

David Mara, Esq. (230498)
Matthew Crawford, Esq. (310230)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 205
San Diego, CA 92108
Telephone: 619-234-2833
Facsimile: 619-234-4048

Attorneys for Plaintiff MIGUEL HERNANDEZ,
on behalf of himself, all others similarly situated,
and on behalf of the general public.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

MIGUEL HERNANDEZ, on behalf of himself,
all others similarly situated, and on behalf of
the general public

Plaintiff,

v.

MJ INDUSTRIES, INC.; MJ TANK LINES,
INC.; and DOES 1-100, inclusive,

Defendants.

Case No. 37-2017-00003218-CU-OE-CTL

**DECLARATION OF DAVID MARA IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
GENERAL RELEASE PAYMENT, AND
ENTERING OF FINAL JUDGMENT**

Date: January 15, 2021
Time: 8:30 a.m.
Dept: C-74
Judge: Hon. Ronald L. Styn

1 I, DAVID MARA, declare the following:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiff and the putative class
3 in this matter. I am duly admitted to practice before all the courts of the state of California.
4 The following facts are within my personal knowledge and, if called to testify, I could and
5 would competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and
9 cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”).
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court,
11 Case No. GIC834348, which was the underlying case in the California Supreme Court’s
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide,
14 and employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California (“CAOC”) in the
16 recent decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.*
17 (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest
18 breaks is not considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the
20 California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and
21 wage and hour class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff’s counsel in a host of other class actions involving violations of California’s
24 wage and hour laws, many of which involve the transportation industry. For example, I have
25 been and am involved as counsel for plaintiffs in the following sampling of class action cases
26 involving wage and hour violations under California law: *Peron v. The Vons Companies, Inc.*
27 (Case No. 37-2014-00006965); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No.
28 DR150155); *Martin v. Sysco Central California, Inc.* (Case No. 1:16-cv-00990-DAD-SAB);

1 *Paramo v. Cintas Corporate Services, Inc., et. al.* (Case No. CIVDS1719941); *Cortez v.*
2 *United Natural Foods, Inc.* (Case No. 5:18-cv-04603-BLF); *Frieri v. Sysco San Diego, Inc.*
3 (Case No. 3:16-cv-1432-JLS-NLS); *Allen v. J.S. West Hardister, LLC, et. al.* (Case No.
4 9000289); *Betts v. Foster Dairy Farms* (Case No. 9000320); *Perez v. City of San Diego* (Case
5 No. 37-2014-00016621); *Cuellar-Ramirez v. US Foods, Inc.* (Case No. RG15770766);
6 *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Helton v. Pepsi-*
7 *Cola Sales and Distribution, Inc., et. al.,* (Case No. 3:17-cv-01135-EMC); *Kramer v. XPO*
8 *Logistics, Inc.* (Case No. 3:16-cv-07039-WHO).

9 9. Plaintiff filed a putative class action complaint in the San Diego County Superior Court
10 against Defendant on January 25, 2017. Plaintiff's original Complaint alleged the following
11 causes of action: 1) failure to pay all straight time wages; 2) failure to pay overtime; 3) failure
12 to provide meal periods; 4) failure to authorize and permit rest periods; 5) knowing and
13 intentional failure to comply with itemized employee wage statement provisions; 6) failure to
14 pay all wages due at the time of termination; and 7) violation of the Unfair Competition Law.
15 On July 5, 2017, Defendant answered the complaint generally denying all claims. Plaintiff's
16 First Amended Complaint was filed on June 17, 2020 alleging violations of the Private
17 Attorneys General Act of 2004 ("PAGA").

18 10. After filing, the Parties engaged in extensive discovery. Plaintiff's discovery requests,
19 coupled with the Parties extensive meet and confer efforts, led to Defendant producing over
20 ten thousand pages of documents. These documents included, but were not limited to,
21 Defendant's meal and rest period policies, employee handbooks, time records and wage
22 records for class members, and additional relevant policies. Additionally, Defendant provided
23 Plaintiff with data that enabled him to fully evaluate class-wide claims and potential exposure.
24 Plaintiff also performed an independent analysis of the case and interviewed numerous class
25 members about their experiences working for Defendant.

26 11. On May 3, 2019, Plaintiff filed his Motion for Class Certification. Defendant opposed this
27 motion. The Court held a hearing on Plaintiff's motion on July 12, 2019, and the Court issued
28 an order granting Plaintiff's Motion for Class Certification only as to Plaintiff's meal period

1 and rest period claims. On or around November 6, 2019, Defendant filed its Motion for
2 Summary Judgment arguing that the certified class claims were preempted by the Federal
3 Motor Carrier Safety Administration’s (“FMCSA”) hours of service regulations and the
4 Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) administrative
5 determination that California’s meal period rules are preempted. The Parties reached the
6 instant settlement prior to having the motion heard by the Court.

7 12. The gravamen of Plaintiff’s claims is that drivers are always subject to Defendant’s control
8 and command, including during meal and rest breaks. Defendant requires class members to
9 remain in constant attendance of their trucks and its contents at all times because Defendant
10 transports hazardous materials. As a result, Defendant failed to provide duty-free meal periods
11 and rest breaks to drivers in violation of *Labor Code* sections 512 and 226.7, Wage Orders,
12 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, and *Augustus v. ABM*
13 *Security Services, Inc.* (2016) 2 Cal.5th 257, that drivers were entitled to premium payments
14 and unpaid wages for Defendant’s failure to provide rest periods and meal periods compliant
15 with California law. This proposed Settlement was only possible following significant
16 discovery and evaluation of Defendant’s relevant policies, procedures, and data, which
17 permitted Plaintiff’s Counsel to engage in a comprehensive analysis of liability and potential
18 damages to prepare for the mediation, class certification, and summary judgment.

19 13. Defendant vigorously denies Plaintiff’s contentions, claiming that all meal and rest breaks
20 were provided in compliance with California law, and any and all wages owed were paid to
21 drivers. Specifically, Defendant contends it imposed compliant meal and rest break policies
22 making meal and rest breaks available to drivers when their trucks did not contain hazardous
23 materials, but drivers’ decisions to take those breaks varied individually. Additionally,
24 Defendant asserts that Plaintiff’s claims for failure to provide meal and rest periods are
25 completely preempted by federal law, and were confident in the Court granting summary
26 judgment on these issues had a settlement not been reached. Defendant further argues, under
27 *Brinker*, it need not ensure meal and rest breaks are taken but are only obligated to make them
28 available to drivers, which it did.

1 14. The Parties participated in a full day mediation with the Jeffrey Krivis on January 22, 2018.

2 The matter did not settle at mediation, but the Parties continued settlement discussions
3 throughout the course of the litigation. In light of the points raised in Defendant's Motion for
4 Summary Judgment, and appreciating the significant risks on both sides, the Parties reached
5 a settlement in principle. The Parties then met and conferred regarding all the terms of the
6 settlement and finalized their agreement in the Joint Stipulation, of which the Parties seek
7 final approval of their Joint Stipulation in the instant motion.

8 15. The Parties agreed (subject to and contingent upon the Court's approval) that this action be
9 settled and compromised for the non-reversionary total sum of \$150,000 ("Gross Settlement
10 Amount" or "GSA") which includes, subject to Court approval: (a) attorneys' fees of up to
11 \$50,000 (33 1/3% of the GSA) to compensate Class Counsel for work already performed and
12 all work remaining to be performed in documenting the settlement, administrating the
13 settlement and securing Court approval; (b) litigation costs of \$ 15,000; (c) Class
14 Representative General Release Payment to the named class representative, Miguel
15 Hernandez, in a sum not to exceed \$10,000 in consideration for a general release of his claims
16 against Defendant and for initiating and prosecuting this Class Action, serving as Class
17 Representative, work performed, and risks undertaken for the payment of Defendant's
18 attorneys' fees and costs in the event he had been unsuccessful in either matter; (d) claims
19 administration fees and expenses to Simpluris, in the amount of \$6,249.00 (originally
20 estimated not to exceed \$7,500), and (e) PAGA payment to the LWDA in the amount of
21 \$3,750 (which represents seventy-five percent (75%) of \$5,000 allocated to PAGA).

22 16. After all Court-approved deductions from the GSA, it is estimated that \$61,036.10, ("Net
23 Settlement Amount" or "NSA"), less all applicable employee taxes, will be distributed to
24 Class Members – with an average estimated payment of \$331.72 per Class Member, and a
25 high payment of \$1,435.54. One hundred percent (100%) of the NSA will be paid to the Class
26 Members, less taxes. Subject to the terms and conditions of the Settlement, the Settlement
27 Administrator will calculate and issue Individual Settlement Payments based on the following
28 formula:

1 **Individual Settlement Share Calculation.** Each Participating Class Member will receive a
2 proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he
3 or she worked for Defendant in California based on the Class data provided by Defendant,
4 divided by (ii) the total number of weeks worked by all Participating Class Members based
5 on the same Class data, which is then multiplied by the Net Settlement Amount. One day
6 worked in a given week will be credited as a week for purposes of this calculation. Therefore,
7 the value of each Class Member's Individual Settlement Share ties directly to the amount of
8 weeks that he or she worked.

9 The precise number of workweeks is derived from Defendant's records. Under no
10 circumstances will any portion of the \$150,000 settlement revert to Defendant.

11 17. In exchange for an Individual Settlement Share, Class Members are informed that, by
12 accepting the payment, they release the Released Parties of all known and unknown state law
13 claims that were alleged or that could have been alleged based on the facts of the complaints
14 filed in the matter.

15 18. This entire case hinges on whether Plaintiff's and class members' claims for failure to provide
16 compliant meal and rest periods under California law are preempted by federal law. A
17 September 21, 2018 opinion by the Pipeline and Hazardous Materials Safety Administration
18 ("PHMSA") found that California's meal and rest period laws do not apply to drivers of motor
19 vehicles that are transporting hazardous materials. PHMSA opined that "California's meal
20 and rest break requirements create an unnecessary delay in the transportation of hazardous
21 materials and are therefore preempted." Further, on December 28, 2018, the Federal Motor
22 Carrier Safety Administration issued a separate opinion determining that the California meal
23 and rest break provisions are more stringent than the Agency's hours of service regulations,
24 that they have no safety benefits that extend beyond those already provided by the Federal
25 Motor Carrier Safety Regulations, that they are incompatible with the Federal hours of service
26 regulations, and that they cause an unreasonable burden on interstate commerce. Thus,
27 California meal and rest break laws, therefore, are preempted under 49 U.S.C. 31141(c).

