  
others similarly situated;

Plaintiff,

v.

WILSON LOGISTICS, INC., a Missouri  
corporation; and JIM PALMER TRUCKING  
COMPANY, a Montana corporation,

Defendants.

NO. 18-2-19565-9 SEA

**PLAINTIFF’S UNOPPOSED MOTION FOR  
APPROVAL OF PAYMENT OF ATTORNEYS’  
FEES AND COSTS**

**TABLE OF CONTENTS**

**Page**

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

I. INTRODUCTION AND RELIEF REQUESTED ..... 1

II. STATEMENT OF FACTS..... 1

    A. Summary of claims and Class Counsel’s efforts ..... 1

    B. The proposed settlement ..... 2

        1. The Settlement Class ..... 2

        2. Settlement relief..... 2

        3. Attorneys’ fees and costs ..... 3

        4. Preliminary approval ..... 4

III. STATEMENT OF ISSUES..... 4

IV. EVIDENCE RELIED UPON ..... 4

V. AUTHORITY AND ARGUMENT ..... 4

    A. Class Counsel should be awarded the requested attorneys’ fees and costs ..... 4

        1. Class Counsel’s requested fees are reasonable ..... 4

            a. The percentage of the fund analysis supports Class  
            Counsel’s fee request ..... 5

            b. Lodestar analysis supports Class Counsel’s fee request ..... 6

        2. Class Counsel are entitled to recover reasonable litigation expenses... 7

    B. Class Counsel will address any objections at final approval ..... 7

VI. CONCLUSION ..... 8

VII. LCR CERTIFICATION..... 8

**TABLE OF AUTHORITIES**

**Page**

**STATE CASES**

*Bowles v. Dept. of Retirement*,  
121 Wn.2d 52, 847 P.2d 440 (1993) ..... 4, 5

**FEDERAL CASES**

*Hanlon v. Chrysler Corp.*,  
150 F.3d 1011 (9th Cir. 1998) ..... 5

*In re Immune Response Sec. Litig.*,  
497 F. Supp. 2d 1166 (S.D. Cal. 2007) ..... 7

*In re Media Vision Tech. Sec. Litig.*,  
913 F. Supp. 1362 (N.D. Cal. 1996) ..... 7

*In re Wash. Pub. Power Supply Sys. Sec. Litig.*,  
19 F.3d 1291 (9th Cir. 1994) ..... 6

*Six (6) Mexican Workers v. Arizona Citrus Growers*,  
904 F.2d 1301 (9th Cir.1990) ..... 4, 5

*Staton v. Boeing Co.*,  
327 F.3d 938 (9th Cir. 2003) ..... 4, 6

*Winger v. SI Mgmt., L.P.*,  
301 F.3d 1115, (9th Cir. 2002) ..... 7

**FEDERAL RULES**

Fed. R. Civ. P. 23(e) ..... 4

Fed. R. Civ. P. 23(h) ..... 7

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Plaintiff Kevin Snider and his counsel investigated and engaged in extensive informal  
3 discovery to resolve this case early, without expending unnecessary time and money litigating  
4 this case, and Class Counsel achieved a favorable settlement on behalf of the Settlement  
5 Class. Plaintiff believes the settlement—which requires Defendants to pay a total of  
6 \$310,000—is in the best interests of the Settlement Class.

7 Subject to approval by the Court, the \$310,000 Gross Settlement Amount includes  
8 payments for settlement administration expenses of up to \$5,000, a service award to Mr.  
9 Snider of up to \$2,000, and attorneys’ fees and costs of up to \$77,500. If the above proposed  
10 amounts are approved, the remaining \$225,000 shall be distributed to Settlement Class  
11 Members who do not opt out without the need to submit a claim. This is an excellent result  
12 for Settlement Class members who will receive payments for 100% of their estimated  
13 damages for their rest break and orientation claims and just under 50% of their estimated  
14 damages for their riskier on duty not driving and overtime claims.

15 To compensate them for their efforts, Class Counsel submit this request for the Court’s  
16 approval of payment from the common fund for attorneys’ fees and litigation expenses in the  
17 amount of \$77,500.

