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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

12 BENITO SEGURA, on behalf of himself and all  
13 other persons similarly situated,

14 Plaintiff,

15 vs.

16 ALTIA TRANSPORTATION COMPANY,  
17 THOMAS GASPARINI, and DOES 1-10,  
inclusive,

18 Defendants.  
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Case No. CGC-20-586926

**NOTICE OF MOTION AND MOTION  
FOR ATTORNEYS' FEES & COSTS AND  
PLAINTIFF'S SERVICE AWARD**

Date: June 22, 2022  
Time: 9:00 a.m.  
Department 304

Before the Honorable Ethan P. Schulman

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**04/20/2022**  
Clerk of the Court  
BY: SANDRA SCHIRO  
Deputy Clerk

1           **PLEASE TAKE NOTICE** that on June 22, 2022 at 9:00 a.m. in Department 304 of the  
2 San Francisco County Superior Court, 400 McAllister, San Francisco, California 94104, Plaintiff  
3 in the above-entitled action will move this honorable Court, pursuant to California Rules of Court  
4 (“CRC”) 3.769, for an order granting approval of Plaintiff’s requested attorneys’ fees to Class  
5 Counsel in the amount of \$149,333.33, reimbursement of actual litigation costs to Class Counsel  
6 in an amount up to \$10,000.00, and a service award to the Class Representative, Benito Segura, in  
7 the amount of \$15,000. These requests are in accordance with the terms of the Settlement  
8 Agreement between the Plaintiff and Defendants Altia Transportation Company and Thomas  
9 Gasparini, which the Court preliminarily approved by Order dated March 7, 2022.

10           This Motion is based upon: the Notice of Motion; the Memorandum of Points and  
11 Authorities in Support Thereof; the Declarations of Joseph D. Sutton and Plaintiff Benito Segura  
12 in support of the Motion; such argument of counsel as the Court may hear; the complete files,  
13 records, and pleadings in the above-captioned matter; and such additional matters as the Court  
14 may consider.

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16           Respectfully submitted,

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18           Dated: April 20, 2022

**ADVOCATES FOR WORKER RIGHTS LLP**

  
\_\_\_\_\_  
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Attorneys for Plaintiff

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Case No. CGC-20-586926

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES &  
COSTS AND PLAINTIFF'S SERVICE  
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1 **I. INTRODUCTION**

2 In accordance with the Court’s Order Granting Preliminary Approval of the Class Action  
3 and PAGA Settlement, Plaintiff Benito Segura moves for an award of \$149,333.33 in attorneys’  
4 fees (representing one-third of the settlement fund of \$448,000) and up to \$10,000 for actual  
5 litigation costs. The lodestar cross-check and the substantial payments Class Members will  
6 receive if the Settlement is granted final approval in this case justify the requested fee award of  
7 one-third of the common fund for the following reasons.

8 First, the settlement achieved significant relief for Class Members. The Settlement  
9 provides a non-reversionary gross payment of \$448,000.00, plus a separate payment of the  
10 employer’s share of payroll taxes for the wage portion of the settlement payment. The estimated  
11 average recovery amount for Class Members from the Net Settlement is \$2,888—a substantial  
12 recovery for the Class of delivery drivers. Sutton Decl. at ¶ 38, filed on 11/5/21. Second, Class  
13 Counsel took on significant litigation risks and bore the financial burden of litigating this case on  
14 a contingency basis. Class Counsel efficiently litigated the claims, achieving a settlement within  
15 one year of filing the case. Third, the fees sought represent 95% of the current lodestar in the case.  
16 That the current lodestar exceeds the common fund request of \$149,333.33 in attorneys’ fees  
17 demonstrates the requested fees award is reasonable and for excellent result achieved. Therefore,  
18 the Court should award the requested fee award, which to date no class member has objected to.

19 In addition, the litigation expenses incurred by Class Counsel should also be reimbursed  
20 as they were reasonably incurred, and the costs are standard in a case such as this.

21 Further, Plaintiff requests approval of a \$15,000 service award for named plaintiff, Benito  
22 Segura. As shown herein, and in the accompanying declaration of Mr. Segura, Plaintiff took  
23 tangible risks in pursuing this matter on behalf of the Class and has devoted significant time and  
24 energy to securing this excellent result for the class. The risks taken and effort expended weigh in  
25 favor of the requested service award for Mr. Segura.

26 Accordingly, Plaintiff respectfully requests that the Court approve the requested attorneys’  
27 fees, reimbursement of actual litigation expenses, and Plaintiff’s requested service award.

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**II. THE REQUESTED SERVICE AWARD, ATTORNEYS' FEES, AND COSTS ARE REASONABLE AND SHOULD BE APPROVED**

**A. The Absence of Objections and the Fair, Efficient Settlement Result Support Approval of the Requested Service Award, Attorneys' Fees, and Costs**

The positive reaction from the Class thus far supports the amounts requested for the Class Representative service award, attorneys' fees, and reimbursement of litigation costs. To date, no Class Member has requested exclusion or opted out of the Settlement. (Class Counsel Decl. at ¶ 17; Ex. 1 to Class Counsel Decl. filed herewith.) The Court-approved Class Notice that was sent to all Class Members on March 28, 2022 disclosed the amounts allocated in the Settlement for the Class Representative service awards, attorneys' fees, and reimbursement of costs and expenses. (Ex. 1 to 3<sup>rd</sup> Supp. Sutton Declaration in Support of Preliminary Approval filed 3/4/22.) Thus far, no Class Member has objected to the amounts allocated in the Settlement for the Class Representative Service Award and Class Counsel's attorneys' fees and litigation expenses award. Plaintiff will submit a declaration from the Settlement administrator once the time-period for opting out and objecting has run and prior to the Final Approval Hearing. (Class Counsel Decl. at ¶ 17.)

**B. The Requested Service Award is Well-Justified and Reasonable**

The Class Representative should be recognized for his role in bringing this case and creating the settlement fund for Class Members. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 725-26 (2004); *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Criteria courts consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *See Van Vranken v. Atlantic Richfield Co.* 901 F. Supp. 294, 299 (N.D. Cal. 1995).





1 occasions. (Declaration of Benito Segura filed herewith (“Segura Decl.”) at ¶ 13.) Plaintiff also  
2 helped his attorneys identify what documents and other evidence Defendant had that would  
3 support the claims alleged. (*Id.* at ¶ 15.) Throughout the lawsuit, Plaintiff was in regular contact  
4 with counsel and staff to stay abreast of developments and assist with investigation and litigation,  
5 and always made himself available to answer questions or provide assistance. (*Id.* at ¶¶ 13-17.)  
6 Plaintiff helped Class Counsel prepare for the mediation and participated in the day-long  
7 mediation. (*Id.* at ¶ 16.) The considerable time and energy Plaintiff spent in securing a successful  
8 result, which is detailed in Plaintiff’s declaration, weighs in favor of the requested \$15,000  
9 service award.

10 3. That the Class Representative Sacrificed His Individual Claims in Favor of  
11 the Class Weigh in Favor of the Requested Service Award

12 Given that Plaintiff worked for Defendant from February 24, 2018 to December 21, 2019,  
13 his individual claims were significant. (Segura Decl. at ¶ 2.) Despite this, Plaintiff chose to pursue  
14 this action on a class-wide basis, putting himself on equal footing with Class Members in terms of  
15 the calculation of shares, which is based on objective criteria: the number of workweeks Class  
16 Members worked for Defendant within the Class Period. In other words, the Class Representative  
17 chose to put the interests of other workers on par with his own, and arguably, at times, above his  
18 own interests. (*Id.* at ¶19.) Knowing that his respective share of the Net Settlement Amount could  
19 be smaller in a class-wide settlement, the Class Representative chose to pursue the action on a  
20 class-wide basis as he wanted to make an impact beyond his own claims and interests. (*Id.*)  
21 Plaintiff’s decision to pursue this action on a class wide basis will provide a significant benefit to  
22 the Class.

