

The Honorable Benjamin H. Settle

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TROY SLACK, JACOB GRISMER, RICHARD
ERICKSON, SCOTT PRAYE, GARY H.
ROBERTS, ROBERT P. ULRICH, HENRY
LEDESMA, TIMOTHY HELMICK, DENNIS
STUBER, ERIC DUBLINSKI, SEAN P.
FORNEY, individually and as Putative Class
Representatives,

Plaintiffs,

v.

SWIFT TRANSPORTATION CO. OF
ARIZONA, LLC,

Defendants.

CLASS ACTION

No. 3:11-cv-05843-BHS

**DECLARATION OF SEAN P. FORNEY
IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES
AND SERVICE AWARDS**

NOTE ON MOTION CALENDAR:
January 22, 2019, 10:00 a.m.

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I, Sean P. Forney, hereby declare as follows:

1. I am one of the class representatives in this action. I am submitting this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Service Awards. The information contained herein is based upon my personal knowledge and I am otherwise competent to be a witness.

2. From September 2008 to October 2011, I worked for Swift Transportation Company of Arizona, LLC as a Costco dedicated driver, operating out of the Swift Terminal in Sumner, Washington. From October 2011 to November 2012, I worked as a Lease/Operator at the Swift Terminal in Grandview, Washington.

3. My home terminal from September 2008 to October 2011 as assigned by Swift was Sumner, Washington.

4. I have been involved in this lawsuit since approximately March 2012, shortly after it was filed. I became involved because I was concerned that I and other Swift drivers were not and had not been paid overtime and certain other earnings as required by Washington State law.

5. The original attorneys we spoke to were later replaced by current Class Counsel, Hagens Berman Sobol Shapiro LLP, in 2015 after the Court issued an order to show cause why the Court should not vacate the class certification order and questioned the role of prior counsel. I was asked and considered the appointment of Hagens Berman as substitute class counsel and I agreed. The Court appointed them as class counsel.

6. I have been involved in the case since shortly after it was brought, and I have worked with our counsel and otherwise as follows:

- Worked with counsel in the investigation of my claims and plaintiffs' claims generally – including all three claims pursued on behalf of the class (overtime, orientation, per diem);
- Produced my personal employment-related documents;
- Was deposed by Swift;
- Reviewed and approved the 2017 settlement agreement and the 2018 amendment; and

- Consulted with our counsel regarding the status and progress of the litigation since the case was brought.

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2 7. It is my understanding that I am the only class representative who represented all
3 three claims pursued on behalf of the class (overtime, orientation, per diem).

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5 8. It is important to me for the Court to understand that it was not an easy choice to
6 become a class representative plaintiff in this case. When I first became involved, I was still
7 employed by Swift and I continued to be employed by Swift as a Lease/Operator. In addition to the
8 many hours of time I spent reviewing case materials and talking to our attorneys, I was concerned
9 that Swift could retaliate against me because I was a named plaintiff in this lawsuit. For example,
10 even before I became a named plaintiff, Swift had demanded that I and other drivers sign an
11 "Acknowledgement" that we had been paid overtime. I refused. While I was a Lease/Operator, I
12 was also confronted by management regarding my involvement in the lawsuit and I responded
13 point-blank that we should not be discussing the ongoing lawsuit.

14 9. I understand that per the settlement agreement, we as plaintiffs are asking the Court
15 to award attorneys' fees. I also understand that the attorneys' fees were negotiated and settled
16 separately from the negotiation and settlement of the claims by Class Counsel; that the fees our
17 attorneys seek represent a substantial reduction in the value of the time they spent on the case and
18 that they have foregone being paid for the additional time; and that the fees they seek include costs
19 they incurred.

20 10. I support the attorneys' fee request in this matter and believe that our lawyers have
21 worked hard and effectively on this case for my benefit and the benefit of the class. Again, I
22 understand that the sum they seek will be paid directly by Swift to our attorneys, if approved by the
23 Court, and will not come out of the gross settlement fund.

24 11. I also am asking respectfully that the Court approve a service award for me in the
25 amount of \$7500, as contemplated by the settlement agreement. This would be in recognition of
26 the service I rendered to fellow class members throughout this case (including being deposed on
27 my wedding anniversary!) and the risks I took in bringing the case, as discussed above. Our
28 lawyers have advised me that this sum was negotiated with Swift following negotiation of class

1 benefits. At no time did the lawyers tell me that I could only apply for a service award if I
2 supported the settlement. Quite the contrary, I support the settlement because I think it provides
3 fair compensation for Swift's failure to pay overtime and other earned benefits to the class. Given
4 the time that I spent on matters related to this case, and my willingness to serve as a class
5 representative, I think this service award is fair and reasonable.

6 Finally, I support final approval of the settlement agreement in this matter. I
7 understand that the Court has granted preliminary approval to it, and that the Court will hold a
8 final approval hearing on January 22, 2019, per the current schedule. I believe that all things
9 considered, the settlement here, which provides for a gross settlement fund consisting of
10 \$5,050,000 in cash, plus attorneys' fees and the costs of administering the settlement, is fair and
11 reasonable to me and my fellow class members.

12 I declare under penalty of perjury under the laws of the State of Washington that the
13 foregoing is true and correct.

14 Executed on this 9TH day of November, 2018, at Vancouver, Washington.

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SEAN P. FORNEY