18 **II. STATEMENT OF FACTS**

19 **A. Summary of claims and Class Counsel’s efforts.**

20 Defendants are in the business of providing logistical and transportation services to  
21 deliver goods through the Unites States, including the State of Washington. Dkt. No. 10.  
22 Plaintiff alleges Defendants denied wages and rest break pay to drivers by: (1) failing to pay  
23 drivers for rest breaks, separate and apart from their piece rate pay; (2) failing to pay drivers  
24 minimum wage for their mandatory orientation; (3) failing to pay drivers for work performed  
25 while on duty not driving; and (4) failing to pay drivers overtime compensation for work  
26 beyond forty hours per week. *Id.* Plaintiff also alleges Defendants’ violations of Washington  
27 law were willful. *Id.* Defendants deny Plaintiff’s claims.

1 Mr. Snider filed this lawsuit on August 3, 2018 on behalf of a proposed class of  
2 similarly situated Washington drivers to recover these alleged unpaid wages. *Id.* Soon after  
3 filing the complaint, defendants’ counsel contacted plaintiff’s counsel and offered to discuss  
4 early settlement. Since September 2018, the parties have exchanged information to conduct  
5 the due diligence necessary to engage in settlement negotiations. *See* Dkt. No. 37 ¶ 3. This  
6 process consisted of plaintiff’s counsel confirming the Class size of 55 driver employees, and  
7 obtaining and analyzing their payroll, timekeeping, and other data and documents relating to  
8 the alleged claims. *Id.* Plaintiff’s counsel conducted an extensive analysis of this information  
9 and prepared a thorough damages analysis that was presented to Defendants in March 2019.  
10 *Id.* The parties then conducted arm’s-length negotiations of the settlement amount and terms  
11 throughout April and May 2019, which ultimately resulted in a signed Settlement in June  
12 2019. *Id.*, Ex. 1 (“Settlement Agreement”).

13 All of the parties’ settlement negotiations have been non-collusive and at arm’s length.  
14 Dkt. No. 37 ¶ 5. The parties have reached a class action settlement in this case that Plaintiff  
15 and his counsel believe is fair, adequate, reasonable, and in the best interests of the class. *Id.*

16 **B. The proposed settlement.**

17 The settlement’s details are contained in the parties’ Settlement Agreement. *See* Dkt.  
18 No. 37, Ex. 1. For purposes of this motion, the following summarizes the Settlement  
19 Agreement’s terms.

20 1. The Settlement Class.

21 The Settlement Class is defined to include:

22 [T]he 55 drivers who worked for Defendants while residing in Washington  
23 at any time from August 3, 2015 to the date when the Court grants  
24 preliminary approval of [the] Settlement Agreement.

24 Settlement Agreement § II.A.

25 2. Settlement relief.

26 The Settlement Agreement requires Defendants to pay a total of \$310,000 for the  
27 benefit of the Settlement Class (the “Gross Settlement Amount”). Settlement Agreement §

1 II.E. Subject to Court approval, the Gross Settlement Amount includes payments for  
2 settlement administration expenses, a service award to Mr. Snider, attorneys' fees and costs,  
3 and Class Member awards. *Id.* at § II.B.

4 Assuming the Court approves the above-mentioned payment amounts as set forth in  
5 the Settlement Agreement, the remaining \$225,000 from the Gross Settlement Amount shall  
6 be considered the Class Fund and shall be distributed directly to Settlement Class Members.<sup>1</sup>  
7 *See id.* §§ II.C, II.G. Settlement Class Members do not need to submit claim forms to receive  
8 settlement payments. *Id.* §§II.A, II.G. Instead, each will receive a pro rata share of the Class  
9 Fund, one-third of which will be treated as wages subject to payroll taxes and two-thirds of  
10 which will be treated as non-wages. *Id.* § II.G. Plaintiff estimates class members will receive  
11 100% of their estimated damages for their rest break and orientation claims and just under  
12 50% of their estimated damages for their riskier on duty not driving and overtime claims. *See*  
13 Declaration of Gregory Wolk in support of Plaintiff's Unopposed Motion for Approval of  
14 Attorneys' Fees and Costs ("Wolk Decl.") ¶ 3.

