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17 Attorneys for Plaintiff ADRIAN AVILES

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ERIC AYALA and ADRIAN AVILES, on behalf)
21 of themselves and all others similarly situated,)
22 and as “aggrieved employees” on behalf of other)
23 “aggrieved employees” under the Labor Code)
24 Private Attorneys General Act of 2004,)

25 *Plaintiff(s),*)

26 vs.)

27 UPS SUPPLY CHAIN SOLUTIONS, INC., a)
28 Delaware corporation; UPS SUPPLY CHAIN)
SOLUTIONS GENERAL SERVICES, INC., a)
Delaware corporation; and DOES 1 10, inclusive,)

Defendant(s).)

Case No. 5:20-cv-00117-PSG-AFM

**DECLARATION OF ADRIAN AVILES
IN SUPPORT OF MOTION FOR
AWARD OF ATTORNEYS’ FEES
AND COSTS, SETTLEMENT
ADMINISTRATION COSTS, AND
CLASS REPRESENTATIVE SERVICE
AWARDS**

Hearing Date: January 14, 2022

Hearing Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

1 I, Adrian Aviles, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Award of Attorneys'
4 Fees and Costs, Settlement Administration Costs, and Class Representative Service Awards.
5

6 2. I have personal knowledge of all the facts stated herein. I could and would competently
7 testify under oath to these facts in court if requested to do so.

8 3. I worked for Defendant UPS Supply Chain Solutions, Inc. ("UPS") in California as a
9 Warehouse Associate at UPS's Mira Loma warehouse from September of 2017 to October of
10 2019 and I was classified by UPS as a non-exempt employee during that time period. During the
11 time I worked for UPS I was paid on an hourly basis and was entitled to legally required meal
12 and rest periods and the payment of minimum and overtime wages due for all time worked.
13

14 4. I retained the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP, who are
15 experienced in both class action litigation and claims against employers for violations of the
16 California Labor Code. I have no personal relationship or family ties to my attorneys or any
17 officer of the Court. I am not involved in any litigation against another member of the class in
18 this case and my attorneys are not working on my behalf in another capacity other than
19 representing me in this lawsuit.
20

21 5. I decided to file this class action lawsuit for the benefit of myself and other current
22 and former non-exempt employees who worked for UPS and be a class representative because I
23 felt that my legal rights as an employee and others like me were violated. For example, under
24 UPS's policies and procedures, I was required to work off-the-clock and without compensation
25 while submitting to UPS's required security procedures. Specifically, I had to wait at and then
26 pass through the security gate at the entrance to UPS's property, wait at and then submit to the
27

1 TSA-like security check at the entrance to the warehouse facility which included emptying the
2 contents of my pockets into a tray, placing bags, backpacks and the like on a conveyor belt that
3 ran through an x-ray scanner and stepping through a body scanner. Only after being granted
4 entry to the warehouse floor could I then make my way to the area where UPS provided
5 computer terminals to be used by employees to clock in. Considering the amount of time I was
6 required by UPS to spend at their security gate entrance to the property, and at their TSA-like
7 security checkpoint at the entrance to their warehouse facility, and at their timekeeping computer
8 terminals, in total, I was routinely required by UPS's policies and procedures to spend several
9 minutes working off-the-clock and without compensation before I was able to clock-in for my
10 shifts. Also, the time I was required to spend working off-the-clock caused me to work overtime
11 from time to time for which UPS was obligated to compensate me with premium pay but UPS
12 failed to do so. Moreover, each time I entered or exited UPS's warehouse facility I was required
13 to submit to the TSA-like security procedure conducted by UPS's security personnel. In so
14 doing, after clocking-out for my meal periods, but before UPS released me to leave the premises,
15 I was required by UPS to submit to their TSA-like security check. Since many other employees
16 received their meal periods at the same time I received my meal period, and since people
17 routinely had to re-empty their pockets and re-enter the body scanner multiple times, it routinely
18 took several minutes for me to clear security before I was freed by UPS from their premises.
19 The minutes that I was required to spend submitting to this process after clocking-out for my
20 meal periods were work minutes that I spent performing required tasks. I was therefore caused
21 by UPS to suffer a meal period violation during each shift. Furthermore, because I had to submit
22 to the same security procedure when returning to the facility from my meal periods, I was forced
23 to interrupt my meal periods to return to work early, in order to have enough time to submit to
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1 the security check and clock-in at the scheduled end time of my meal periods. With respect to
2 rest breaks, and in light of UPS's mandatory security procedures, it was routinely impossible for
3 me to leave the premises of UPS's warehouse facility during my rest breaks. In reality, the time
4 required to submit to UPS's mandatory security procedures when leaving for and returning from
5 a rest break would exceed the 10 minutes allotted for my rest breaks, thereby making it
6 impractical and/or impossible for me to leave the premises during my rest breaks. I should have
7 received duty-free rest periods including the ability to leave the premises if I chose to do so. As a
8 direct result of UPS's failure to compensate me correctly for all time worked and their failure to
9 compensate me with penalty compensation, the pay statements issued to me by UPS were
10 incomplete and inaccurate.