28 19. Plaintiff argues that these opinions cannot and do not apply retroactively, and Defendant is
still liable for violating California law for nearly the entirety of the Class Period prior to the
issuance of this opinion. Federal agency decisions and opinions, like the FMCSA and
PHMSA opinions, are "subject to the presumption of prospectivity that attends true exercises
of legislative authority." *Gutierrez-Brizuela v. Lynch* (10th Cir. 2016) 834 F.3d 1142, 1144.

1 As FMCSA and PHMSA orders are subject to the presumption of prospectivity, there must
2 be express language in the statutory grant of legislative rulemaking authority enabling these
3 administrative agencies to extend their regulations retroactively. Here, the statutes enabling
4 these agencies to issue this legislative regulations, 49 U.S.C. §§ 31141 and 5125, are
5 completely void of any language, evidence, or indication whatsoever that Congress expressly
6 granted these agencies with the power to promulgate retroactive rules, nor do the FMCSA and
7 PHMSA Orders themselves give any indication that they are to be interpreted retroactively.
8 Hence, because agency orders are presumed prospective unless congress expressly conveys
9 the power to promulgate retroactive rules, and congress never expressly granted the power to
10 issue retroactive preemption determinations, the FMCSA and PHMSA opinions are not
11 retroactive Further, Plaintiff contends that this opinion holds no weight over California
12 Superior Courts, and will ultimately be struck down and/or reversed by the appropriate
13 legislative and judicial bodies.

14 20. Therefore, Plaintiff's arguments, as outlined below, are only relevant if the Court were to find
15 that the PHMSA and FMCSA opinions have no, or only a limited, effect on Plaintiff's case.
16 Because of this, Plaintiff had to take into consideration the possibility that Defendant's
17 position could prevail and had to discount his damage exposure significantly.

18 21. Based upon the discovery and litigation conducted, Plaintiff contends – and Defendant
19 disputes – that class members are always subject to MJ's control and command, including
20 during meal and rest breaks. Plaintiff alleges that MJ has uniform policies which require class
21 members to remain in constant attendance of their trucks and its contents at all times. Because
22 Defendant transports hazardous materials, Plaintiff asserts that under Title 49 of the Code of
23 Federal Regulations, Section 397.5(a) (49 CFR 397.5(a)) drivers are required to attend to their
24 trucks at all times throughout the workday, even on meal and rest periods. As a result,
25 employees are not provided with rest periods in which they are free to use the time for their
26 own purposes.

27 22. Plaintiff argues that the cases *Brinker Restaurant Corp. v. Superior Court* ("Brinker"), (2012)
28 53 Cal.4th 1004, and *Augustus v. ABM Security Services, Inc.* ("Augustus"), (2016) 2 Cal. 5th

1 257, provide that employers are required to relinquish any control over how employees spend
2 their break time, and relieve their employees of all duties. Plaintiff contends that when an
3 employer requires drivers to remain in constant attendance of their truck and trailers during
4 meal and rest periods, that is, when an employer prevents drivers from leaving their trucks
5 unattended due to their containment of hazardous materials to maintain the employer's
6 compliance with 49 CFR 397.5(a), the employer has impermissibly imposed a restraint not
7 inherent in the meal and rest period requirements itself, and places drivers on-duty for meal
8 and rest periods. Under California Labor Code § 226.7(a), "[n]o employer shall require any
9 employee to work during any . . . rest period mandated by an applicable order of the Industrial
10 Welfare Commission." If an employer does not provide a duty-free meal or rest period, i.e.,
11 one that is free of employer control, the 226.7 premium is triggered.

12 23. Furthermore, Plaintiff contends that because MJ mandates drivers attend to their trucks and
13 its contents, drivers are not paid wages for all hours worked. Under California law, employees
14 must be paid for all hours worked. Hours worked is defined in Wage Order 9-2001¹ as "the
15 time during which an employee is subject to the control of an employer, and includes all the
16 time the employee is suffered or permitted to work, whether or not required to do so." Wage
17 Order 9-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833
18 (2015). Under this standard, "it is only necessary that the worker be subject to the control of
19 the employer in order to be entitled to compensation." *Morillion v. Royal Packing Co.*, 22
20 Cal. 4th 575, 584 (2000). Plaintiff asserts that this deprives drivers of wages for all hours
21 worked, specifically during unpaid meal periods).

22 24. Although Plaintiff is confident in the strengths of his claims, Defendant's counter-arguments
23 raise uncertainties to success on the merits. Perhaps of chief importance are Defendant's
24 counter-arguments asserted in regard to the FMCSA and PHMSA opinions; if Defendant were
25 successful on its arguments, Plaintiff's claims for meal and rest breaks, the core claims of this
26 case, would fail entirely. Given the uncertainty of how the Ninth Circuit will rule and the
27 current trial court decisions being made in support of FMCSA's decisions, a significant
28

¹ This is the Wage Order that governs the driver class members in this case.
DECLARATION OF DAVID MARA, ESQ.

1 discount had to be factored into evaluating class-wide settlement. In light of Defendant's
2 defenses, supporting evidence, and position that the action is not suitable for class treatment,
3 the settlement amount of \$150,000.00—with an average settlement share estimated at
4 \$331.72, with a high payment of \$1,435.54 —Plaintiff and his counsel believe this is a
5 reasonable and fair settlement.

6 25. Class Counsel applies for an award of attorneys' fees in the sum of \$50,000 (which is 33 1/3%
7 of the GSA), and litigation costs of \$15,000.

8 26. As of the date of filing this Motion for Final Approval, Plaintiff's counsel has worked a total
9 of 444 hours on this case and calculated the base lodestar at \$239,900 at rates reflecting those
10 currently earned in the marketplace.

11 27. I devoted 150 hours to this case. The following is a summary of my tasks and the activities I
12 performed in this litigation: prefiling investigation; meet and confer with defense counsel;
13 discussions with class members and Plaintiff; research and investigation into California's ever
14 evolving wage and hour laws regarding compensation, overtime, meal and rest breaks,
15 itemized wage statements, and waiting time penalties; draft and file pleadings; numerous
16 interoffice discussions; review documents and discovery responses produced by Defendant;
17 numerous conferences with Defendant; review Defendant's discovery responses; analyze
18 records produced by Defendant relating to its policies, pay-structures, driver logs, and
19 timekeeping and payroll; draft mediation brief and damage exposure models; attend mediation;
20 review and revise motion for class certification; prepare for and argue at class certification
21 hearing; review Defendant's motion for summary judgment; review and revise the settlement
22 agreement and class notice; review and revise the motion for preliminary approval; draft
23 declarations in support of preliminary approval; review weekly reports from the settlement
24 administrator; review and revise the motion for final approval; draft declarations in support of
25 final approval.

26 28. My hourly rate is \$750. Based on my hourly rate and the hours expended (150), my fee is
27 \$112,500, which was reasonable and necessary to the successful litigation of this matter.

28 29. Jamie Serb was an associate at the Mara Law Firm. Ms. Serb has been a member of the

1 California Bar since 2013. She has gained extensive experience in wage and hour class
2 litigation. Ms. Serb co-drafted an amicus brief on behalf of CAOC in the recent decision by
3 the California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA
4 and wage and hour class action). She has been substantially involved in all phases of this
5 litigation. Ms. Serb was also substantially involved in the following sampling of wage and
6 hour class action and PAGA cases, of which our firm is the attorney of record: *Perez v. City*
7 *of San Diego* (Case No. 37-2014-00016621); *Hernandez v. Classic Distributing and Beverage*
8 *Group, Inc.* (Case No. BC615317); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No.
9 DR150155); *Parker v. Selland Auto Transport, Inc.* (Case No. 3:15-cv-05635-ECM); *Vega v.*
10 *Advance Beverage Co., Inc.* (Case No. BCV-16-100848); *Payton v. Atech Logistics, Inc.*
11 (Case No. SCV-258595); *Austin v. Canteen Vending; Compass Group, USA, Inc.* (Case No.
12 RG16809670); *Timothy v. Coastal Transport Co., Inc.* (Case No. 37-2016-00023458-CU-OE-
13 CTL); *Beach-Barrow v. The Hertz Corporation* (Case No. RG17848833); *Caulfield v. ITS*
14 *Logistics, LLC* (Case No. 37-2016-00044111-CU-OE-CTL); *Clavel v. La Jolla Beach &*
15 *Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Helton v. Pepsi-Cola Sales*
16 *and Distribution, Inc.* (Case No. 17-cv-1135); *McConville v. Renzenberger, Inc.* (Case No.
17 16-cv-00578).

18 30. Ms. Serb devoted 98 hours to this case. The following is a summary of her tasks and activities
19 performed in the litigation of this matter: meet and confer discussions with defense counsel;
20 discussions with Plaintiff and Class Members re: their experiences working for Defendant;
21 analyze records produced by Defendant relating to its policies, pay-structures, driver logs, and
22 timekeeping and payroll; interoffice meet and confer discussions; review and revise discovery
23 requests to propound on Defendant; review and revise responses to discovery requests
24 propounded on Plaintiff; review Defendant's discovery responses; review and analyze data
25 produced by Defendant; prepare for and attend depositions of Defendant's PMQ witnesses;
26 prepare for and defend Plaintiff's deposition; prepare for and attend mediation.

27 31. Ms. Serb's hourly rate was \$500. Based on her hourly rate and the hours expended (98), her
28 lodestar fee is \$49,000, which was reasonable and necessary to the successful litigation of this

1 matter.