23 In addition, this Settlement furthers the public policy of enforcing the protections of the  
24 Labor Code, which also merits recognition. For example, “Labor Code section 1194 confirms a  
25 clear public policy that is specifically directed at the enforcement of California’s minimum wage  
26 and overtime laws for the benefit of workers.” *Sav-on Drug Stores, Inc. v. Sup. Ct.*, 34 Cal. 4th  
27 319, 340 (2004) (internal quotations and citation omitted). Thus, the fact that the Class  
28 Representative prioritized the interests of his fellow workers and that the Settlement further an

1 important public policy both weigh in favor of the requested service awards.

2 4. The Requested Service Award Is Warranted As it Falls Within the  
3 Reasonable Range of Service Awards

4 In addition to the underlying factors noted above that support the requested service award,  
5 the award—which individually represents less than 3% of the total settlement—is warranted as it  
6 falls within a reasonable range of service awards. *See, e.g., Carl v. Modern Custom Fabrication,*  
7 *Inc.*, No. 14CECG00658, 2016 WL 4611477, at \*3 (Fresno Sup. Ct., Apr. 25, 2016) (approving  
8 \$10,000 service award that was 11.7% of the total \$85,000 class action settlement); *Nwabueze v.*  
9 *AT&T Inc.*, 2013 U.S. Dist. LEXIS 169270, at \*39 (N.D. Cal. Nov. 27, 2013) (awarding service  
10 award which was approximately 5% of the total settlement amount). As such, Plaintiff’s requested  
11 service award of \$15,000 is fair and reasonable and should be approved. (Class Counsel Decl. at ¶  
12 6.)

13 **C. The Request for Attorneys’ Fees Should be Granted Because it is Fair**  
14 **Reasonable Under Either the Common Fund or Lodestar Analyses**

15 A prevailing Plaintiff is statutorily entitled to recover reasonable attorneys’ fees related to  
16 the Class’s wage and hour claims. *See* Lab. Code §§ 226(e)(1), 1194(a), 2699(g)(1); Civ. Code  
17 § 1021.5. According to the California Supreme Court, the two “primary methods of determining a  
18 reasonable attorney fee in class action litigation ... are [t]he percentage method calculates the fee  
19 as a percentage share of a recovered common fund ... [and the] lodestar method, or more  
20 accurately the lodestar-multiplier method ...” *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480,  
21 489 (2016) (affirming trial court’s attorneys’ fees decision under the common fund method for  
22 one-third of the settlement). Here, the attorneys’ fees requested are reasonable under both the  
23 common fund and lodestar analyses.

24 1. The Requested Fee Award is Reasonable Using the Common Fund Method

25 The common fund method is appropriate here because there is an easily calculable  
26 common fund that provides substantial benefits to the class. *See Serrano v. Priest*, 20 Cal. 3d 25,  
27 35 (1977) (A common fund approach is available where Class Counsel’s efforts “have resulted in  
28 the preservation or recovery of a certain or easily calculable sum of money – out of which sum or

1 ‘fund’ the fees are to be paid.”). This situation exists here because the settlement is an easily  
2 calculable sum of money from which attorneys’ fees can be paid. (Class Counsel Decl. ¶ 8.)

3         The common fund method also allows Plaintiff and Class Counsel to create “a fund from  
4 which others will benefit [and] to require those other beneficiaries to bear their fair share of the  
5 litigation costs.” *Nw. Energetic Servs., LLC v. Cal. Franchise Tax Bd.*, 159 Cal. App. 4th 841,  
6 878 (2008) (citing *Serrano*, 20 Cal. 3d at 35). The common fund method provides both “[f]airness  
7 to the successful litigant, who might otherwise receive no benefit because his recovery might be  
8 consumed by the expenses” and the “encouragement of the attorney for the successful litigant,  
9 who will be more willing to undertake and diligently prosecute proper litigation for the protection  
10 or recovery of the fund if he is assured that he will be promptly and directly compensated should  
11 his efforts be successful.” *Bank of Am. v. Cory*, 164 Cal. App. 3d 66, 90 (1985) (citation omitted).  
12 At the same time, the common fund approach discourages “cheap settlements and ... the ability of  
13 defendants and the plaintiff’s attorneys to arrange collusive settlements that exchange a low  
14 recovery for a high fee award.” *Navarro v. Servisair*, No. C 08-02716 MHP, 2010 WL 1729538,  
15 at \*2 (N.D. Cal. Apr. 27, 2010); *see also Lealao*, 82 Cal. App. 4th at 55, n.5 (the common fund  
16 approach discourages “unjustified work and protracting the litigation.”). Accordingly, it is  
17 unsurprising that the “common fund principle” is “well-established” [in California] and has “been  
18 applied by the courts of this state in numerous cases.” *Serrano*, 20 Cal. 3d at 34-35 (collecting  
19 cases); *see also In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009)  
20 (upholding as reasonable a fee award based on a percentage of the settlement recovery).

21         When courts determine the percentage of the fund, they look at the reaction of the class  
22 members following the notice period. *See Sanders v. City of Los Angeles*, 3 Cal. 3d 252, 263  
23 (1970); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 251-52 (2001). Courts also  
24 consider: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of  
25 work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and  
26 (5) awards made in similar cases. *See Serrano*, 20 Cal. 3d at 49; *Vizcaino v. Microsoft Corp.*, 290  
27 F.3d 1043, 1048-50 (9th Cir. 2002).

28         First, as described above, thus far, there has been a positive reaction of the Class Members

1 supports the requested percentage of the fund. (Class Counsel Decl. at ¶ 17; Ex. 1 to Class  
2 Counsel Decl.) Second, the Settlement achieves a significant result in an efficient manner,  
3 especially if the litigation were to reach trial, further supporting the requested fees under the  
4 common fund approach. Third, Class Counsel demonstrated substantial skill and diligence in  
5 achieving the settlement in an efficient manner, which Class Counsel has gained through their  
6 history of litigating wage-and-hour class and representative actions. (Prelim. Decl. at ¶¶3-6 filed  
7 11/5/21.) The excellent, early settlement was reached as a result of Class Counsel’s expertise and  
8 experience. Class Counsel’s experience helped narrow the factual and legal issues in the  
9 complaint, allowed them to engage in efficient discovery that moved the case towards resolution,  
10 and facilitated effective negotiations, including the preparation of detailed mediation papers and  
11 damages analyses. (*Id.* at ¶¶ 3-7, 17-19.) In a situation such as this where there was a positive  
12 resolution and a mutually respectable relationship between opposing counsel, the burden on the  
13 judicial system is reduced because there are fewer court appearances and less motion practice.  
14 Thus, Class Counsel’s skill and diligence in achieving an efficient settlement favors the requested  
15 percentage of the fund. *See Lealao*, 82 Cal. App. 4th at 52 (“counsel should be rewarded, not  
16 punished, for helping to achieve [the] goal” of early settlement).

