

Exhibit 2

Declaration of Robi J. Baishnab

DECLARATION OF ROBI J. BAISHNAB

I, Robi J. Baishnab, pursuant to 28 U.S.C. § 1746, hereby declare, under penalty of perjury, that the following is true and correct to the best of my personal knowledge, information, and belief:

1. I am one of the attorneys for Plaintiffs.

2. This Declaration is submitted in support of the Parties' Joint Motion for Approval of FLSA Settlement ("Joint Motion"). Unless otherwise defined, all terms used in this declaration have the same meanings as defined in the Collective and Class Action Settlement Agreement attached as Exhibit 1 to the Joint Motion.

Qualifications of Plaintiffs' Counsel

3. I obtained a J.D. and LL.M. from Capital University Law School.

4. I was admitted to practice law in Ohio in 2010.

5. I am an attorney in good standing with the State Bar of Ohio. I am also admitted to practice in the United States District Courts for the Northern and Southern Districts of Ohio, the United States District Courts for the Northern and Southern Districts of Indiana, the United States District Court for the Northern District of Illinois, the United States District Court for the Western District of Oklahoma, the United States District Court for the Western District of Pennsylvania, the United States District Court of Colorado, the United States District Court for the Western District of Tennessee, and the United States Court of Appeals for the Sixth Circuit. I am presently admitted *pro hac vice* in the United States District Court of New Jersey, the United States District Court for the Eastern District of Tennessee, and the United States District Court for the District of Delaware.

6. I am an associate attorney at Nilges Draher LLC.

7. Nilges Draher LLC is comprised of four attorneys: Hans A. Nilges; Shannon M. Draher; Jeffrey M. Moyle; and Robi J. Baishnab. Our general profiles, work histories, and educational backgrounds are accurately summarized on the “Attorneys” page at www.ohlaborlaw.com.

8. My practice focuses on collecting unpaid minimum and overtime wages for employees in collective, class, hybrid, and individual wage and hour actions brought under the Fair Labor Standards Act (FLSA), the Ohio Minimum Fair Wage Standards Act, and other state wage and hour laws, brought in federal or Ohio state courts. I have been practicing wage and hour law since October 2012 and have been with Nilges Draher since November 2018.

9. Nilges Draher currently has one of the largest wage and hour collective action practices in Ohio. In addition, we litigate wage and hour cases in other jurisdictions across the country, including arbitrations.

10. Nilges Draher has litigated over 200 wage and hour cases since February 2014. Since 2012, I have been lead or co-counsel on over 200 filed FLSA cases. In 2020 and 2021, I was lead or co-counsel on at least approximately 38 settled individual and collective wage and hour cases.

11. Nilges Draher enjoys a positive reputation for its ability to litigate wage and hour cases. *See White v. Premier Pallet & Recycling, Inc.*, N.D. Ohio No. 5:18-cv-1460, 2018 U.S. Dist. LEXIS 174414, at *6 (Oct. 10, 2018) (J. Lioi) (“[C]lass counsel is abled and experienced in FLSA collective actions, litigating over one hundred cases since February 2014[.]”); *Lackie v. U.S. Well Servs.*, S.D. Ohio No. 2:15-cv-695, 2017 U.S. Dist. LEXIS 28920, at *6-7 (Mar. 1, 2017) (Chief Mag. J. Deavers); *adopted and affirmed, Lackie v. U.S. Well Servs.*, S.D. Ohio No. 2:15-cv-695,

2017 U.S. Dist. LEXIS 34720 (Mar. 10, 2017) (J. Smith) (recognizing that Nilges Draher LLC has “extensive experience litigating FLSA and other wage-and-hour claims....”).

Negotiation and Settlement

12. I agree with the procedural history and background outlined in the Parties’ Joint Motion and in the Agreement.

13. Settlement negotiations were made in good faith and at arm’s length. Major disputes developed between the parties regarding collective treatment, definition, notice, questions of liability as well as the valuation of the case, and the proper method of calculating damages.