2 32. Matthew Crawford is an associate at the Mara Law Firm. Mr. Crawford has been a member
3 of the California Bar since 2016. Mr. Crawford received his training in wage and hour class
4 action and PAGA lawsuits while at Mara Law Firm, PC. Mr. Crawford has been substantially
5 involved in all phases of this litigation and in the following sampling of wage and hour class
6 action and PAGA cases, of which our firm is the attorney of record: *Norona v. B&G Delivery*
7 *System, Inc.* (Case No. RG1577005); *Limon v. National Retail Transportation, Inc.* (Case No.
8 2:16-cv-02054); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011);
9 *Shroeder v. YRC Global, Inc.* (Case No. 2:16-cv-06173); *Davidson v. A&B Trucking Services,*
10 *Inc.* (Case No. 16CECG02390); *Spikes v. Bear Trucking, Inc.* (Case No. 16CECG02389);
11 *Montes v. CORAM Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-
12 CTL); *Valentich v. Hub Construction Specialties, Inc.* (Case No. RIC 1610267); *Roby v. Pan*
13 *Pacific Petroleum, Inc.* (Case No. BCV-16-101856); *Smith v. Roadrunner Management*
14 *Services, Inc.* (Case No. BC630949); *Terry v. Hoovestol, Inc.* (Case No. RG16823879);
15 *Belton v. Satellite Affordable Housing Associates* (Case No. RG17885127).

16 33. Mr. Crawford devoted 69 hours to this case. The following is a summary of his tasks and
17 activities performed in the litigation of this matter: discussions with Plaintiffs and Class
18 Members throughout case; discussions and emails with Defense Counsel throughout case;
19 interoffice discussions throughout case; review and analyze documents produced in case;
20 prepare Plaintiff for deposition; review Defendant's motion for summary judgment; draft the
21 settlement agreement and class notice; draft preliminary approval motion and supporting
22 papers; appear at preliminary approval hearing; review weekly reports from the settlement
23 administrator; drafting final approval motion and supporting papers; review and revise
24 declaration from settlement administrator; appear at final approval hearing.

25 34. Mr. Crawford's hourly rate is \$400. Based on his hourly rate and the hours expended (69), his
26 lodestar fee is \$27,600, which was reasonable and necessary to the successful litigation of this
27 matter.

28 35. Tony Roberts is an associate at the Mara Law Firm. Mr. Roberts has been a member of the

1 California Bar since 2017. He is also an adjunct professor of law at the University of San
2 Diego School of Law. He has been substantially involved in all phases of this litigation. Mr.
3 Roberts was also substantially involved in the following sampling of wage and hour class
4 action and PAGA cases, of which our firm is the attorney of record: *Hilderbrand v. LinkUs*
5 *Enterprises, LLC* (Case No. DR150155); *Hernandez v. Classic Distributing and Beverage*
6 *Group, Inc.* (Case No. BC615317); *Vega v. Advance Beverage Co., Inc.* (Case No. BCV-16-
7 100848); *Payton v. Atech Logistics, Inc.* (Case No. SCV-258595); *Mendoza v. Bi-Rite Food*
8 *Service, Inc.* (Case No. 17CIV02044); *Sanchez v. Exact Staff, Inc.* (Case No.
9 CIVDS1702554); *Beach-Barrow v. The Hertz Corporation* (Case No. RG17848833); *Clavel*
10 *v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Helton*
11 *v. Pepsi-Cola Sales and Distribution, Inc.* (Case No. 17-cv-1135); *Randall v. Professional*
12 *Auto Transport, Inc.* (Case No. RG17847058); *McConville v. Renzenberger, Inc.* (Case No.
13 16-cv-00578); *Kramer v. XPO Logistics, Inc.* (Case No. 3:16-cv-07039-WHO).

14 36. Mr. Roberts devoted 127 hours to this case. The following is a summary of his tasks and
15 activities performed in the litigation of this matter: discussions with class members and
16 Plaintiff; discussions with defense counsel; draft discovery requests to propound on Defendant;
17 draft responses to discovery requests propounded on Plaintiff; review Defendant's discovery
18 responses; review and analyze documents produced in case; prepare for and attend depositions
19 of Defendant's PMQ witnesses; prepare Plaintiff for deposition; draft motion for class
20 certification; prepare for class certification hearing.

21 37. Mr. Robert's hourly rate is \$400. Based on his hourly rate and the hours expended (127), his
22 lodestar fee is \$50,800, which was reasonable and necessary to the successful litigation of this
23 matter.

24 38. As Class Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar
25 fee is not sought herein.

26 39. All tasks and work performed were reasonable and necessary to the prosecution of this case.

27 The work performed was justified in light of the result achieved

28 40. Class Counsel seeks reimbursement of the litigation costs and expenses of \$15,000. These

- 1 costs were all reasonable and necessary to the prosecution of this case and the results achieved
2 and are fair, and reasonable.
- 3 41. Class Counsel seeks approval of a service award to named Plaintiff/Class Representative,
4 Miguel Hernandez, of \$10,000. The requested service award is reasonable in light of the
5 general releases of all claims Plaintiff agreed to, greater than the release given by Class
6 Members, the benefits Plaintiff conferred upon the entire Class, resulting in payments to all
7 Class Members, the time spent assisting counsel with the investigation and prosecution of
8 these claims, commitment to responding to anticipated discovery and to his anticipated
9 deposition, sitting for a full day deposition, and consenting to the proposed Settlement.
- 10 42. In my experience, the typical enhancement award in wage and hour class action settlements
11 ranges from \$5,000 to \$75,000. Very commonly there is more than one class representative
12 who receives an award in the above range.
- 13 43. The proposed settlement is the product of serious, informed, non-collusive negotiations, has
14 no obvious defects, does not improperly grant preferential treatment to the class representative
15 or segments of the class and falls within the range of fair and reasonable settlements. I believe
16 that this non-reversionary settlement is in the best interests of the class as fair, reasonable, and
17 adequate. Therefore, I recommend approval of the settlement.
- 18 44. A true and correct copy of the Summary of Time and Costs is attached hereto as **Exhibit 1**.
- 19 45. A true and correct copy of Westlaw Court Express's Legal Billing Report, Volume 14,
20 Number 3, California Region for December 2012 is attached hereto as **Exhibit 2**.
- 21 46. A true and correct copy of the 2014 Declaration of Richard Pearl in *Hohnbaum v. Brinker*
22 *Restaurant Corp.* SDSC GIC834348 is attached hereto as **Exhibit 3**.
- 23 47. A true and correct copy of the 2012 National Law Journal Survey of Hourly Billing Rates for
24 Partners and Associates is attached hereto as **Exhibit 4**.
- 25 48. A true and correct copy of the Joint Stipulation and Settlement Agreement is attached hereto
26 as **Exhibit 5**.
- 27 49. A true and correct copy of the filing receipt from Plaintiff's upload of his final approval
28 motion and supporting documents to the LWDA's website is attached as **Exhibit 6**.

1 50. A true and correct copy of the confirmation that the upload of Plaintiff's final approval motion
2 was received by the LWDA is attached as **Exhibit 7**.

3 I hereby declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Dated: December 8, 2020

A handwritten signature in dark ink, appearing to read "DM", is written over a horizontal line.

David Mara, Esq.

Exhibit 1

SUMMARY OF TIME AND COSTS

Miguel Hernandez v. MJ Industries, Inc. dba MJ Tank Lines

San Diego County Superior Court Case No. 37-2017-00003218-CU-OE-CTL

Hours: 444
Lodestar Fees: \$ 239,900.00
Costs: \$ 30,347.53

As of 12/8/2020

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara	2004 (16)	150	\$750	\$112,500.00
Jamie Serb	2013 (7)	98	\$500	\$ 49,000.00
Matthew Crawford	2016 (4)	69	\$400	\$ 27,600.00
Tony Roberts	2017 (3)	127	\$400	\$ 50,800.00
MARA LAW FIRM, PC TOTAL:		444		\$239,900.00

*****This does NOT include the anticipated attorney time to prepare for/travel to/attend final approval and any supplemental hearings, administrator declarations, work with defense counsel and administrator re: funding, distribution, tax forms, transmittal instruments - process, answer class member questions, etc.***

LITIGATION EXPENSES	
MARA LAW FIRM, PC	\$30,347.53
TOTAL COSTS	\$30,347.53

Miguel Hernandez v. MJ Industries, Inc., et al.
San Diego County Superior Court Case No. 37-2017-00003218-CU-OE-CTL

Costs Summary

Attorney Service:	\$	188.00
Court Fees:	\$	4,679.95
Mediation:	\$	13,000.00
Copies/Faxes:	\$	1,251.00
Telephone:	\$	584.88
Legal & Factual Investigation	\$	2,780.77
Postage:	\$	183.62
Court Reporters:	\$	2,886.60
Experts:	\$	3,400.00
Travel:	\$	1,392.71
TOTAL COSTS	\$	<u>30,347.53</u>

Exhibit 2

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY REGION, BY FIRM

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California Report

FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Alvin Gomp Strauss Hauer & Feld LLP						
Partner	1993	1993	CA	\$ 825.00	8.10	\$ 6,682.50
Partner	1993	1993	CA	\$ 725.00	2.60	\$ 1,885.00
Senior Counsel	1993	1993	CA	\$ 725.00	10.70	\$ 8,567.50
TOTAL						
U.S.B.C New York Southern						
Private Air/Inns Corp (12-11343 REG)						
From the fee application covering						
July 1, 2012 through October 31, 2012						
NLI Ranking:						
Firm Size:						
U.S.B.C Delaware						
Trident Microsystems, Inc. (12-10063 CSS)						
From the fee application covering						
October 1, 2012 through October 31, 2012						
NLI Ranking:						
Firm Size:						
U.S.B.C New York Southern						
LightSquared, Inc. (12-12080 SCC)						
From the fee application covering						
October 1, 2012 through October 31, 2012						
NLI Ranking:						
Firm Size:						

California Report

FIRM

Kornfield, Nyberg, Bander & Kuhner, P.C.,
Partner Eric A. Nyberg
Paraprofessional Nancy L. Nyberg

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1987	1987	CA	\$ 425.00	15.90	\$ 7,182.50
		CA	90.00	0.30	24.00
				17.20	\$ 7,206.50
TOTAL					

U.S.B.C California Northern
Hawrey LLP(41-34376-DJ)
From the fee application covering
August 1, 2012 through August 31, 2012
NJ Ranking: n/a
Firm Size: 3