17 Fourth, the contingent nature of the fee and the financial burden carried by Class Counsel  
18 support the requested fees award because a fee award is intended, among other things, to  
19 compensate for the risk of loss that counsel assume when undertaking contingency class cases.  
20 (Class Counsel Decl. at ¶ 8.) The requested attorneys’ fee award is one-third of the Gross  
21 Settlement Amount, which is consistent with fee awards in similar cases, and is reasonable and  
22 appropriate under the circumstances of this case. *See Carpinelli v. Boliden Ab*, No. CGC-04-  
23 435527, 2010 WL 4272058 (San Francisco Sup. Ct., Feb. 5, 2010) (awarding one-third of  
24 common fund for attorneys’ fees because, *inter alia*, it is “consistent with the market for  
25 contingent litigation of this nature”); *Aquino v. Ozburn-Hessey Logistics, LLC*, No. CIVDS-  
26 1410456, 2015 WL 12732304, at \*2 (San Bernardino Sup. Ct., Dec. 10, 2015) (finding that one-  
27 third of common fund for attorneys’ fees is reasonable because, *inter alia*, “of the contingent  
28 nature of Class Counsels’ fee”). Class counsel must take on a substantial risk of “never receiving

1 compensation at all.” *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1217-18 (2008). “A  
2 contingent fee must be higher than a fee for the same legal services paid as they are performed”  
3 because it “compensates the lawyer not only for the legal services he renders but for the loan of  
4 those services.” *Id.* (internal citation omitted). Similarly, compensating attorneys for these risks  
5 helps fulfill the “need to encourage ‘private attorneys general’ willing to challenge injustices in  
6 our society,” and “[a]dequate fee awards are perhaps the most effective means of achieving this  
7 salutary goal.” *Thayer v. Wells Fargo Bank, NA*, 92 Cal. App. 4th 819, 839 (2001); *see Amaral*,  
8 163 Cal. App. 4th at 1217-18 (“If he is paid no more, competent counsel will be reluctant to  
9 accept fee award cases.”).

10           Here, during the period commencing from when the Plaintiff initially approached Class  
11 Counsel to the date of the settlement, Class Counsel risked spending considerable time and  
12 monetary resources without the promise of repayment or reimbursement. *See In re Vitamin Cases*,  
13 No. 301803, 2004 WL 5137597, at \*12 (San Francisco Sup. Ct., Apr. 12, 2004) (“The fact that  
14 Plaintiff’s Counsel settled the case before filing a class certification motion and did not need to go  
15 to trial to achieve the result does not diminish the risks that Plaintiffs faced at the outset.”). Class  
16 Counsel have thus far devoted more than 218 hours of their professional time on this case and will  
17 have spent nearly \$10,000 of their own money in support of their successful efforts to vindicate  
18 the rights of the Class Members. (Class Counsel Decl. ¶¶ 10, 15.) Further, Class Counsel faced  
19 the risk of non-recovery after a substantial investment of time and resources. As a result, Class  
20 Counsel should be rewarded with a fee that accounts for these risks.

21           Fifth, the request for attorneys’ fees in the amount of one-third of the common fund falls  
22 within the norms accepted by the state and federal courts in California in comparable wage and  
23 hour class actions. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“[e]mpirical  
24 studies show that, regardless whether the percentage method or the lodestar method is used, fee  
25 awards in class actions average around one-third of the recovery”); *Knight v. Red Door Salons*,  
26 *Inc.*, No. 08-01520 SC, 2009 WL 248367, at \*6 (N.D. Cal. Feb. 2, 2009) (“fee awards in class  
27  
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1 actions average around one-third of the recovery”) (quoting *Newberg*, at § 14.6).<sup>1</sup> Indeed, many  
2 “California trial courts have awarded attorney’s fees ... greater than [] thirty percent ....” *In re*  
3 *Cal. Indirect Purchases*, No. 960886, 1998 WL 1031494, at \*9 (Alameda Sup. Ct., Oct. 22, 1998)  
4 (citing eleven California trial court decisions as examples where at least thirty percent of the  
5 common fund was award, including cases where forty-five percent was awarded).

6 The requested percentage also approximates the legal marketplace by awarding a fee  
7 comparable to what clients and counsel would likely have negotiated at the outset of the litigation.  
8 *See Lealao*, 82 Cal. App. 4th at 47; *see also In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1450  
9 (N.D. Cal. 1994) (citations omitted). Here, the Class Representative negotiated a one-third  
10 contingency fee arrangement, which is a typical arrangement necessary for clients to obtain  
11 competent counsel in the marketplace for representation in wage and hour class actions of this  
12 nature. (Class Counsel Decl. at ¶ 8; *see Chavez*, 162 Cal. App. 4th at 64-65 (noting that the typical  
13 contingency fee contract agreement ranged between 20 and 40 percent of total recovery). Thus, it  
14 is fair and equitable that Class Members bear their share of fees in an amount that is not less than  
15 that negotiated by the Class Representative. *See Earley v. Super. Ct. of L.A. Cnty.*, 79 Cal. App.  
16 4th 1420, 1436 (2000).

17 2. The Requested Fee Award is Reasonable Under the Lodestar Method

18 The lodestar analysis also supports the attorneys’ fees allocated in the Settlement. (Class  
19 Counsel Decl. ¶ 9.) This method, “more accurately [described as] the lodestar-multiplier method,”  
20 is calculated by multiplying reasonable hourly rates of counsel by the reasonable number of hours  
21 needed to litigate the case to a successful conclusion. *Laffitte*, 1 Cal. 5th at 488. Where the  
22 percentage of the fund analysis accurately reflects the results achieved, “[t]he lodestar method  
23 better accounts for the amount of work done....” *Id.* at 504 (quoting *Rawlings v. Prudential*–

24  
25  
26 <sup>1</sup> *See also Barrett v. The St. John Cos.*, No. BC354278 (Los Angeles Sup. Ct., July 9, 2009) (33 & 1/3%  
27 award in wage and hour class action); *Case v. Toyohara Am. Inc.*, No. BC328111 (Los Angeles Sup. Ct.,  
28 May 31, 2006) (same); *Tokar v. GEICO*, No. GIC 810166 (San Diego Sup. Ct. July 9, 2004) (same);  
*Marroquin v. Bed Bath & Beyond*, No. RG04145918 (Alameda Sup. Ct., June 22, 2004) (same); *Crandall*  
*v. U-Haul Int’l, Inc.*, No. BC178775 (Los Angeles Sup. Ct., Aug. 17, 2001) (40% award in wage and hour  
class action).

1 *Bache Properties, Inc.*, 9 F.3d 513, 516 (1993)). Where the common fund method is available, a  
2 lodestar cross-check is appropriate to ensure a fair fee award. *Laffitte*, 1 Cal. 5th at 505. The  
3 California Supreme Court has “emphasize[d] [that] the lodestar calculation, when used in this  
4 manner, does not override the trial court’s primary determination of the fee as a percentage of the  
5 common fund ... [unless] the multiplier calculated by means of a lodestar cross-check is  
6 extraordinarily high or low,” and even when the multiplier is extraordinary, the trial court is still  
7 “not necessarily required to make ... an adjustment” to the fees awarded under the common fund  
8 approach. *Id.*

9         The California Supreme Court in *Laffitte* affirmed a fee award representing one third (33  
10 & 1/3%) of the common fund, *id.* at 506, which was based on a lodestar amount that required a  
11 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high  
12 or low [should] the trial court [] consider whether the percentage method should be adjusted so as  
13 to bring the imputed multiplier within a justifiable range.” *Id.* at 505. Thus, a lodestar cross-check  
14 is aimed only at astronomical multipliers. Indeed, cross-checks are not required; in many cases,  
15 performing a cross-check “undermines” one of the primary reasons for using the percentage  
16 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging  
17 protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a lodestar cross-  
18 check”); *see* Report of the Third Circuit Task Force, Court Awarded Attorney Fees, 108 F.R.D.  
19 237, 258 (1985); *see also* *Lealao*, 82 Cal. App. 4th at 29-30 (citing recommendations of the Third  
20 Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach set  
21 forth in this Report are now echoed by many authorities, who have been most vocal about the  
22 manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already  
23 overworked trial judge.”).