11
12 6. I filed a class action lawsuit against UPS on February 18, 2020 in Riverside Superior
13 Court. The case was later removed to federal court by UPS. My case was later consolidated
14 with the instant case originally filed by Plaintiff Eric Ayala. Before my original complaint was
15 filed I spoke to my attorneys several times and discussed how UPS implemented its company
16 policies and procedures. I also assisted my attorneys in their investigation into my claims by
17 providing them documents and answering their questions. I reviewed the complaint before it
18 was filed and after it was filed I was given access to an electronic file sharing program that
19 alerted me via email when important documents were filed so that I could review them and keep
20 up with the developments in the case which I understood was one of my duties as a class
21 representative. I would also call my attorneys from time to time if I had any questions about the
22 case. My attorneys were regularly available when I contacted them. Additionally, I made
23 myself available and sat for an all-day deposition taken by UPS on January 22, 2021. In order to
24 do so I had to get permission from my supervisor and take a day off of work.

1 7. Even though this action is in the process of settling, I was and remain prepared to
2 perform all the duties of a class representative. I understand that as a class representative I have
3 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent non-
4 exempt employees who worked for UPS during the class period. I have understood that as a
5 fiduciary, I have a duty to prosecute this action for the benefit of the members of the class and
6
7 surrender any right to compromise the group action for an individual gain.

8 8. I understand that being a plaintiff/class representative in this case means that I am
9 seeking damages not only for myself but also other non-exempt employees that are part of the
10 class. I felt that this group of employees were not aware of their labor law rights and even if they
11 were they would probably be apprehensive about speaking up or even simply because of the
12 time, effort and risk involved in filing a class action lawsuit.

13 9. I understood that being a part of this lawsuit involved risks. For example, my
14 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
15 pay for all or part of the attorney fees and costs paid by UPS to defend this lawsuit. Also, I knew
16 there was a risk that future employers, if they ever found out about this lawsuit, could hold it
17 against me or downgrade me as a potential hire. As one of two named Plaintiffs in this case it
18 would not be difficult for a future employer to figure out I sued a former employer for labor law
19 violations. Ultimately I decided these risks were worth it and decided to fight for my rights and
20 the rights of others regardless of the risks, time and effort I spent on this case.

21 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
22 kept up to date on important developments by reviewing court filings that were made available to
23 me electronically as I described above.

24 11. A mediation took place on January 4, 2021 with Lisa Klerman, an experienced
25
26

1 mediator of wage and hour class actions. The mediation was unsuccessful. The parties attempted
2 another mediation on April 23, 2021 with Lou Marlin, another respected and experienced
3 mediator of wage and hour class actions. Following the all-day mediation session, the parties
4 agreed to settle the action based on a mediator's proposal. I spoke with my attorneys regarding
5 the terms of the settlement which was reached between the parties and understood that I was
6 representing absent class members and therefore wanted the best possible result to be obtained
7 for the class and I believe an excellent result was in fact achieved via settlement. I reviewed and
8 signed the Memorandum of Understanding on April 24, 2021 and when the final settlement
9 papers were ready, I again spoke with my attorneys to review the Settlement Agreement which I
10 signed on June 23, 2021.

12 12. I have been actively involved with this class action lawsuit performing the duties
13 described above. Although I did not keep time records, I was in regular contact with my
14 attorneys, reviewed important court filings and spent a significant amount of time on the issues
15 presented during the lawsuit and in the settlement process. I was also deposed by UPS as set
16 forth above which entailed significant effort before my deposition and also reviewing my
17 transcript afterward for accuracy. I also assisted my attorneys during their efforts to prepare a
18 motion for class certification. I estimate that I have spent approximately 90-100 hours working
19 on this case. My understanding is that future tasks may require additional hours of my time. I
20 believe I have been diligent and have done what is expected of a named plaintiff and class
21 representative to date, and will continue to do so. I have and always will maintain the best
22 interest of the class.
23
24

25 13. My attorneys explained to me that the settlement process involves a two-step
26 review by the Court to determine whether the settlement is fair before approving the settlement.
27

1 I know this process also involves notifying all class members of the settlement terms and of their
2 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
3 settlement.

4
5 14. I believe I did the right thing by filing this case on behalf of the class. It gives me
6 great personal satisfaction to know that I played a role in benefitting the class who are in line to
7 receive monetary payments as a result of the settlement of this case. I understand that my Class
8 Representative Service Award request is approximately 1.1% of the Gross Settlement Amount. I
9 also understand that because my employment ended before the close of the Class Period, there
10 are absent class members who will have worked more workweeks during the Class Period than I
11 did and, as a result, they will receive larger shares in the recovery even though they did not
12 actively participate in the lawsuit. While this is a risk that I assumed when I brought the lawsuit,
13 it seems unfair to limit my recovery to an amount less than other absent class members.
14 Accordingly, I believe that the requested Class Representative Service Award of \$20,000 from
15 the settlement is fair compensation for the significant work I performed and the significant risks I
16 undertook.

17
18 15. As part of the settlement it was necessary for me to sign a general release of all
19 claims I may have against the UPS. I believe the Class Representative Service Award I have
20 requested provides me with some compensation for this agreed release.

21
22 16. I have not entered into any undisclosed agreements nor have I received any
23 undisclosed compensation in this case. The only compensation I will receive is whatever amount
24 the Court approves as a service award payment, as well as my share as a class member of the
25 settlement fund.

26
27 17. In light of all the time and effort I have spent on this case, the risk I undertook by

1 suing a former employer, the exposure to being responsible for paying UPS's costs in the event
2 we did not win the case, the reputational risk that future employers may hold this lawsuit against
3 me, the general release, and in light of the size of the settlement, I believe the request for \$20,000
4 as a Class Representative Service Award is fair and reasonable.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

7 Executed on Nov 5, 2021, at Olympia, Washington.
8 (city, state)

9 
10 Adrian Aviles (Nov 5, 2021 10:14 PDT)
11 Adrian Aviles