Loeb & Loeb

Partner	Lance N. Jurich	1987	CA	\$ 695.00	1.50	\$ 1,320.50
Partner	Christopher W. Campbell	1999	CA	550.00	46.20	30,030.00
Associate	Ryan M. Audin	2007	CA	550.00	122.30	67,255.00
Associate	Jeanne C. Wanless	1993	CA	435.00	18.20	7,917.00
Paraprofessional	S. Steadman			280.00	0.20	52.00
TOTAL					182.30	\$ 105,584.50

U.S.B.C California Central
American Medical Technologies(8-12-12339-MW)
From the fee application covering
July 1, 2012 to September 30, 2012
NJ Ranking: 144
Firm Size: 301

Pachtulski Stang Ziehl Young Jones & Weintraub

Of Counsel	James K. T. Hunter	1976	CA	\$ 745.00	0.10	\$ 74.50
Partner	Samuel R. Matzel	1985	CA	725.00	40.90	29,652.50
Of Counsel	Jeffrey Kandell	1984	CA	615.00	0.50	307.50
Partner	Mahar S. Pagay	1997	CA	615.00	1.80	1,107.00
Partner	Scotta McFarland	1980	CA	615.00	47.80	29,397.00
Of Counsel	Mary Lane	1976	CA	595.00	3.80	2,261.00
Partner	Nina Hong	1995	CA	595.00	0.50	297.50
Associate	Teddy M. Kapur	2006	CA	495.00	8.40	4,158.00
Library	Leslie A. Forrester			295.00	1.10	324.50
Paraprofessional	Felice Harrison			275.00	23.00	6,325.00
TOTAL					127.90	\$ 73,904.50

U.S.B.C California Central
American Medical Technologies(8-12-12339-MW)
From the fee application covering
July 1, 2012 to July 31, 2012
NJ Ranking: n/a
Firm Size: 55

California Report

FIRM

Pedraza & Stang Ziehl Young Jones & Weintraub

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	1979	1979	CA	\$ 975.00	0.80	\$ 780.00
Partner	1982	1983	CA	\$ 875.00	12.80	\$ 11,200.00
Of Counsel	1975	1976	CA	\$ 745.00	4.00	\$ 2,980.00
Partner	1983	1983	CA	\$ 745.00	50.80	\$ 37,846.00
Partner	1983	1984	CA	\$ 725.00	11.10	\$ 8,047.50
Of Counsel	1987	1987	CA	\$ 675.00	15.80	\$ 10,462.50
Of Counsel	1987	1987	CA	\$ 595.00	5.20	\$ 3,094.00
Of Counsel	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
Associate	2004	2010	CA	\$ 525.00	31.00	\$ 16,275.00
Paraprofessional				265.00	2.50	\$ 862.50
Paraprofessional				265.00	7.70	\$ 2,040.50
Paraprofessional				265.00	1.00	\$ 265.00
Case Management				185.00	5.40	\$ 993.00
Case Management				185.00	0.40	\$ 74.00
TOTAL					152.50	\$ 57,198.50

Paul Hastings LLP

Partner	1976	1976	CA	\$ 840.00	15.80	\$ 13,272.00
Of Counsel	1983	1983	CA	\$ 785.00	132.40	\$ 115,062.00
Associate	2006	2006	CA	\$ 615.00	31.10	\$ 19,126.50
Associate	2007	2008	CA	\$ 575.00	181.70	\$ 104,477.50
Associate	2009	2009	CA	\$ 485.00	87.10	\$ 42,343.50
Associate	2010	2010	CA	\$ 385.00	57.00	\$ 37,345.00
Associate	2010	2010	CA	\$ 385.00	160.20	\$ 81,577.00
TOTAL					725.30	\$ 393,203.50

Seyfarth Shaw LLP

Counsel	1996	1996	CA	\$ 580.00	2.40	\$ 1,832.00
Partner	1985	1985	CA	\$ 620.00	1.50	\$ 930.00
Counsel	1997	1997	CA	\$ 540.00	55.60	\$ 30,564.00
TOTAL					60.50	\$ 33,426.00

U.S.B.C Delaware
Trident Microsystems, Inc. (12-10089 (CSS))

From the fee application covering
September 1, 2012 through September 30, 2012

N.J. Ranking: n/a
Firm Size: 55

U.S.B.C New York Southern
AMR Corporation (11-15463 (SHL))

From the fee application covering
July 1, 2012 through July 31, 2012

N.J. Ranking: 30
Firm Size: 851

U.S.B.C New York Southern
Grubb & Ellis Company (12-10085 (MG))

From the fee application covering
July 2, 2012 through October 31, 2012

N.J. Ranking: 50
Firm Size: 733

California Report

FIRM Sidley Austin LLP

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	1995	1995	CA	\$ 875.00	18.10	\$ 12,217.50
Associate	2010	2010	CA	450.00	117.50	53,065.00
Associate	2011	2011	CA	355.00	41.00	14,555.00
TOTAL					177.00	\$ 79,827.50

U.S.B.C Delaware
Tribune Company, et al. (08-13144 FJCJ)

From the fee application covering
September 1, 2012 through September 30, 2012

NLI Ranking: 10
Firm Size: 1,592

Tenys LLP

Partner	1983	1983	CA	\$ 995.00	5.50	\$ 5,472.50
Partner	1974	1974	CA	995.00	0.40	398.00
Partner	1977	1977	CA	810.00	0.50	405.00
Associate	2008	2008	CA	695.00	21.10	14,564.50
Associate	2007	2007	CA	565.00	110.00	62,150.00
Associate	2008	2008	CA	500.00	0.50	250.00
Library				355.00	0.80	284.00
Law Clerk				395.00	43.90	13,389.50
Paraprofessional				250.00	28.20	7,332.00
Paraprofessional					210.90	\$ 104,345.50
TOTAL						

U.S.B.C Delaware
Nettel Networks Inc. (09-10139)

From the fee application covering
August 1, 2012 through October 31, 2012

NLI Ranking: n/a
Firm Size: 236

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY BILLING RATE

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	John Cameron	1983	1983	CA	\$ 995.00	5.50	\$ 5,472.50
Partner	Shelia Block	1974	1974	CA	\$ 995.00	0.40	388.00
Partner	Richard M. Pachulski	1979	1979	CA	\$ 975.00	0.80	780.00
Partner	Ira D. Kharasch	1982	1982	CA	\$ 875.00	12.80	11,200.00
Partner	J. A. Latham Jr.	1978	1978	CA	\$ 840.00	15.80	13,272.00
Partner	David P. Stronids	1983	1983	CA	\$ 825.00	9.10	6,682.50
Partner	Michael Rotszala	1977	1977	CA	\$ 810.00	0.50	405.00
Partner	Nate McKittick	1989	1989	CA	\$ 780.00	0.60	474.00
Partner	Richard Yankeiwich	1979	1979	CA	\$ 780.00	39.40	30,732.00
Partner	Ana Lawton	1989	1989	CA	\$ 785.00	50.30	68,176.50
Of Counsel	Jennifer S. Baldocchi	1983	1983	CA	\$ 765.00	152.40	115,062.00
Of Counsel	James K.T. Hunter	1976	1976	CA	\$ 745.00	0.10	74.50
Partner	John D. Fiero	1976	1976	CA	\$ 745.00	4.00	2,980.00
Senior Counsel	Edward P. Christian	1989	1989	CA	\$ 745.00	50.80	37,846.00
Partner	Samuel R. Malzel	1985	1985	CA	\$ 725.00	2.80	1,895.00
Partner	Bruce Grohschal	1983	1983	CA	\$ 725.00	40.90	29,632.50
Partner	Heather Dunn	2000	2000	CA	\$ 705.00	11.10	8,047.50
Partner	Lance N. Jurth	1987	1987	CA	\$ 695.00	1.90	1,320.50
Associate	Jessica Bullock	2003	2003	CA	\$ 695.00	21.10	14,684.50
Counsel	Ellen Sueda	1983	1983	CA	\$ 675.00	2.40	1,632.00
Of Counsel	Henry Hochman	1987	1987	CA	\$ 675.00	16.50	10,462.50
Partner	Max C. Fischer	1985	1985	CA	\$ 675.00	18.10	12,217.50
Partner	Jeffrey D. Karsonson	1988	1988	CA	\$ 650.00	12.70	8,255.00
Partner	Christopher W. Campbell	1989	1989	CA	\$ 650.00	46.20	30,030.00
Of Counsel	Ben Gibson	2002	2002	CA	\$ 640.00	3.10	1,984.00
Associate	Bertrand Pan	2004	2004	CA	\$ 630.00	170.00	107,100.00
Partner	Colleen M. Regan	1985	1985	CA	\$ 620.00	1.50	930.00
Of Counsel	Jeffrey Kamel	1984	1984	CA	\$ 615.00	0.50	307.50
Partner	Malhar S. Pargy	1984	1984	CA	\$ 615.00	1.60	1,107.00
Partner	Scott McFarland	1980	1980	CA	\$ 615.00	47.80	29,397.00
Associate	Melinda A. Gordon	2009	2009	CA	\$ 615.00	31.10	19,126.50
Of Counsel	Mary Lane	1976	1976	CA	\$ 595.00	3.90	2,281.00
Partner	Nina Hong	1986	1986	CA	\$ 595.00	0.90	535.50
Of Counsel	Gabriele Rohrer	1997	1997	CA	\$ 595.00	5.20	3,094.00