24         A reasonable hourly billing rate is the prevailing rate charged by attorneys of similar skill  
25 and experience in the relevant community. *See* *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084,  
26 1095 (2000). The court may consider other factors when determining a reasonable hourly rate,  
27 like the attorney’s skill and experience, the nature of the work performed, the relevant area of  
28 expertise and the attorney’s customary billing rates. *See* *Flannery v. California Highway Patrol*,



1 61 Cal. App. 4th 629, 632-33 (1998). Here, Class Counsel’s 2022 hourly rates are commensurate  
2 with the prevailing rates for partners and associates engaged in Plaintiff-side wage and hour class  
3 and representative action work in the San Francisco Bay Area. (Class Counsel Decl. at ¶¶ 11-14.)  
4 Fee awards for Class Counsel have been approved in wage and hour class and representative  
5 actions in Northern California during 2021 at the following rates: \$800 per hour for Mr. Palau,  
6 \$700 per hour for Mr. Sutton, and \$600 per hour for Mr. Trabucco. (*Id.*) Further, Class Counsel’s  
7 2022 hourly rates are also supported by the hourly rates outlined in the Laffey Matrix  
8 (<http://www.laffeymatrix.com/see.html>), which courts have found is within the range of reasonable  
9 hourly rates for attorneys of comparable skill, experience and reputation litigating similar cases in  
10 the Bay Area. *See Rivera v. Rivera*, WL 3667486, at \*2 (N.D. Cal., 2011); *see also Theme*  
11 *Promotions, Inc. v. News America Marketing FSI, Inc.*, 731 F. Supp. 2d 937, 949 (N.D. Cal.  
12 2010) (approving a 7 percent upward adjustment of Laffey Matrix rates to account for the pay  
13 differential between Washington D.C. and the Bay Area).

14 Courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed  
15 time records are not required, and an attorney’s testimony alone may suffice: “Testimony of an  
16 attorney as to the number of hours worked on a particular case is sufficient evidence to support an  
17 award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal.  
18 App. 3d 553, 559 (1986). Reasonable hours include, in addition to time spent during litigation, the  
19 time spent before the action is filed, including time spent interviewing the clients, investigating  
20 the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*,  
21 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and  
22 defend the attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982).

23 Class Counsel have expended more than 218 hours on this matter, reflecting a \$156,540  
24 lodestar, which constitutes the reasonable and necessary time spent litigating, settling, and  
25 seeking approval in this class action lawsuit. (Class Counsel Decl. at ¶ 10.) In addition, Class  
26 Counsel expects to log approximately 25 additional hours to bring this class action settlement to  
27 conclusion. (*Id.* at ¶ 9.) This additional time will be spent preparing the final approval motion,  
28 attending the final approval hearing, responding to questions and concerns of Class Members and

1 the Settlement Administrator during payout process, monitoring the distribution process, and  
2 submitting a filing for the Court’s compliance hearing. Thus, Class Counsel requests that the  
3 court find that these hours were reasonable in this litigation.

4         Once the court establishes the lodestar amount, it may enhance the fee award by a  
5 multiplier in order to make an appropriate fee award. *Serrano*, 20 Cal. 3d 25, 48 (1977). In  
6 determining whether or not to enhance the lodestar, California courts take into account multiple  
7 factors, including: the time and labor required; the skill requisite to perform the legal services  
8 properly; the preclusion of other employment by the attorney due to the acceptance of the case;  
9 the contingent nature of the fee; the amount involved, and results obtained; the experience,  
10 reputation, and ability of the attorney; and awards in similar cases. *Ketchum v. Moses*, 24 Cal. 4th  
11 1122, 1139 (2001). However, this list is not exhaustive, and courts can consider other factors it  
12 deems important in setting the multiplier. *Id.*

13         This settlement meets these and several other factors justifying an enhancement based on  
14 the percentage-of-the-benefit, including: no objections by Class Members; commendable conduct  
15 by Class Counsel; and significant recoveries by Class Members. *See Lealao*, 82 Cal. App. 4th at  
16 51-53. As in *Lealao*, the Class was notified of the settlement and attorneys’ fees request with no  
17 objections. The multiplier should also be enhanced given the contingent nature of Class Counsel’s  
18 fee recovery. The risks in taking on a class action case are enormous, not the least of which is  
19 time and effort. Defendant maintained that there were significant obstacles and defenses to this  
20 action. Thus, not only was there significant risk taken by Class Counsel, but the ability to obtain  
21 the current settlement should be seen as commendable.

22         Here based upon Class Counsel’s lodestar of \$156,540, Class Counsel seeks a negative  
23 multiplier .95, as the requested common fund award is actually less than the current lodestar.<sup>2</sup>

24 \_\_\_\_\_  
25 <sup>2</sup> Courts routinely award greater multipliers, enhancing lodestar amounts with multipliers that “range from  
26 2 to 4 or even higher.” *Wershba*, 91 Cal. App. 4th at 255; *see also Chavez*, 162 Cal. App. 4th at 66  
27 [approving multiplier of 2.5]; *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart Stores,*  
28 *Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (approving multiplier of 3.5); *Craft v. County of*  
*San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2006) (awarding multiplier of 5.2 and referring to  
other cases with cross-check multipliers ranging from 4.5 to 19.6).

1 Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the  
2 successful litigation of this action on behalf of all Class Members. In sum, the percentage-of-the-  
3 fund and lodestar analyses both support Class Counsel's request for attorneys' fees of one-third,  
4 or \$149,333.33, of the Gross Settlement Amount, which is fair, reasonable, and adequate given  
5 the circumstances and should thus be awarded in its entirety.

6 **D. The Requested Litigation Reimbursement Costs Are Reasonable**

7 Plaintiff requested preliminary approval for out-of-pocket litigation costs and expenses  
8 incurred by Class Counsel in the amount of up to \$10,000.00. The actual costs incurred to date is  
9 equal to \$6,850.30. (Class Counsel Decl. at ¶ 10.) However, Class Counsel will incur additional  
10 costs in filing the instant motion and any required supplemental filings, filing the motion for final  
11 approval of class settlement, and monitoring the distribution process. (*Id.*) Class Counsel will  
12 confirm their final costs information at the final approval hearing. (*Id.*)

13 Plaintiff is entitled to recover litigation costs and expenses reasonably incurred in the  
14 prosecution of his claims. *See* Lab. Code §§ 226(e)(1), 1194(a), 2699(g)(1); Civ. Code § 1021.5.  
15 Class Counsel seeks reimbursement for commonly reimbursed costs, including mediation fees,  
16 filing and process serving fees, court fees, and the like. (*Id.*) No Class Member has objected to  
17 these costs thus far, and Defendant does not oppose this request. Thus, the Court should approve  
18 Plaintiff's requested reimbursement of litigation costs and expenses in up to \$10,000 once Class  
19 Counsel confirms the total costs at the Final Approval Hearing.

20 **III. CONCLUSION**

21 For all the reasons set forth herein, Plaintiff respectfully request that the Court grant the  
22 requested attorneys' fees and reimbursement of litigation costs, and the Class Representative  
23 service award.

24 Respectfully Submitted,


25

26 Dated: April 20, 2022

ADVOCATES FOR WORKER RIGHTS LLP

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Joseph D. Sutton  
Attorneys for Plaintiff

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7 Attorneys for Plaintiff Benito Segura  
8  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**  
12

13 BENITO SEGURA, on behalf of himself and all  
14 other persons similarly situated,

15 Plaintiff,

16 vs.