15 3. Attorneys' fees and costs.

16 To compensate them for their efforts, and to reimburse them for their litigation costs,  
17 Class Counsel request the Court approve an attorneys' fees and costs award of \$77,500, which  
18 reflects 25% of the Gross Settlement Amount. Settlement Agreement § II.C. As set forth  
19 below, this percentage reflects the benchmark fee award that Washington and other courts  
20 routinely approve for attorneys' fees in class action settlements with a common fund, as is the  
21 case here. Class Counsel has worked on this case without compensation for over a year. Wolk  
22 Decl. ¶ 4; Declaration of Erika Nusser in support of Plaintiff's Unopposed Motion for Approval  
23 of Attorney's Fees and Costs ("Nusser Decl.") ¶¶ 2-5, 15. Class Counsel's fees to date exceed  
24 \$70,000. Wolk Decl. ¶ 6; Nusser Decl. ¶ 16. In addition, Class Counsel anticipates additional

25 \_\_\_\_\_  
26 <sup>1</sup> The Settlement Agreement contemplates settlement administration expenses of \$5,500, a  
27 service award of \$2,000 to Plaintiff, and \$77,500 to compensate Class Counsel for their fees  
and to reimburse them for the litigation expenses for prosecuting this case. *Id.* § II.C. The  
remaining \$225,000 is the proposed Class Fund (\$310,000-\$5,500-2,000-77,500 = \$225,000).

1 work in documenting the settlement, securing the Court’s approval of the settlement, working  
2 with the Settlement Administrator to ensure the settlement is fairly administered and  
3 implemented, and obtaining dismissal of the action. Nusser Decl. ¶ 17. Moreover, Class  
4 Counsel has incurred \$762.68 in costs to date and expect to incur additional costs before the  
5 case is dismissed. Wolk Decl. ¶ 9; Nusser Decl. ¶ 20-21. These costs include filing fees, service  
6 of process and courier fees, and copying expenses. Wolk Decl. ¶ 9; Nusser Decl. ¶ 20-21.

7 4. Preliminary approval.

8 The Court granted preliminary approval of the settlement on August 2, 2019. Dkt. No.  
9 39.

10 **III. STATEMENT OF ISSUES**

11 Whether the Court should grant Plaintiff’s application for payment of attorneys’ fees  
12 and costs to Class Counsel?

13 **IV. EVIDENCE RELIED UPON**

14 Plaintiff relies on the declarations of Gregory A. Wolk and Erika L. Nusser and the  
15 Settlement Agreement.

16 **V. AUTHORITY AND ARGUMENT**

17 **A. Class Counsel should be awarded the requested attorneys’ fees and costs.**

18 1. Class Counsel’s requested fees are reasonable.

19 A plaintiff may recover his or her attorneys’ fees when the plaintiff obtains a “common  
20 fund” for the benefit of others. *See Bowles v. Dept. of Retirement*, 121 Wn.2d 52, 70, 847 P.2d  
21 440 (1993). “Attorneys’ fees provisions included in proposed class action settlement  
22 agreements are, like every other aspect of such agreements, subject to the determination  
23 whether the settlement is ‘fundamentally fair, adequate, and reasonable.’” *Staton v. Boeing*  
24 *Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)). Under Washington law,  
25 the percentage-of-recovery approach is used in calculating fees in common fund cases.  
26 *Bowles*, 121 Wn.2d at 72. In “special circumstances, this figure can be adjusted upward or  
27 downward, or can be replaced with a lodestar calculation.” *Id.* (citing *Six (6) Mexican Workers*

1 *v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir.1990)). Class Counsel’s request for fees is  
2 reasonable under either analysis.