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Of Counsel	Pachulski Stang Ziehl Young Jones & Weintraub	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
William Ramseyer	Paul Hastings LLP	2007	2008	CA	\$ 575.00	191.70	104,477.50
Robert E. Zivver	Tony's LLP	2007	2007	CA	\$ 555.00	110.00	62,150.00
Adam Siverts	Loeb & Loeb	2007	2007	CA	\$ 550.00	122.30	67,265.00
Ryan M. Aulich	Seyfarth Shaw LLP	1997	1997	CA	\$ 40.00	56.60	30,854.00
Holger Basch	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2010	CA	\$ 525.00	31.00	16,275.00
John W. Lucas	DLA Piper LLP	2008	2008	CA	\$ 510.00	87.00	34,170.00
Diana M. Malzer	Tony's LLP	2008	2008	CA	\$ 500.00	0.50	250.00
Madhew Akoy	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2008	CA	\$ 495.00	8.40	4,158.00
Teddy M. Kumar	Paul Hastings LLP	2009	2009	CA	\$ 485.00	87.10	42,243.50
Liam M. Paez	DLA Piper LLP	2011	2011	CA	\$ 470.00	1.80	846.00
Natasha Hsieh	Sidley Austin LLP	2010	2010	CA	\$ 450.00	117.50	53,055.00
Michael T. Gustafson	Gibson Dunn & Crutcher, LLP	2010	2010	CA	\$ 445.00	19.20	8,544.00
Virginia FRI	Loeb & Loeb	1993	1993	CA	\$ 435.00	18.20	7,917.00
Jeanne C. Wanlass	Kornfield, Nyberg, Bendes & Kuhner, P.C.	1987	1987	CA	\$ 425.00	16.90	7,182.50
Eric A. Nyberg	DLA Piper LLP	2000	2000	CA	\$ 400.00	4.10	1,640.00
Tina Bhattachal	Gibson Dunn & Crutcher, LLP	2011	2011	CA	\$ 395.00	12.60	4,577.00
Matthew Bourisog	Paul Hastings LLP	2010	2010	CA	\$ 385.00	97.00	37,345.00
Ji Hae Kim	Paul Hastings LLP	2010	2010	CA	\$ 385.00	160.20	61,677.00
Marlo C. Ortega	Sidley Austin LLP	2011	2011	CA	\$ 355.00	41.00	14,555.00
Francis S. Lum	Tony's LLP	2000	2000	CA	\$ 305.00	0.80	264.00
Clare Mauro	Tony's LLP	2000	2000	CA	\$ 305.00	43.90	13,389.50
Bradley Tordick	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 285.00	1.10	324.50
Leslie A. Forrester	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 275.00	23.00	6,325.00
Paraprofessional Felicia Harrison	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	2.50	662.50
Paraprofessional Patricia Cuniff	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	7.70	2,040.50
Paraprofessional Louise Tuzchak	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	1.00	265.00
Paraprofessional Cheryl A. Krotz	Loeb & Loeb	2000	2000	CA	\$ 260.00	0.20	52.00
Paraprofessional S. Steadman	Tony's LLP	2000	2000	CA	\$ 260.00	28.20	7,332.00
Paraprofessional Dianna Rajah	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	5.40	595.00
Case Manager Sharita Filman	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	0.40	74.00
Case Manager Dina K. Whaley	Kornfield, Nyberg, Bendes & Kuhner, P.C.	2000	2000	CA	\$ 80.00	0.30	24.00
Paraprofessional Nancy L. Nyberg							

Exhibit 3

1 DEBRA L. HURST (SBN 106118)
2 KYLE VAN DYKE (SBN 171186)
3 JULIE CORBO RIDLEY (SBN 234274)
4 **HURST & HURST**
5 701 "B" Street, Suite 1700
6 San Diego, CA 92101
7 Telephone: 619.236.0016
8 Facsimile: 619.236.8569

WILLIAM TURLEY (SBN 122408)
DAVID T. MARA (SBN 230498)
The Turley Law Firm, APLC
625 Broadway, Suite 625
San Diego, CA 92101
Telephone: 619.234.2833
Facsimile: 619.234.4048

RAUL CADENA (SBN 185787)
NICOLE R. ROYSDON (SBN 262237)
CADENA CHURCHILL, LLP
701 "B" Street, Suite 1700
San Diego, CA 92101
Telephone: 619.546.0888
Facsimile: 619.923.3208

L. TRACEE LORENS (SBN 150138)
LORENS AND ASSOCIATES, APLC
701 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619.239-1233
Facsimile: 619.239-1178

Additional Counsel Listed After Signature Page
Attorneys for Plaintiffs and the certified Class

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

ADAM HOHNBAUM, ILLYA HAASE,
ROMEO OSORIO, AMANDA JUNE RADER,
and SANTANA ALVARADO and ROES 1
through 500, Inclusive on behalf of themselves
and all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

BRINKER RESTAURANT CORPORATION,
BRINKER INTERNATIONAL, INC. and
BRINKER INTERNATIONAL PAYROLL
COMPANY, LP a Delaware Corporation; and
DOES 1 through 500, Inclusive

Defendants.

CASE NO.: GIC834348

CLASS ACTION

DECLARATION OF RICHARD M.
PEARL IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL
APPROVAL AND OF CLASS ACTION
SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
SERVICE PAYMENTS, AND CLAIMS
ADMINISTRATION EXPENSES

Date: December 12, 2014

Time: 1:30 p.m.

Dept.: C-69

Judge: Hon. Katherine A. Bacal

Complaint Filed: August 16, 2004

1 I, RICHARD M. PEARL, hereby declare the following:

2 1. I am a member in good standing of the California State Bar. I am in
3 private practice as the principal of my own law firm, the Law Offices of Richard
4 M. Pearl, in Berkeley, California. I specialize in issues related to court-awarded
5 attorneys' fees, including the representation of parties in fee litigation and
6 appeals, serving as an expert witness, and serving as a mediator and arbitrator in
7 disputes concerning attorneys' fees and related issues. In this case, I have been
8 asked by Plaintiffs' counsel to render my opinion on the reasonableness of the
9 hourly rates they are requesting in this matter. I make this Declaration in Support
10 of Plaintiffs' Motion for Award of Reasonable Attorneys' Fees.

11 **Professional Background**

12 1. Briefly summarized, my background is as follows: I am a 1969
13 graduate of Boalt Hall School of Law, University of California, Berkeley,
14 California. I took the California Bar Examination in August 1969 and passed it in
15 November of that year, but because I was working as an attorney in Atlanta,
16 Georgia for the Legal Aid Society of Atlanta (LASA), I was not admitted to the
17 California Bar until January 1970. I worked for LASA until summer of 1971,
18 when I then went to work in California's Central Valley for California Rural Legal
19 Assistance, Inc. (CRLA), a statewide legal services program. From 1977 to 1982,
20 I was CRLA's Director of Litigation, supervising more than fifty attorneys. In
21 1982, I went into private practice, first in a small law firm, then as a sole
22 practitioner. Martindale Hubbell rates my law firm "AV." I also have been
23 selected as a Northern California "Super Lawyer" in Appellate Law for 2005,
24 2006, 2007, 2008, 2010, 2011, 2012, 2013, and 2014. A copy of my current
25 Resume is attached hereto as Exhibit A.

26 2. Since 1982, my practice has been a general civil litigation and
27 appellate practice, with an emphasis on cases and appeals involving court-awarded
28 attorneys' fees. I also am the author of *California Attorney Fee Awards* (3d ed.

1 Cal. CEB 2010) and its February 2011, 2012, 2013, and March 2014 Supplements,
2 as well as all its previous editions and annual supplements. California appellate
3 courts have cited this treatise on more than 35 occasions. *See, e.g., Graham v.*
4 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 576, 584; *Lolley v. Campbell* (2002)
5 28 Cal.4th 367, 373; *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259; *Syers*
6 *Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698, 700. I also have
7 lectured and written extensively on court-awarded attorneys' fees. I have been a
8 member of the California State Bar's Attorneys' Fees Task Force and have
9 testified before the State Bar Board of Governors and the California Legislature on
10 attorneys' fee issues. In addition, I authored a federal manual on attorneys' fees
11 entitled *Attorneys' Fees: A Legal Services Practice Manual*, published by the
12 Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in
13 Volume 2 of CEB's *Wrongful Employment Termination Practice*, 2d Ed. (1997).

14 3. More than 90% of my practice is devoted to issues involving court-
15 awarded attorneys' fees. I have been counsel in over 180 attorneys' fee
16 applications in state and federal courts, primarily representing other attorneys. I
17 also have briefed and argued more than 40 appeals, at least 25 of which have
18 involved attorneys' fees issues. I have successfully handled five cases in the
19 California Supreme Court involving court-awarded attorneys' fees: (1) *Maria P. v.*
20 *Riles* (1987) 43 Cal.3d 1281, a landmark early decision on the scope of California
21 Code of Civil Procedure section 1021.5; (2) *Delaney v. Baker* (1999) 20 Cal.4th
22 23, which held that heightened remedies, including attorneys' fees, are available in
23 suits against nursing homes under California's Elder Abuse Act; (3) *Ketchum v.*
24 *Moses* (2001) 24 Cal.4th 1122, which held, *inter alia*, that contingent risk
25 multipliers remain available under California attorney fee law, despite the United
26 States Supreme Court's contrary ruling on federal law (note that in *Ketchum*, I was
27 primary appellate counsel in the Court of Appeal and "second chair" in the
28 Supreme Court); (4) *Flannery v. Prentice* (2001) 26 Cal.4th 572, which held that in

1 the absence of an agreement to the contrary, statutory attorneys' fees belong to the
2 attorney whose services they are based upon; and (5) *Graham v. DaimlerChrysler*
3 *Corp.* (2004) 34 Cal.4th 553, which held, *inter alia*, that the "catalyst" theory was
4 still valid under California law despite federal Supreme Court authority to the
5 contrary. I also represented and argued on behalf of *amicus curiae* in
6 *Conservatorship of McQueen* (2014) 59 Cal.4th 602, and, along with Richard
7 Rothschild, filed an *amicus curiae* brief in *Vasquez v. State of California* (2009) 45
8 Cal.4th 243. I also have handled numerous other appeals involving attorney's fees,
9 including: *Davis v. City & County of San Francisco* (9th Cir. 1992) 976 F.2d 1536;
10 *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470; *Moore v. Bank of America* (9th
11 Cir. 2007) 245 Fed.Appx. 613; *Velez v. Wynne* (9th Cir. 2007) 2007
12 U.S.App.LEXIS 2194; *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523
13 F.3d 973; *Center for Biological Diversity v. County of San Bernardino* (2010) 185
14 Cal.App.4th 866; and *Environmental Protection Information Center v. California*
15 *Dept. of Forestry & Fire Protection et al* (2010) 190 Cal.App.4th 217. For an
16 expanded list of my representative decisions, see Exhibit A.

17 4. I also have been retained by various governmental entities, including
18 the State of California, at my then current rates to consult with them regarding their
19 affirmative attorney fee claims.