17 ALTIA TRANSPORTATION COMPANY,  
18 THOMAS GASPARINI, and DOES 1-10,  
inclusive,

19 Defendants.  
20  
21  
22

Case No. CGC-20-586926

**DECLARATION OF JOSEPH D. SUTTON  
IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES & COSTS AND  
PLAINTIFF'S SERVICE AWARD**

Date: June 22, 2022  
Time: 9:00 a.m.  
Department 304

Before the Honorable Ethan P. Schulman

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**04/20/2022**  
Clerk of the Court  
BY: SANDRA SCHIRO  
Deputy Clerk

1 I, Joseph D. Sutton, declare the following:

2 1. I am an attorney at law licensed to practice before all courts of the State of  
3 California and am a founding member of Advocates for Worker Rights LLP. My firm and I  
4 represent Plaintiff in the above-entitled case. I am familiar with the above-captioned litigation and  
5 the dispute from which it arises. All statements made herein are on personal knowledge unless  
6 otherwise stated. If called as a witness, I could and would competently testify as to matters stated  
7 herein.

8 2. This declaration is in support of the Plaintiff's Motion for Attorneys' Fees & Costs  
9 and Plaintiff's Service Award, filed herewith.

10 3. On or about November 5, 2021, I submitted a declaration in support of Plaintiff's  
11 Motion for Preliminary Approval of Class Action & PAGA Settlement ("Prelim. Decl."). My  
12 declaration detailed the initial investigation of this case, the procedural and litigation history, the  
13 informal discovery conducted, the settlement negotiations, the material terms of the Settlement,  
14 and the factors supporting preliminary approval of the Settlement. That declaration also addressed  
15 issues related to the Class Action Settlement Agreement & Release ("Settlement"), including  
16 regarding the fairness of the settlement, the process for providing notice to the Class, and the form  
17 and content of the Class Notice Packet ("Notice"), among others. I also filed supplemental  
18 declarations in support of Plaintiff's Motion for Preliminary Approval to address issues raised by  
19 the Court on January 6, 2022, February 10, 2022, and March 4, 2022. I will not repeat the  
20 information addressed in my previous declarations, and instead will focus all details pertinent to  
21 this Motion.

22 **The Class Representative Service Award Is Reasonable and Should be Approved**

23 4. Plaintiff Benito Segura has been and continues to be an adequate Class  
24 Representative. Plaintiff chose to sacrifice his individual claims and resolve this matter on a class  
25 wide basis to provide significant relief to fellow employees of Altia Transportation Company  
26 ("Altia" or "Defendant"). Plaintiff alleged those workers suffered the same labor violations he  
27 did, and in addition to the financial risks of being liable for Defendant's litigation costs if the  
28 action was not successful, Plaintiff also bore the risk of being blacklisted by potential employers

1 for filing the suit. Despite these risks, Plaintiff chose to take the action that has now resulted in a  
2 significant recovery for the Class of workers affected by Defendant’s alleged labor violations.

3           5. Plaintiff took his duties and responsibilities as Class Representative seriously and  
4 performed them well. Mr. Segura was actively involved at all stages of litigation, assisting me,  
5 and our firm with the investigation before filing the case, reviewing informal discovery requests,  
6 responses, and production of compensation and timekeeping data and policy, payroll, and other  
7 documents in preparation for mediation. Plaintiff provided the factual background for the class  
8 and representative claims and detailed to his attorneys what documents and other evidence  
9 Defendant had that would support the claims alleged. Throughout the lawsuit, he was in regular  
10 contact with counsel and their staff to assist in the investigation and litigation of the case, and he  
11 always made himself available to answer our firm’s questions. Plaintiff also helped counsel  
12 prepare for the mediation with Justice Steven M. Vartabedian (ret.) on July 19, 2021, and  
13 participated in the full day mediation, where he was actively engaged in the negotiations and  
14 provided key background and context to the mediator. Importantly, Plaintiff sacrificed his  
15 individual claims in order to seek a fair and sizeable recovery for the Class. For these reasons, and  
16 those detailed in Plaintiff’s declaration filed herewith, I believe that \$15,000 is a fair and  
17 reasonable service award for Plaintiff due to the personal and financial risks incurred in filing this  
18 action, his active and engaged participation in the matter, his work reviewing informal discovery,  
19 his assistance to Class Counsel prior to and during the full-day mediation, the fact that he put the  
20 claims of the Class on par with his own in order to achieve a sizeable recovery for the Class, and  
21 the comprehensive release he has agreed to provide to settle this case. *See, generally*, Declaration  
22 of Benito Segura in Support of Motion for Final Approval of Settlement (“Segura Decl.”).

23           6. In addition to the underlying factors noted above that support the requested service  
24 awards, I also believe that the requested \$15,000 award—which totals approximately 3% of the  
25 gross settlement—is warranted as it falls within a reasonable range of service awards in similar  
26 matters. *See e.g., Carl v. Modern Custom Fabrication, Inc.*, No. 14CECG00658, 2016 WL  
27 4611477, at \*3 (Fresno Sup. Ct., Apr. 25, 2016), at \*3 (approving \$10,000 service award that was  
28 11.7% of the total \$85,000 wage and hour class action settlement); *Nwabueze v. AT&T Inc.*, 2013

1 U.S. Dist. LEXIS 169270, at \*39 (N.D. Cal. Nov. 27, 2013) (awarding service award which was  
2 approximately 5% of the total settlement amount). Thus, I believe a service award for Plaintiff in  
3 the amount of \$10,000 is fair and reasonable in this instance and should be approved.

4 **The Reasonableness of the Requested Attorneys' Fees and Costs**

5 7. Plaintiff seeks an attorneys' fees award of \$149,333.33 that is set forth in the  
6 Settlement, detailed in the Class Notice, and Defendant does not oppose Plaintiff's request. This  
7 common fund request represents one-third of the gross settlement amount of \$448,000.00. Courts  
8 commonly award one third of the gross settlement amount in common fund settlement class  
9 actions because it constitutes a fair charge to beneficiaries of this Settlement while encouraging  
10 qualified and competent counsel to diligently prosecute cases brought as contingency fee cases.

11 8. As set forth in the accompanying Memorandum of Points & Authorities filed  
12 herewith, the requested fee award of one-third of the gross Settlement amount is well justified  
13 under the common fund approach. The California Supreme Court has affirmed that a reasonable  
14 fee award in class action litigation can be calculated as a percentage of a recovered common fund.  
15 *Laffitte v. Robert Half Int'l Inc.*, (2016) 1 Cal.5th 480, 488-490 (affirming trial court's attorney's  
16 fees decision under the common fund method for one-third of the settlement). Here, a common  
17 fund recovery of one-third is a reasonable fee award because (1) the Class has, thus far, uniformly  
18 responded positively to the requested fee award up to this point; (2) the monetary relief achieved  
19 is an excellent result for the Class; (3) Plaintiff faced numerous risks with continued litigation  
20 including the challenge of certifying highly contested claims with limited common proof, like the  
21 rest and meal period claims, and various legal defenses asserted by Defendant; (4) Class Counsel  
22 have displayed significant skill and high quality of work to reach this excellent, early settlement  
23 with the assistance of a skilled mediator; (5) Class Counsel carried the financial burden of  
24 litigating these class claims on a contingency-fee basis, which included the risk of no recovery if  
25 the case proved unsuccessful; and (6) this one-third of the Settlement fund award is consistent  
26 with fees in similar circumstances. The requested award also replicates the likely fee arrangement  
27 that the Class and Class Counsel would have negotiated (as evidenced by the Class  
28 Representative's one-third contingency fee arrangements with Class Counsel) and thus constitutes



1 a fair charge for the benefit enjoyed by all participating Class Members.