3 a. *The percentage of the fund analysis supports Class Counsel’s fee*  
4 *request.*

5 Plaintiff’s efforts in prosecuting this case obtained a common fund for the benefit of  
6 the class of driver employees. See Settlement Agreement § II.A-C (establishing a common  
7 fund, subject to Court approval, to be shared among the Settlement Class Members). “In  
8 common fund cases, the ‘benchmark’ award is 25 percent of the recovery obtained.” *Bowles*,  
9 121 Wn.2d at 72; see also *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (the  
10 “benchmark” award in the Ninth Circuit is also 25 percent of the recovery obtained).

11 Here, in accordance with the benchmark established by the Washington Supreme  
12 Court, Class Counsel seeks an award of 25% of the recovery obtained. The award will not only  
13 reflect fees for Class Counsel, it also will reimburse them for their litigation costs that they  
14 have and will continue to incur until dismissal of this lawsuit. The fee request is particularly  
15 reasonable in light of the risks inherent in a wage and hour class action. Indeed, there was a  
16 real possibility that Class Counsel would recover nothing for their work. But counsel took their  
17 charge seriously and endeavored to represent the interests of the class to the greatest extent  
18 possible.

19 For more than a year, Class Counsel, on behalf of plaintiff and the class, has  
20 investigated and litigated this class action, analyzed payroll and hours worked data, applied  
21 this analysis to the claims and defenses at issue, engaged in extensive negotiations with  
22 Defendants, and ultimately achieved a favorable settlement on behalf of the Settlement Class.  
23 Plaintiff and Class Counsel believe the settlement—which requires Defendants to pay  
24 \$310,000—is in the best interests of the Settlement Class. Indeed, the Settlement is an  
25 excellent result, with members receiving 100% of their estimated damages for their rest break  
26 and orientation claims and just under 50% of their estimated damages for their risky on duty  
27



1 not driving and overtime claims. Class Counsel’s request for fees and costs of \$77,500, which  
2 is 25 percent of the common fund, is reasonable.

3 b. *Lodestar analysis supports Class Counsel’s fee request.*

4 “Under the lodestar/multiplier method, the district court first calculates the ‘lodestar’  
5 by multiplying the reasonable hours expended by a reasonable hourly rate.” *In re Wash. Pub.*  
6 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 n.2 (9th Cir. 1994); *see also Staton v. Boeing*  
7 *Co.*, 327 F.3d 938, 965 (9th Cir. 2003). If circumstances warrant, the court may adjust the  
8 lodestar to account for other factors which are not subsumed within it. *Staton*, 327 F.3d at 965  
9 & n.17.

10 The payment of \$77,500 for attorneys’ fees and costs is also shown to be fair and  
11 reasonable when examined through the lens of the lodestar calculation method. Over the past  
12 year, Class Counsel have spent more than 240 hours analyzing Defendants’ data to determine  
13 damages on behalf of the class. *See* Wolk Decl. ¶ 6; Nusser Decl. ¶ 16. Calculated using their  
14 current rates, Counsel’s lodestar is \$70,822. Wolk Decl. ¶ 6; Nusser Decl. ¶ 16. In addition,  
15 Counsel estimate they will incur an additional \$5,000 in fees to prosecute this case through  
16 final settlement approval. Nusser Decl. ¶ 17.

17 The lodestar calculations of Class Counsel are based on reasonable hourly rates. Class  
18 counsel set their rates for attorneys and staff members based on a variety of factors, including  
19 among others: the experience, skill and sophistication required for the types of legal services  
20 typically performed; the rates customarily charged in the markets where legal services are  
21 typically performed; and the experience, reputation and ability of the attorneys and staff  
22 members. Wolk Decl. ¶¶ 7-8; Nusser Decl. ¶¶ 18-19. The rates charged for attorneys and staff  
23 members working on this matter range from \$100 to \$525, with the majority of the work  
24 performed by Mr. Wolk at an hourly rate of \$450 and Ms. Nusser at an hourly rate of \$475. *See*  
25 Wolk Decl. ¶ 6; Nusser Decl. ¶ 16. In addition, Class Counsel’s rates have been approved in  
26 class action cases brought in the Washington U.S. District Courts and state courts. *See* Wolk  
27 Decl. ¶ 8; Nusser Decl. ¶ 19.