20 5. I am frequently called upon to opine about the reasonableness of
21 attorneys' fees, and numerous federal and state courts have cited my testimony on
22 that issue favorably. The reported cases referencing my testimony include the
23 following California appellate courts: *Laffite v. Robert Half Int'l* (2014)
24 __Cal.App.4th __, 2014 Cal.App.LEXIS 1059; *In re Tobacco Cases I* (2013) 216
25 Cal.App.4th 570; *Heritage Pacific Financial LLC v. Monroy* (2013) 215
26 Cal.App.4th 972, 1009; *Children's Hospital & Medical Center v. Bonta* (2002) 97
27 Cal.App.4th 740; *Wilkinson v. South City Ford* (2010) 2010 Cal.App.Unpub.
28 LEXIS 8680; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628

1 (anti-SLAPP case). My declaration also has been favorably referenced by the
2 following federal courts: *Prison Legal News v. Schwarzenegger* (9th Cir. 2010)
3 608 F.3d 446, 455, in which the expert declaration referred to in that opinion is
4 mine; *Antoninetti v. Chipotle Mexican Grill, Inc.* (9th Cir. 2012) Order filed Dec.
5 26, 2012; *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D.Cal. 2013) No. M
6 07-1827 SI, MDL, No. 1827, Report and Recommendation of Special Master re
7 Motions for Attorneys' Fees etc., filed Nov. 9, 2012, adopted in relevant part, 2013
8 U.S.Dist.LEXIS 49885; *Rosenfeld v. United States Dept. of Justice* (N.D. Cal.
9 2012) 904 F.Supp.2d 988; *Stonebrae v. Toll Bros.* (N.D. Cal. 2011) 2011
10 U.S.Dist.LEXIS 39832, at *9 (thorough discussion), *aff'd* (9th Cir. 2013) 2013
11 U.S.App.LEXIS 6369; *Hajro v. United States Citizenship & Immigration Service*
12 (N.D.Cal 2012) 900 F.Supp.2d 1034, 1054; *Armstrong v. Brown* (N.D. Cal. 2011)
13 2011 U.S.Dist.LEXIS 87428; *Californians for Disability Rights, Inc. v. California*
14 *Dept. of Transportation* (N.D. Cal. 2010) 2010 U.S.Dist.LEXIS 141030; *Prison*
15 *Legal News v. Schwarzenegger* (N.D. Cal. 2008) 561 F.Supp.2d 1095 (an earlier
16 motion); *Oberfelder v. City of Petaluma* (N.D. Cal. 2002) 2002 U.S.Dist.LEXIS
17 8635, *aff'd* (9th Cir. 2003) 2003 U.S.App.LEXIS 11371; *Bancroft v. Trizechahn*
18 *Corp.*, C.D. Cal. No. CV 02-2373 SVW (FMOx), Order Granting Reasonable
19 Attorneys' Fees etc., filed Aug. 14, 2006; *Willoughby v. DT Credit Corp.*, C.D.
20 Cal. No. CV 05-05907 MMM (Cwx), Order Awarding Reasonable Attorneys' Fees
21 After Remand, filed July 17, 2006; *A.D. v. California Highway Patrol* (N.D.Cal.
22 2009) 2009 U.S.Dist.LEXIS 110743, *rev's'd on other grounds* (9th Cir. 2013) 712
23 F.3d 446, *reaffirmed and additional fees awarded on remand* at 2013
24 U.S.Dist.LEXIS 169275; *National Federation of the Blind v. Target Corp.*
25 (N.D.Cal. 2009) 2009 U.S.Dist.LEXIS 67139. In addition, numerous trial courts
26 have relied upon my testimony in unpublished fee orders.

27 6. I also have extensive experience litigating the merits of class actions,
28 including numerous housing, government benefits, and consumer class actions.

1 See, e.g., *Employment Dev. Dept. v. Superior Court (Boren)* (1981) 30 Cal.3d 256.

2 I also have represented Class Counsel on their fee requests in numerous highly-
3 contested class actions, including *Davis v. City & County of San Francisco, supra*,
4 *Duran v. First National Bank*, Alameda County Superior Court No. 2001-035537,
5 and *Molina, et al. v. Lexmark International, et al.*, Los Angeles County Superior
6 Court No. BC339177.

7 7. In this matter, I have reviewed several documents from the underlying
8 litigation and fee motion, including the entire Motion for Preliminary Approval, as
9 well as the declarations of Plaintiffs' principal counsel filed in support of the
10 instant motion. I also have discussed the case with class counsel Julie Corbo-
11 Ridley.

12 **PLAINTIFFS' ATTORNEYS' HOURLY RATES ARE**
13 **REASONABLE**

14 8. Through my writing and practice, I have become knowledgeable
15 about the non-contingent market rates charged by attorneys in California and
16 elsewhere. I have obtained this knowledge in several ways: (1) by handling
17 attorneys' fee litigation; (2) by preparing expert declarations in numerous cases;
18 (3) by discussing fees with other attorneys; (4) by obtaining declarations regarding
19 prevailing market rates in cases in which I represent attorneys seeking fees; and (5)
20 by reviewing attorneys' fee applications and awards in other cases, as well as
21 surveys and articles on attorneys' fees in the legal newspapers and treatises.

22 9. I am aware of the hourly rates being requested by Plaintiffs' attorneys
23 in this case, their experience and qualifications, the nature of the work performed,
24 and the results achieved. Under California law, Plaintiff's attorneys are entitled to
25 their requested rates if those rates are "within the range of reasonable rates charged
26 by and judicially awarded comparable attorneys for comparable work." *Children's*
27 *Hosp. & Med. Ctr. v. Bonta [CHMC]* (2002) 97 Cal.App.4th 740, 783. In my
28 opinion, the information about non-contingent hourly rates I have gathered, some

1 of which is summarized below, shows that the rates requested by Plaintiffs'
2 counsel in this matter are well within the range of the non-contingent market rates
3 charged by California and San Diego attorneys of reasonably comparable
4 experience, skill, and expertise for reasonably comparable services. I base that
5 opinion in large part on the following data:

6 **Court Awards**

7 10. Several of the Plaintiffs' law firms have had the hourly rates requested
8 here, or their equivalent rates in prior years, approved by the courts in other class
9 actions. For example, Hurst & Hurst's rates were found reasonable in *Serochi v.*
10 *Bosa Development California II, Inc., et al.*, San Diego Superior Court Case No.:
11 37-2009-00096686-CU-BT-CTL. Similarly, Ms. Lorens's 2012 rate of \$795/hour
12 was approved in November 2012 in *Hoch v. Rockin' Baja Coastal Cantina, et al.*,
13 San Diego Superior Court Case No. 37-2012-00095176-CU-OE-CTL/*Mojica v.*
14 *Rockin' Baja Coastal Cantina, et al.*, San Diego Superior Court Case No. 37-2012-
15 00091490-CU-OE-CTL. This is highly probative evidence of the reasonableness
16 of their rates in subsequent reasonably similar cases.

17 11. Counsel's rates are also consistent with the following court awards
18 from the Southern District of California¹:

19 (1) In *Hartless v. Clorox*, 273 F.R.D. 630, 644 (S.D. Cal. 2011), the
20 Court found, *inter alia*, that class counsel's requested rates were consistent with
21 the hourly rates found reasonable in numerous other class actions and with rates
22 charged by other firms in the San Diego area, including rates of \$795 per hour for a
23 25-year attorney and \$675 per hour for an experienced partner. 273 F.R.D. at 644.

24
25 ¹ In my experience, for purposes of the hourly rates charged and found reasonable by the courts,
26 the differences between types of class actions (i.e. wage and hour class actions versus consumer
27 class actions) are not significant, either factually or legally. See, e.g., *Heritage Pacific Financial,*
28 *LLC v. Monroy*, 215 Cal.App.4th 972, 1009 (2013); *Camacho v. Bridgeport Financial, Inc.*, 523
F.3d 973, 979 (9th Cir. 2008).

1 Given the rate increases that have occurred over the ensuing three years, counsel's
2 rates here are certainly within the same range.

3 (2) In *Shames v. Hertz Corp.*, 2012-2 Trade Case. (CCH) ¶78,120 (S.D.
4 Cal. 2012), the Court, relying on *Hartless*, found that plaintiffs' San Diego
5 Counsel there were comparable in skill and experience to the attorneys whose rates
6 were found reasonable in *Hartless*. At *59-61.

7 (3) In *Briarwood Capital LLC v. HCC Investors LLC*, San Diego
8 Superior Court No. GIC877446, on March 30, 2011, the court (Judge William R.
9 Nevitt Jr.) found that the 2009 hourly rates charged by the San Diego office of
10 Bernstein Litowitz Berger & Grossman LLP -- \$725 for partners, \$490-550 for
11 associates -- were reasonable.

12 (4) Similarly, in the same case, the court found that the 2009 rates
13 charged by the Century City office of O'Melveny & Myers LLP, including rates of
14 \$860-950 for a 36-37 year attorney and \$700-710 for 16-18 year attorneys also
15 were reasonable for San Diego litigation. Again, given the rate increases that have
16 occurred over the past three years, Plaintiffs' attorneys' current rates here are in the
17 same range as those found reasonable in *Briarwood Capital*.

18 (5) In *Atlas v. Accredited Home Lenders Holdings, Co.* Case No. 07-
19 CV-488-H-CAB (S.D. Cal. 2009), the court (Judge Marilyn Huff) found the 2009
20 rates charged by Bernstein Litowitz's San Diego office reasonable. Again, those
21 rates ranged from \$490 to \$550 for associates, and \$725 for a partner.

22 (6) In *In re Virgil's Tours*, Case No. 08-30659 (Bank. N.D. Cal. 2008),
23 the court found reasonable the 2008 rates requested by Morrison & Foerster LLP's
24 San Diego office. Those rates ranged from \$600 to \$675 for partners, from \$350 to
25 \$485 for associates, and from \$220 to \$245 for paralegals.

26 (7) In *Qualcomm, Inc. v. Broadcom, Inc.* Case No. 05-CV-1958-B,
27 2008 WL 2705161 (S.D. Cal. 2008), the court found the 2007 hourly rates
28 requested by Wilmer Cutler, Pickering, Hale & Dorr LLP reasonable for San

1 Diego-based litigation. Those rates ranged from \$45 to \$300 for staff and
2 Paralegals, from \$275 to \$505 for associates and counsel, and from \$435 to \$850
3 for partners.