2 **The Lodestar Cross-Check Supports the Requested Departure From the Benchmark**

3 9. In addition to the common fund approach, Plaintiff's requested common fund fee  
4 award is also justified under the lodestar approach. Class Counsel currently has expended more  
5 than 218 hours in this litigation as of April 19, 2022, for a current lodestar of \$156,540. This  
6 lodestar cross check supports the reasonableness of the common fund award of \$149,333.33  
7 requested in this matter. Further, I expect that Class Counsel will incur approximately 25  
8 additional hours of time to see this case through completion of the Settlement, including:  
9 preparing a motion for final approval; preparing for and appearing at the hearing on the final  
10 approval motion; monitoring the award distributions to the Class and responding to Class Member  
11 inquiries; preparing a final compliance report to the Court that distribution of settlement funds has  
12 been completed; attending the compliance hearing; and ensuring any uncashed checks mailed to  
13 participating Class Members are distributed to the designated *cy pres* recipient. Per the Settlement  
14 Agreement, Class Counsel is requesting a common fund award of thirty-three and 1/3 percent (33  
15 & 1/3 %) of the gross settlement, or \$149,333.33.

16 10. Advocates maintains contemporaneous, detailed time records billed at 1/10 of an  
17 hour increments. A summary of hours expended by Advocates for Worker Rights LLP is as  
18 follows:

19 Professional		Hours	Hourly Rate	Total Lodestar
20 Marco A. Palau	Attorney	22.3	\$850.00	\$18,955.00
21 Joseph Sutton	Attorney	164.1	\$750.00	\$123,075.00
22 Eric Trabucco	Attorney	16.8	\$650.00	\$10,920.00
23 Alan Jimenez	Law Clerk	9.4	\$250.00	\$2,350.00
24 Sarahi Ortiz Llanes	Law Clerk	6.2	\$200.00	\$1,240.00
25 Total		218.8		\$156,540.00

**Advocates' Reasonable Hourly Rates**

11. I am a co-founder of Advocates for Worker Rights LLP. My legal and professional experience and credentials were detailed in my declaration submitted in support of Plaintiff's Motion for Preliminary Approval of Class Settlement filed on November 5, 2021. I am familiar with the hourly rates for partners and associates engaged in Plaintiffs-side wage and hour class and representative action work in the San Francisco Bay Area. Fee awards for my work in the wage and hour class and representative actions in California courts during 2021 have been approved at \$700 an hour. See *Moreno v. Capital Building Maintenance & Cleaning Services, Inc.*, Case No. 4:19-cv-07087-DMR, 2021 WL 4133860, at 6 (N.D. Cal. Sept. 10, 2021); *Gonzalez-Rodriguez v. RJA Pollinating Company, et al.*, Imperial County Sup. Ct. Case No. ECU001087, class action settlement approval granted February 25, 2021.) In addition, fee awards for my work in similar class and representative matters during 2020 were approved at \$650 an hour. (See *Macias, et al. v. QLM, Inc., et al.*, Alameda County Sup. Ct. Case No. RG19005507, class action settlement approval granted June 10, 2020; *Ramirez v. Terona, et al.*, Santa Clara Sup. Ct. Case No 19CV343622, approval of PAGA Settlement granted June 5, 2020; and *Mendoza v. Able Sheet Metal, Inc.*, Alameda Sup. Ct. Case No. RG19023873. I believe my current rate of \$750 per hour for contingency fee representative and class action cases is fair and reasonable given my experience level and success in this field, the contingent and risky nature of the work, and the prevailing rates for attorneys of similar experience in the San Francisco Bay Area. My 2022 hourly rate for this type of specialized work is also supported by the hourly rates outlined in the Laffey Matrix (<http://www.laffeymatrix.com/see.html>), which courts in the San Francisco Bay Area have found to be within the range of reasonable hourly rates for attorneys of comparable skill, experience and reputation litigating similar cases in the Bay Area. See *Rivera v. Rivera*, WL 3667486, at \*2 (N.D. Cal., 2011); *Theme Promotions, Inc. v. News America Marketing FSI, Inc.* 731 F.Supp.2d 937, 949 (N.D. Cal. 2010) (approving a 7 percent upward adjustment of Laffey Matrix rates to account for the pay differential between Washington D.C. and the Bay Area.

12. Marco A. Palau is a founding member of Advocates for Worker Rights LLP. His

1 experience and credentials were detailed in my declaration submitted in support of Plaintiff's  
2 Motion for Preliminary Approval of Class Settlement filed on November 5, 2021. I am familiar  
3 with the hourly rates for partners and associates engaged in Plaintiffs-side wage and hour class  
4 and representative action work in the San Francisco Bay Area. Fee awards for Mr. Palau's work  
5 in the wage and hour class and representative actions in California courts during 2021 have been  
6 approved at \$800 an hour. See *Moreno v. Capital Building Maintenance & Cleaning Services,*  
7 *Inc.*, Case No. 4:19-cv-07087-DMR, 2021 WL 4133860, at 6 (N.D. Cal. Sept. 10, 2021);  
8 *Gonzalez-Rodriguez v. RJA Pollinating Company, et al.*, Imperial County Sup. Ct. Case No.  
9 ECU001087, Class Action settlement approval granted February 25, 2021.) Further, fee awards  
10 for Mr. Palau's work in similar class and representative cases during 2020 have been approved at  
11 \$750 an hour. See *Macias, et al. v. QLM, Inc., et al.*, Alameda County Sup. Ct. Case No.  
12 RG19005507, class action Settlement approval granted June 10, 2020; *Ramirez v. Terona, et al.*,  
13 Santa Clara Sup. Ct. Case No 19CV343622, approval of PAGA Settlement granted June 5, 2020;  
14 and *Mendoza v. Able Sheet Metal, Inc.*, Alameda Sup. Ct. Case No. RG19023873, approval of  
15 PAGA Settlement granted May 15, 2020. I believe Mr. Palau's current rate of \$850 per hour for  
16 contingency fee representative and class action cases is fair and reasonable given his experience  
17 level and success in this field, the contingent and risky nature of the work, and the prevailing rates  
18 for attorneys of his experience in the San Francisco Bay Area. Mr. Palau's 2022 hourly rate is  
19 also supported by the hourly rates outlined in the Laffey Matrix  
20 (<http://www.laffeymatrix.com/see.html>), which courts in the San Francisco Bay Area have found  
21 has been found to be within the range of reasonable hourly rates for attorneys of comparable skill,  
22 experience and reputation litigating similar cases in the Bay Area. See *Rivera v. Rivera*, WL  
23 3667486, at \*2 (N.D. Cal., 2011); *Theme Promotions, Inc. v. News America Marketing FSI, Inc.*  
24 731 F.Supp.2d 937, 949 (N.D. Cal. 2010) (approving a 7 percent upward adjustment of Laffey  
25 Matrix rates to account for the pay differential between Washington D.C. and the Bay Area.)