14. In my opinion, the total settlement amount itself is fair and reasonable, especially considering the compounding risk of continuing the litigation. We have adopted a systematic approach to analyzing settlements that is grounded in empirical research and designed to achieve the maximum utility of a lawsuit. This approach is also specifically designed to avoid various decision-making biases that could result in the rejection of a favorable settlement or result in one that is disadvantageous to our clients.

15. To mitigate unwarranted biases in settlement decisions, we perform an Expected Value (“EV”) calculation for nearly all cases, which can be generalized as the anticipated value of a case at some point in the future after various uncertain events have occurred. We performed such an analysis here before mediation. Essentially, the EV is calculated by summing the product of the probabilities of winning at each stage of the litigation and the expected outcome of success and the product of the probabilities of losing at each stage and zero. The EV of a case is calculated and visualized using the decision tree software TreeAge Pro[©].

16. A decision tree is created with various decision and chance (i.e., probability) nodes at each stage of the case where there is a win/loss potential. At the end of each “branch” in the tree

is a payoff node, which is the sum of the probabilities times damages for the branch. The probabilities and values of the entire case are then summed, resulting in a final EV. Both potential damages and win/loss probabilities are determined through a collaborative process involving attorneys who are familiar with the case and relevant case law. All participating attorneys also have significant experience with state and federal wage and hour collective and class action litigation generally. Alleged damages and probabilities are determined by a combination of averaging these attorneys' estimates and/or their consensus opinion. The actual EV can be submitted for in camera review, if the Court so directs.

17. Potential damages were calculated pre-mediation by the EmployStats, which is a research firm that performs economic and statistics research for the legal, business and governmental communities.¹ As explained by EmployStats, in calculating alleged and estimated overtime damages, EmployStats used the data produced by Defendant in preparation for mediation. The regular rate of pay analysis was based on the opt-in payroll records primarily from the following files: FR00067128, FR00067129, FR00067611, FR00067612, and FR00067613. The analysis recalculated the regular rate of pay that each Plaintiff should have received, based on the alleged claims. Certain extrapolations were made for gaps or missing data. The model EmployStats created included a toggle field to adjust the estimated reduced hours per day. The analysis extrapolated the unpaid overtime wages through the present for the employees and pay periods where payroll records are not available in an Excel format. The extrapolation applied the average per person damages to the approximate 25 employees without payroll records. The extrapolation applied the average unpaid overtime wages per pay period during the relevant time period.

¹ <https://employstats.com/about-us/> (last viewed 1/11/2023).

18. The settlement reflects substantial benefit to Plaintiffs. For example, the Gross Settlement Fund exceeded the calculated expected value. The Gross Settlement Fund reflects approximately one-half hour of reduction of the respective Opt-In Plaintiff's regular rate, or, in other words, an estimated dilution of the regular rate as alleged the Complaint, plus more than 26% liquidated damages. This was an excellent outcome, considering the hotly contested issues, including Defendant's defenses.

19. Settlement provides \$7,500.00 service award to Representative Plaintiff Fitzgerald. Ms. Fitzgerald took the risk of filing the action, met with her us and talked to former coworkers about her case. She also completed written discovery, had her deposition taken, and actively participated during the litigation, including being available throughout the day of mediation. In my opinion, without her, there would be no collective recovery.

20. We took this case on a contingency basis, agreeing to one-third fees at the outset of this litigation. We not only invested our time, but also paid significant expenses up front, including the filing fee, service, postage, processing of produced data and creation of damages model, calculating an expected value and reviewing the same with Representative Plaintiff. We will not be paid for any time during effectuation of the settlement.

21. Costs of \$42,369.73, included the following: postage, notice administration to over 10,000 putative collective members, damages analysis and model, mediation fees, and court fees. These costs were reasonably incurred to advance the litigation and achieve a favorable settlement for Plaintiffs. Had this case not settled, we would have continued to vigorously litigate the case without any promise of success and compensation. At every step of the litigation, Defendant could have succeeded. Therefore, we were at great risk for no compensation. This risk of no compensation strongly supports the amount requested here and warrants approval.

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

Executed on this 27th day of January 2023.

/s/ Robi J. Baishnab

Robi J. Baishnab

Counsel for Plaintiffs