4 12. In addition to local courts, the following hourly rates have been
5 found reasonable by various California courts for reasonably similar services:

6 **2014**

7 (1) *IPVX Patent Holdings, Inc. v. Voxernet LLC*, N.D. Cal. No.
8 5:13-CV-01708-HRL, a patent infringement case, in which the court found the
9 following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
<u>2014</u>	
45	\$750
35	750
23	725
19	695
5	400
3	350
Paralegal	125
<u>2013</u>	
18	\$755
11	595
2	425
<u>2012</u>	
40	\$865
17	755
10	595
1	375

23 (2) *Doe v. United Healthcare Insurance Co., et al.*, C.D. Cal. No.
24 SACV 13-0864 DOC(JPRx), Order Granting Attorney's Fees and Costs, filed
25 October 15, 2014, a multi-Plaintiff consumer action, in which the court found the
26 following hourly rates reasonable:

<u>Whatley Kallas</u>	
<u>Years of Experience</u>	<u>Rate</u>
36	\$950

Whatley Kallas

<u>Years of Experience</u>	<u>Rate</u>
27	900
32	800
33	750
21	700
10	600
4	400
2	375
Paralegal	225
Intern	125

Consumer Watchdog

35	\$925
19	650
4	425

(3) *Rose v. Bank of America Corp.*, N.D. Cal. No. 5:11-CV-02390-EJD; 5:12 CV-04009-EJD, Order Granting Motion for Final Approval of Settlement; Granting in Part and Denying in Part Motion for Attorney's Fees and Costs, filed August 29, 2014, a consumer class action involving the Bank's loan servicing calls, in which the court found the following hourly rates reasonable:

Partners: \$775-350

Associates: \$525-325

(4) *Carpio v. California Department of Social Services, Los Angeles County Superior Court*, No. BS 135127, Order Granting Petitioner's Motion For Attorney's Fees, filed July 24, 2014, a government benefits writ of mandate, in which the court found the following hourly rates reasonable:

<u>Years</u>	<u>Rate</u>
39	\$750
35	730
13	500
8	460
6	440

(5) *Cornell v. City & County of San Francisco*, San Francisco County

1 Superior Court No. CGC-11-509240, Order Granting Motion for Reasonable
2 Attorneys' Fees, Subject to Modifications, filed May 15, 2014, an individual police
3 misconduct/employment action, in which the court found the following hourly
4 rates reasonable, plus a 1.25 lodestar multiplier for merits work:

<u>Years of Experience</u>	<u>Rate</u>
45	\$750
35	750
23	725
19	695
5	400
3	350
Paralegal	125

11 **2013 Rates**

12 (1) *Ellis v. Costco Wholesale Corp.*, N.D. Cal. No. C04-3341 EMC,
13 Order Granting Motion for Final Approval of Class Action Settlement, filed May
14 27, 2014, an employment class action, in which the court found the following
15 hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
38	\$700
35	825
30	650-825
29	875
19	725
9	500
8	460
7	425-575
6	435
3	315
Paralegals	155-295
Law Clerks	185-275

25 (2) *In re Pacific Bell Late Fee Litigation*, Contra Costa County Superior
26 Ct. No. MSC10-00840, Order Awarding Attorneys' Fees, Costs and Expenses and
27 Authorizing Payment of Incentive Award to the Class Representative, filed
28 October 18, 2013, a consumer class action, in which the court found the following

hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
17	\$850
16	680
11 (partner)	680
36	675
32	675
28 (assoc.)	620
4	400
3	390
Paralegals and Litigation Support	160-180

(3) *Reuters America LLC v. The Regents of the Univ. of Calif.*, Alameda County Superior Court No. RG12-613664, Order Granting in Part Motion of Petitioner for Attorneys' Fees filed May 2, 2013, reversed on the merits sub nom *Regents of U.C. v. Superior Court* (2014) 222 Cal.App.4th 383, a California Public Records Act action, in which the trial court found the following hourly rates reasonable, before applying a 1.3 lodestar multiplier:

<u>Years of Experience</u>	<u>Rate</u>
31	\$785
27	600
6	400

(4) *Recouvreur v. Carreon* (N.D. Cal. 2013) 940 F.Supp.2d 1063, a Lanham Act/ sanctions fee motion, in which the court found the following hourly rate reasonable:

<u>Years of Experience</u>	<u>Rate</u>
20+	\$700

2012 Rates

(1) *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D.Cal. 2013) No. M 07 1827 SI, MDL, No. 1827, an antitrust class action, in which the court found the following hourly rates reasonable:

Zelle Hofman

<u>Bar Admission</u>	<u>Rate</u>
1967	\$1000
1978	861
2001	619
2002	525
2005	500
2006	472
2009	417

Steyer, Lowenthal et al.

<u>Bar Admission</u>	<u>Rate 2012</u>	<u>Rate 2011</u>	<u>Rate 2010</u>
1981	\$820	\$770	\$730
1995	660	640	590
2007	380	360	320
2008	380	360	320
1982	750	710	680
Paralegal	190		

Cooper & Kirkham

<u>Bar Admission</u>	<u>Rates 2010-2012</u>
1964	\$950
1975	825
2001	550

(2) *Rosenfeld v. United States Dept. of Justice* (N.D. Cal. 2012) 904 F.Supp.2d 988, a Freedom of Information Act action, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
28	\$700
21	550
1	200
Law students	160-180

(3) *Williams v. H&R Block Enterprises, Inc.*, Alameda County Superior Ct. No. RG08366506, Order of Final Approval and Judgment filed November 8, 2012, a wage and hour class action, in which the court found the following hourly

1 rates reasonable:

<u>Year of Bar Admission</u>	<u>Rate</u>
1970	\$785
1976	775
1981	750
1993	650-700
1994-1997	500-650
2004	500
2005	470
2006	445-475
2007	450
2008	400
2009	350

11 (4) *American Civil Liberties Union v. Drug Enforcement Administration*,
12 N.D. Cal. No. C-11-01977 RS, Order Granting Motion for Attorneys' Fees and
13 Litigation Costs Pursuant to 5 U.S.C. §552, filed November 8, 2012, a Freedom of
14 Information Act case, in which the court found the following hourly rates
15 reasonable:

<u>Year of Bar Admission</u>	<u>Rate</u>
1970	\$700
1996	595
1999	575
Law Clerks	150

20 (5) *Luquetta v. The Regents of the Univ. of California*, San Francisco
21 Superior Ct. No.CGC-05-443007, Order Granting Plaintiff's Motion for Common
22 Fund Attorneys' Fees and Expenses, filed October 31, 2012, a class action to
23 recover tuition overcharges, in which the court found the following hourly rates
24 reasonable:

<u>Year of Bar Admission</u>	<u>Rate</u>
1977	\$850
1986	785
1991	750
1994	700
1998	625

2000	570
2001	550
2002	520
Law Clerks	250
Paralegals	215

(6) *Davis v. Prison Health Services* (N.D. Cal. 2012) 2012 U.S. Dist. LEXIS 138556, an individual Fair Employment and Housing Act case, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
33	\$750
29	675
4	300
6	265

2011 Rates

(1) *Pierce v. County of Orange* (C.D. Cal. 2012) 905 F.Supp.2d 1017, a civil rights class action brought by pre-trial detainees, in which the court approved a lodestar, including appellate fees, based on the following 2011 rates:

<u>Years of Experience</u>	<u>Rate</u>
42	\$850
32	825
23	625
18	625
Law Clerks	250
Paralegals	250

(2) *Davis v. Prison Health Services* (N.D. Cal. 2012) 2012 U.S. Dist. LEXIS 138556, an individual Fair Employment and Housing Act case, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
33	\$750
29	675
4	300
6	265

(3) *Holloway et. al. v. Best Buy Co., Inc.* (N.D. Cal. 2011) No. 05-5056

1 PJH, Order dated November 9, 2011, a class action alleging that Best Buy
2 discriminated against female, African American and Latino employees by denying
3 them promotions and lucrative sales positions, in which the court approved a
4 lodestar award based on the following rates:

<u>Years of Experience</u>	<u>Rate</u>
37	\$825
Associates	
8	490
6	405
Law Clerks	225
Paralegals	215

10 (3) *Molina, et al. v. Lexmark International, et al.*, Los Angeles County
11 Superior Court No. BC339177, Order Granting Petitioners' Motion for Attorneys'
12 Fees and Costs in the Amount of \$5,722,008.07, filed October 28, 2011, *aff'd*
13 (2013) 2013 Cal.App.Unpub. LEXIS 6684, a class action to recover forfeited
14 vacation pay, in which the court found the following hourly rates reasonable
15 (before applying a 2.0 multiplier):

<u>Years of Experience</u>	<u>Rate</u>
42	\$675
25	550
24	655-675
23	625
20	550
17	600
9	475
6	350
Paralegals	210
Paralegals	210

23 **2010 Rates**

24 (1) *Californians for Disability Rights, Inc., et al. v. California*
25 *Department of Transportation, et al.* (N.D.Cal. 2010) 2010 U.S.Dist.LEXIS
26 141030, adopted by Order Accepting Report and Recommendation filed February
27 2, 2011, a disability-access class action, in which the court found the following
28

2010 hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
49	\$835
34	730
26	740
25	730
19	660
10	570
9	560
7	535
6	500
5	475
3	350
2	290
1	225-265
Senior Paralegals	265
Law Clerks	175
Case Clerks	165

Rate Information from Surveys

12. I also base my opinion on several credible surveys of legal rates, including the following:

- The 2014 *Laffey Matrix* is a survey of District of Columbia hourly rates that is often relied upon in other jurisdictions, with appropriate adjustments for differences in income levels, to determine reasonable hourly rates. See, e.g., *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 695. A copy of that survey is attached hereto as Exhibit B. It shows that for attorneys with 20+ years out of law school, the prevailing market in the period between June 1, 2013, and May 31, 2014 was \$771 per hour. For lawyers with 11-19 years out of law school, the prevailing rate for the same period was \$640 per hour. The difference in the Local Pay Tables for the Washington D.C. area and the San Diego-Carlsbad-San Marcos areas are de minimis -- .03%.