26       13. Eric Trabucco is a founding member of Advocates for Worker Rights LLP. His  
27 experience and credentials were detailed in my declaration submitted in support of Plaintiff's  
28 Motion for Preliminary Approval of Class Settlement filed on November 5, 2021. I am familiar

1 with the hourly rates for partners and associates engaged in Plaintiffs-side wage and hour class  
2 and representative action work in the San Francisco Bay Area. Fee awards for Mr. Trabucco's  
3 work in the wage and hour class and representative actions in California courts during 2021 have  
4 been approved at \$600 an hour. See *Moreno v. Capital Building Maintenance & Cleaning*  
5 *Services, Inc.*, Case No. 4:19-cv-07087-DMR, 2021 WL 4133860, at 6 (N.D. Cal. Sept. 10, 2021);  
6 *Gonzalez-Rodriguez v. RJA Pollinating Company, et al.*, Imperial County Sup. Ct. Case No.  
7 ECU001087, Class Action settlement approval granted February 25, 2021.) Further, fee awards  
8 for Mr. Trabucco's work in similar class and representative cases during 2020 have been  
9 approved at \$550 an hour. See *Macias, et al. v. QLM, Inc., et al.*, Alameda County Sup. Ct. Case  
10 No. RG19005507, class action settlement approval granted June 10, 2020; *Ramirez v. Terona, et*  
11 *al.*, Santa Clara Sup. Ct. Case No 19CV343622, approval of PAGA Settlement granted June 5,  
12 2020; and *Mendoza v. Able Sheet Metal, Inc.*, Alameda Sup. Ct. Case No. RG19023873, approval  
13 of PAGA Settlement granted May 15, 2020. I believe Mr. Trabucco's current rate of \$650 per  
14 hour for contingency fee representative and class action cases is fair and reasonable given his  
15 experience level and success in this field, the contingent and risky nature of the work, and the  
16 prevailing rates for attorneys of his experience in the San Francisco Bay Area. Mr. Trabucco's  
17 2022 hourly rate is also supported by the hourly rates outlined in the Laffey Matrix  
18 (<http://www.laffeymatrix.com/see.html>), which courts in the San Francisco Bay Area have found  
19 has been found to be within the range of reasonable hourly rates for attorneys of comparable skill,  
20 experience and reputation litigating similar cases in the Bay Area. See *Rivera v. Rivera*, WL  
21 3667486, at \*2 (N.D. Cal., 2011); *Theme Promotions, Inc. v. News America Marketing FSI, Inc.*  
22 731 F.Supp.2d 937, 949 (N.D. Cal. 2010) (approving an 7 percent upward adjustment of Laffey  
23 Matrix rates to account for the pay differential between Washington D.C. and the Bay Area.)

24 14. Mr. Alan Jimenez is a case clerk at Advocates. His 2022 rate is \$250 per hour. Ms.  
25 Sarahi Ortiz Llanes is also a case clerk at Advocates, and her 2022 rate is \$200 per hour.

26 **The Litigation Expenses Were Reasonably Incurred**

27 15. Class Counsel further requests that the Court approve payment of up to \$10,000 in  
28 costs, which is the maximum amount that was requested in the Motion for Preliminary Approval

1 and disclosed in the Class Notice. As of the date of this declaration, Class Counsel has incurred a  
2 total of \$6,850.30 in actual costs. The costs and expenses in this action are customary in such  
3 cases. For example, costs include, but are not limited to, the following: (1) \$1,770 for complaint  
4 filing and service costs; (2) \$2,058 for Plaintiff's portion of the mediation costs; and (3) \$2,062  
5 for expert fees for damage analysis. All costs incurred here were necessary to the prosecution of  
6 this litigation and would normally have been billed to a client paying for the firm's services on a  
7 non-contingent basis. These costs are reasonable for a case in which such a substantial recovery  
8 has been achieved for the Class. Class Counsel will incur additional costs in filing the instant  
9 motion and any required supplemental filings, filing the motion for final approval of class  
10 settlement, and monitoring the distribution process. Class Counsel will confirm their final costs  
11 information at the final approval hearing.

12           16. I have reviewed the expense records described above and certify to the Court that  
13 the work was reasonably and necessarily performed and expenses reasonably and necessarily  
14 incurred in connection with the litigation of this matter.

15           17. Attached to this declaration as exhibit 1 is the most recent Weekly Report from  
16 Phoenix Class Action Administration Solutions detailing the lack of Class Members who have  
17 objected or opted out of the Settlement. Plaintiff will submit a full declaration from the Settlement  
18 administrator once the time-period for opting out and objecting has run and prior to the Final  
19 Approval Hearing.

20


21 I declare under penalty of perjury under the laws of the State of California and the United  
22 States of America that the foregoing is true and correct. Executed this 20th day of April, 2022, in  
23 Berkeley, California.

24

25

**ADVOCATES FOR WORKER RIGHTS LLP**

26



27

Joseph D. Sutton  
Attorneys for Plaintiff

28

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8  
9

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**04/20/2022**  
Clerk of the Court  
BY: SANDRA SCHIRO  
Deputy Clerk

10 **SUPERIOR COURT OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**  
12

13 BENITO SEGURA, an individual, on behalf of  
14 himself and all other similarly situated individuals,

15 PLAINTIFF,

16 vs.

17 ALTIA TRANSPORTATION CORPORATION, a  
18 California Corporation, THOMAS GASPARINI,  
an individual, and DOES 1-20, inclusive,

19 Defendants.  
20

Case No. CGC-20-586926

**DECLARATION OF BENITO SEGURA IN  
SUPPORT OF MOTION FOR  
ATTORNEYS' FEES & COSTS AND  
PLAINTIFF'S SERVICE AWARD**

Date: June 22, 2022  
Time: 9:00 a.m.  
Department 304

Before the Honorable Ethan P. Schulman

1 I, Benito Segura, declare the following:

2 1. I am the named plaintiff in the matter entitled *Segura v. Altia Transportation Corporation*  
3 *et al.*, Case No. CGC-20-586926. I am a resident of California over the age of 18. I have personal  
4 knowledge of all facts stated in this declaration, except those facts stated on information and belief,  
5 which I believe to be true.

6 2. I worked for Altia Transportation Corporation (“Altia”) as a driver from approximately  
7 February 24, 2018 to December 21, 2019.

8 3. As a driver, I primarily delivered packages for Altia’s principal customer, FedEx, in  
9 Northern California.

10 4. Altia had an unusual way of paying its drivers, including me. I decided to bring this case  
11 on behalf of myself and the class because I believed the compensation system did not comply with  
12 California law. Defendants’ compensation system did not pay for overtime hours, or for all work  
13 activities, or for rest breaks.

14 5. Altia utilized a piece-rate system to compensate me, and I understand that compensation  
15 was based on the number of deliveries I made, with each delivery paid at about \$1.00. However, other  
16 work activities and time that I spent performing my duties were not paid. My rest breaks were also not  
17 paid.

18 6. Typically, I arrived at the loading depot in the mornings to load and organize the truck,  
19 and then I would set off on my route. The time spent loading the truck, organizing packages, and  
20 preparing my route was not paid. I was also not paid separately for rest breaks.

21 7. I have learned that Altia had a practice of paying a minimum daily rate when the piece  
22 rate was insufficient to meet the legal minimum wage. However, the daily rate did not always comply  
23 with the minimum wage. Sometimes I was not given many stops and my piece rate earnings were low,  
24 so the company would pay me a fixed amount, which was approximately \$200 per workday. However,  
25 after factoring the total hours worked those days, the daily minimum that Altia paid me did not meet the  
26 legal minimum wage.

27 8. Another problem with Altia’s compensation system is that it often did not include the  
28

1 appropriate overtime pay. For example, the overtime calculation did not take into account a correct  
2 regular rate based upon my piece rate earnings. I often worked more than eight hours in a workday and I  
3 regularly did not receive the correct overtime compensation for those days.