1 Plaintiff's request for approval of a fees and costs payment totaling \$77,500, is nearly  
2 equal to Class Counsel's total anticipated lodestar (\$70,822 lodestar + \$5,000 in additional fees  
3 through final approval) plus Class Counsel's costs (\$75,822 anticipated total lodestar + \$962.68  
4 anticipated total costs). Thus, Class Counsel's lodestar further supports their fee request.

5 2. Class Counsel are entitled to recover reasonable litigation expenses.

6 Class Counsel's request for a payment of \$77,500 from the common fund is inclusive of  
7 their costs. In a class action, the court may award reasonable litigation costs "that are  
8 authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "Reasonable costs and  
9 expenses incurred by an attorney who creates or preserves a common fund are reimbursed  
10 proportionately by those class members who benefit from the settlement." *In re Media Vision*  
11 *Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996); *see also Wininger v. SI Mgmt., L.P.*,  
12 301 F.3d 1115, 1120-21 (9th Cir. 2002) (noting that "jurisdiction over a fund allows for the  
13 district court to spread the costs of the litigation among the recipients of the common  
14 benefit"). To date, Class Counsel have incurred out-of-pocket litigation expenses totaling  
15 \$762.68, primarily to cover expenses related to filing, legal research, investigation, data  
16 analysis, and administrative costs such as copying, mailing, and messenger expenses. Wolk  
17 Decl. ¶ 9; Nusser Decl. ¶ 20. These out-of-pocket costs were necessary to secure the  
18 resolution of this litigation and should be recouped. *See In re Immune Response Sec. Litig.*, 497  
19 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy  
20 costs, travel expenses, postage, telephone and fax costs, computerized legal research fees,  
21 and mediation expenses are relevant and necessary expenses in a class action litigation).

22 In total, Class Counsel estimate their lodestar and costs will exceed \$76,700. Thus,  
23 Class Counsel's lodestar and costs further supports the reasonableness of the requested fees  
24 and costs award.

25 **B. Class Counsel will address any objections at final approval.**

26 Pursuant to the notice program approved by this Court, Class Counsel has fully  
27 disclosed to the class their intent to request these fees and costs, and the amount and way

1 such fees and costs would be paid. To the extent there is any objection to Class Counsel's  
2 request for these disclosed attorneys' fees and costs, Class Counsel will address those at the  
3 Final Fairness Hearing, scheduled for November 7, 2019 at 3:30 pm.

4 **VI. CONCLUSION**

5 For the foregoing reasons, plaintiff respectfully requests the Court approve an award  
6 of \$77,500 for fees and reimbursement of litigation costs to Class Counsel. Plaintiff will submit  
7 a proposed order in conjunction with their motion for final approval of the settlement.

8 **VII. LCR 7(B)(5)(VI) CERTIFICATION**

9 This memorandum contains 2,477 words which complies with the Local Civil Rules.  
10 RESPECTFULLY SUBMITTED AND DATED this 23rd day of August, 2019.

11 TERRELL MARSHALL LAW GROUP PLLC

12 By: /s/ Erika L. Nusser, WSBA #40854

13 Toby J. Marshall, WSBA #32726  
14 Email: tmarshall@terrellmarshall.com  
15 Erika L. Nusser, WSBA #40854  
16 Email: enusser@terrellmarshall.com  
17 936 North 34th Street, Suite 300  
18 Seattle, Washington 98103-8869  
19 Telephone: 206-816-6603  
20 Facsimile: 206-319-5450

21 Hardeep S. Rekhi, WSBA #34579  
22 Email: hardeep@rekhiwolk.com  
23 Gregory A. Wolk, WSBA #28946  
24 Email: greg@rekhiwolk.com  
25 REKHI & WOLK, P.S.  
26 529 Warren Avenue North, Suite 201  
27 Seattle, Washington 98109  
Telephone: 206-388-5887  
Facsimile: 206-577-3924

*Attorneys for Plaintiff*