4 9. Apart from being denied separate pay for rest breaks and for non-driving time, and  
5 regularly being denied the correct overtime pay, Altia also did not properly provide meal periods. I  
6 rarely, if ever, took a 30-minute uninterrupted meal period free of duty. Meal periods were never  
7 scheduled within the first five hours of work, nor were they recorded as required, and I was discouraged  
8 from taking meal periods in favor of making deliveries.

9 10. I was never paid a meal period premium for a denied meal period, or a rest period  
10 premium for a denied rest period. That was unheard of at this company.

11 11. I had to use my own personal cell phone to perform my work as a driver. During the time  
12 I was employed, I never received a reimbursement. I learned through this lawsuit that Altia changed the  
13 policy to offer a small reimbursement of a few dollars each pay period for drivers' cell phone usage  
14 starting in April 2020. This policy was not in place when I was employed.

15 12. Additionally, my wage statements did not list my hours, or my hourly rates of pay, or the  
16 piece rates and corresponding units earned. Instead, they would have a line item indicating "salary,"  
17 which was inaccurate because I did not earn a salary, and "bonus," which was also inaccurate because,  
18 although the amounts reflected piece-rate compensation, it did not list the actual piece rate or the  
19 number of units earned at that piece rate. I was never able to fully understand what I was being paid for.

20 13. I assisted my lawyers with the prosecution of the case from the outset. One of my first  
21 tasks was to contact fellow workers to assist my attorneys in the investigation of the case. I put my  
22 attorneys in contact with several current and former workers who were able to corroborate facts  
23 pertaining to company practices and working conditions. I estimate that I attempted to contact and/or  
24 contacted more than 5 employees who worked Altia. I spent quite a few hours during the course of the  
25 initial investigation and later during the litigation communicating with current and former Altia workers  
26 about the lawsuit and status of the litigation. My estimate of the total amount of time I spent speaking  
27 with other workers about the case is approximately 6 hours since first pursuing this matter.

28 14. At my attorney's request, I spent time gathering the records in my possession and control



1 relating to my work at Altia. I estimate that I spent about 4 hours gathering records and conferencing  
2 with my attorneys at the beginning of the case.

3 15. Early on in the case, I assisted my attorney by helping them understand what documents,  
4 data, and other evidence Altia may have that would support the claims alleged. I understand that these  
5 discussions helped form the basis for the evidence my attorney requested from Altia in order to  
6 adequately assess liability and the damages in this case and to prepare the litigation. I was in regular  
7 contact with my attorney and their staff to assist in whatever way I could, and I was always available to  
8 answer my lawyer's questions. I estimate that I spent 9 hours receiving routine updates from my  
9 attorney and their staff about the status of the case, as well as answering questions asked of me from  
10 time to time about different issues relating to my work with Altia.

11 16. I helped my attorneys prepare for mediation and participated remotely at the mediation  
12 on July 19, 2021 with mediator Justice Steven Vartabedian (ret.). I believe I spent approximately 8.5  
13 hours preparing for and participating in mediation with my lawyers and their staff.

14 17. Approximately two weeks after the July 19, 2021 mediation, Justice Vartabedian made a  
15 mediator's proposal. In consultation with my attorney, on or about August 6, 2021, I decided to accept  
16 the mediator's proposal. Since that time, I have been in communication with my attorneys regarding the  
17 approval process. I believe I have spent approximately 9 hours since the mediation discussing the  
18 settlement with my attorneys, and discussing the proposed settlement with other current and former  
19 Altia workers.

20 18. I brought this class and representative action for myself, the State of California, and other  
21 workers to recover wages and penalties because I believe Altia failed to pay me and other workers at the  
22 minimum wage and at lawful overtime rates for all hours worked; failed to provide proper rest and meal  
23 breaks or wages instead of breaks; failed to reimburse cell phone expenses; failed to issue accurate wage  
24 statements; and failed to timely pay all wages due. I understand the role of a class representative and  
25 chose to take on that role to make a positive impact beyond my own claims and interests. I believe that  
26 the result in this case is positive for other workers and for the company.

27 19. Although I had individual claims when this original lawsuit was filed, I have voluntarily  
28 chosen to pursue the claims I had on a class-wide basis in order to obtain the maximum recovery for

1 workers who suffered wage violations as I did. In so doing, I believe I put the interests of other Altia  
2 drivers on par with mine, and arguably, at times, above my own interests. I did this because I believe  
3 Altia was not complying with the law and it was important for me to stand up for myself and my fellow  
4 workers.

5 20. I believe the settlement is fair and reasonable in light of the circumstances. The  
6 settlement agreement does not provide me with consideration for the release of my individual claims,  
7 nor have I received separate consideration not made as part of this settlement for the release of my  
8 individual claims. I understand that if the proposed distribution of settlement funds is approved by the  
9 Court, the average payment to participating Class Members will be approximately \$2,865 as a result of  
10 this lawsuit. I believe this is a fair and reasonable result for the approximately 89 drivers included in the  
11 settlement.

12 21. I respectfully request that the Court approve the class representative service award for me  
13 in the amount of \$15,000 for the substantial risk I took in filing this case, the significant amount of time  
14 (more than 36 hours) and energy I spent during the litigation, and what I believe to be a good result for  
15 the Class.

16  
17 I declare, under penalty of perjury pursuant to the laws of the State of California, that the  
18 foregoing is true and correct. Executed on 04/20/2022 \_\_\_\_\_.

19  
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21 \_\_\_\_\_  
22 Benito Segura  
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7 Attorneys for Plaintiff BENITO SEGURA  
8  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**  
12

13 BENITO SEGURA, on behalf of himself and all  
14 other persons similarly situated,

15 Plaintiff,

16 vs.

17 ALTIA TRANSPORTATION COMPANY,  
18 THOMAS GASPARINI, and DOES 1-10,  
inclusive,

19 Defendants.  
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Case No. CGC-20-586926

**EXHIBITS TO DECLARATION OF  
JOSEPH D. SUTTON IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES &  
COSTS AND PLAINTIFF'S SERVICE  
AWARD**

Date: June 22, 2022  
Time: 9:00 a.m.  
Department 304

Before the Honorable Ethan P. Schulman

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**04/20/2022**  
Clerk of the Court  
BY: SANDRA SCHIRO  
Deputy Clerk



Class Size: 107  
Class Period: 9/16/16 - 3/7/22  
Claims Deadline: N/A  
Opt-Out Deadline: 5/27/2022  
Final Approval Hearing: 6/22/2022

Report Date:  
Thursday, April 14, 2022

## Weekly Report For

# Segura v. Altia Transportation Corporation and Thomas Gasparini

### MAILINGS

Notice Mailing Date:	<u>3/28/2022</u>	Total Notices Mailed:	<u>107</u>
Notices Returned:	<u>0</u>	Notices Requested:	<u>0</u>
Notices Traced:	<u>0</u>	Notices Rемаiled:	<u>0</u>
Notices Forwarded:	<u>0</u>	Notices Returned 2nd Time:	<u>0</u>
		Notices Undeliverable:	<u>0</u>

### OPT-OUTS

Opt-Outs Received:	<u>0</u>	Dispute:	<u>0</u>
Deficient:	<u>0</u>	Invalid:	<u>0</u>
% of Class Submitted Opt-Out:	<u>0 %</u>	Late:	<u>0</u>
		Objections:	<u>0</u>

Thank you for choosing Phoenix Settlement Administrators (PSA) to work with you on this matter.  
Please feel free to contact us at 800-523-5773 with any questions.

*Phoenix Settlement Administrators  
P.O. Box 7208, Orange, CA 92863  
Phone: 800-523-5773 Fax: 949-209-2503  
www.phoenixclassaction.com*