- 1 • On January 13, 2014, the National Law Journal published an article
2 about its most recent rate survey. That article included a chart listing
3 the billing rates of the 50 firms that charge the highest average hourly
4 rates for partners. A true and correct copy of that article is attached
5 hereto as Exhibit C. Of the 50 firms listed, several have offices in the
6 San Diego area and many others have significant litigation experience
7 in this area. And, although the rates that Plaintiffs' counsel are
8 requesting here are significantly *lower* than many of the rates charged
9 by the top 50 firms, the NLJ chart does show the *range* of rates
10 charged for similar services, which *is* the applicable standard. *See*
11 *CHMC*, 97 Cal.App.4th at 783.
- 12 • In an article entitled "On Sale: The \$1,150-Per Hour Lawyer,"
13 written by Jennifer Smith and published in the Wall Street Journal on
14 April 9, 2013, the author describes the rapidly growing number of
15 lawyers billing at \$1,150 or more revealed in public filings and major
16 surveys. A true and correct copy of that article is attached hereto as
17 Exhibit D. The article also notes that in the first quarter of 2013, the
18 50 top-grossing law firms billed their partners at an *average* rate
19 between \$879 and \$882 per hour.
- 20 • In an article published April 16, 2012, the Am Law Daily described
21 the 2012 Real Rate Report, an analysis of \$7.6 billion in legal bills
22 paid by corporations over a five-year period ending in December
23 2011. A true and correct copy of that article is attached hereto as
24 Exhibit E. That article confirms that the rates charged by experienced
25 and well-qualified attorneys have continued to rise over the five-year
26 period between 2006 and 2011, particularly in large urban areas. It
27 also shows, for example, that the top quartile of lawyers bill at an
28 *average* of "just under \$900 per hour."

1 **Rates Charged by Other Law Firms**

2 14. The standard hourly non-contingent rates for comparable civil
3 litigation stated in court filings, depositions, surveys, or other reliable sources by
4 numerous California law firms or law firms with offices or practices in California
5 also support counsel's rates. The following hourly rates are those charged where
6 full payment is expected promptly upon the rendition of the billing and without
7 consideration of factors other than hours and rates. If any substantial part of the
8 payment were to be contingent or deferred for any substantial period, for example,
9 the fee arrangement would be adjusted accordingly to compensate the attorneys for
10 those factors. These rates include, in alphabetical order:²

11 **Altshuler Berzon LLP****

12 **2014 Rates:** Years of Experience Rate
13 38 \$895

14 **2012 Rates:** Years of Experience Rate
15 34 \$850
16 26 785
17 21 750
18 18 700
19 14 625
20 12 570
21 11 550
22 10 520
23 6 410
24 5 385
25 4 335

26 Law Clerks 250
27 Paralegals 215

28 **2011 Rates:** Years of Experience Rate
 43 \$825
 17 675
 12 575
 10 520
 Law Clerks 225

² Firms based in San Diego are marked with an *. Firms with substantial class action practices, which tend to be statewide, are marked "***".

Altshuler Berzon LLP**

Paralegals	215
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Arnold Porter LLP

<u>2013 Rates:</u>	Average Partner	\$815
	Highest Partner	950
	Lowest Partner	670
	Average Associate	500
	Highest Associate	610
	Lowest Associate	345

The Arns Law Firm LLP **

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	37	\$950
	Law Clerks	165

Bernstein Litowitz Borger & Grossman LLP
(San Diego Office) *, **

<u>2009 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$725
	Associates	490-550

Bingham McCutchen

<u>2013 Rates:</u>	Average Partner	\$795
	Highest Partner	1,080
	Lowest Partner	670
	Average Associate	450
	Highest Associate	605
	Lowest Associate	185

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	30	\$780

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	13	\$655
	4	480
	2	400

Blood Hurst & O'Reardon *, **

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	22	\$655
	17	585

Blood Hurst & O'Reardon*, **

6	510
5	410
1	305
Paralegals	260

Burson & Fisher**

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	16	\$680-850
	11	680
	4	400
	3	390
	2	375
	1	300
	Law Clerks	225
	Litigation Support Specialists	180

Chavez & Gertler*

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	33	\$750
	29	725
	32	675
	21	575
	11	535
	7	475
	Legal Assistant	185

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	32	\$725
	28	700
	10	550
	9	510
	5	425
	Paralegals	225

Coblentz Patch & Duffy

<u>2013 Rates:</u>	<u>Year of Bar Admission</u>	<u>Rate</u>
	1979	\$720
	1994	575
	2008	320
	Paralegals/Case Clerks	295

Cohelan Khoury & Singer

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$750
	28	750
	11	400
	Paralegal	170

Cooper & Kirkham

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	48	\$950
	37	825
	11	600

Covington Burling

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	28	\$750
	16	670
	14	670
	7	510
	2	375
	5	490
	Litigation Support	110-355

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	27	\$730
	15	632-650
	13	650

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	26	\$710
	14	640
	12	600
	9	565
	7	550
	5	425
	3	390
	1	320

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	25	\$710
	13	640
	11	575-600
	8	550-565

Covington Burling

6	525-550
4	390-425
2	350-390

Farella Braun & Martell LLP

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	31	\$715

Fenwick & West

<u>2014 Rates</u>	<u>Years of Experience</u>	<u>Rate</u>
	45	\$750
	35	750
	23	725
	19	695
	5	400
	3	350
	Paralegal	125
<u>2013 Rates</u>	18	\$755
	11	595
	2	425
<u>2012 Rates</u>	40	\$865
	17	755
	10	595
	1	375

Furth Firm LLP**

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	51	\$875
	39	750
	38	600
	33	775
	25	550
	23	650
	21	625
	19	610
	18	600
	17	585
	16	570
	15	560

Furth Firm LLP**

14	550
13	525
12	515
11	510
10	505
9	500
7	460
4	435
Law Clerks	125-260

Gibson Dunn & Crutcher LLP

<u>2013 Rates:</u>	Average Partner	\$980
	Highest Partner	1,800
	Lowest Partner	765
	Average Associate	590
	Highest Associate	930
	Lowest Associate	175

Goldstein, Borgen, Dardarian & Ho**

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	33	\$795
	27	750
	8	500
	4	395
	3	350
	1	300
	Law Clerks/Paralegals	160-250

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	42	\$785
	36	750
	31	700
	18	650

	Associates	
	7	470
	6	445
<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	41	\$725
	35	725

Goldstein, Borgen, Dardarian & Ho**

30	700
24	650
18	600
17	600
16	550

2010 Rates:

Years of Experience Rate

Partners

40	\$700
34	700
29	675
23	625
17	575
16	575

Of Counsel

40	725
----	-----

Associates

15	\$500
11	440
6	375
5	365
4	355
3	340
2	325
1	305

Law Clerks

Paralegals	195
	150-225

Greenberg, Traurig, LLP

2010 Rates:

<u>Years of Experience</u>	<u>Rate</u>
22	\$850

Greines, Martin, Stein & Richland

2012 Rates:

<u>Years of Experience</u>	<u>Rate</u>
41	\$850
29	850
23	650
18	500
Law Clerks	100

**Hadsell, Stormer, Keeny, Richardson &
Renick****

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$825
	33	775
	22-23	625
	17	600
	12	525
	10	425
	4	275
	3	250

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$800
	31	750
	20-21	600
	15	575
	10	475-500
	8	425
	4	325
	2	275
	1	250

Hausfeld LLP**

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	45	\$985
	37	935-895
	15	610-510
	14	600
	7	490
	3	370
	Paralegals	300-320
	Law Clerks	325

Irell & Manella

<u>2013 Rates:</u>		
	Average Partner	\$890
	Highest Partner	975
	Lowest Partner	800
	Average Associate	535
	Highest Associate	750
	Lowest Associate	395

1 **Janssen Malloy LLP**

2 **2014 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
33	\$775
Paralegals	175

4 **Jones Day**

5 **2013 Rates:**

Average Partner	\$745
Highest Partner	975
Lowest Partner	670
Average Associate	435
Highest Associate	775
Lowest Associate	205

10 **Kaye, McLane, Bednarski & Litt ****

11 **2013 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
44	\$925
27	725
24	725
7	525
5	475

15 **Keker & Van Nest, LLP**

16 **2010 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
Partners	
32	\$775
Other Partners	525-975
Associates	340-500
Paralegals/Support Staff	120-260

21 **Kemnitzer, Barron & Krieg**

22 **2014 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
38	\$750
32	750
8	475
3	350
Senior Paralegal	250

26 **Kiesel, Boucher, Larson LLP *, ****

27 **2012 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
Partners	
27-28	\$890

Kiesel, Boucher, Larson LLP *, **

Associates 625-325

Kingsley & Kingsley**

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	14	\$655
	8	475-515
	7	475
	6	485
	5	375
	3	350
	2	300

Kirkland & Ellis

<u>2013 Rates:</u>		
	Average Partner	\$825
	Highest Partner	995
	Lowest Partner	670
	Average Associate	540
	Highest Associate	715
	Lowest Associate	235

Knapp, Petersen & Clarke

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$753
	9	554
	6	383

Knobbe Martin Olson & Bear LLP

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$395-710
	Associates	285-450

Latham & Watkins

<u>2013 Rates:</u>		
	Average Partner	\$990
	Highest Partner	1,100
	Lowest Partner	670
	Average Partner	895
	Average Associate	605
	Highest Associate	725
	Lowest Associate	465

Lewis Feinberg Lee, Renaker & Jackson,
P.C.**

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$825
	29	750
	24	725
	21	700
	8	450
	7	425
	3	375
	Senior Paralegals	250
	Law Clerks	225

Litt, Estuar, & Kitson, LLP**

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	42	\$825
	18	625
	17	625
	5	425
	3	375
	Senior Paralegals	125-235
	Law Clerks	225

Manatt, Phelps & Phillips

<u>2013 Rates:</u>	<u>Average Partner</u>	<u>\$740</u>
	Highest Partner	795
	Lowest Partner	670
	Lowest Partner	640
<u>2010 Rates:</u>	Partners	525-850
	Associates	200-525

McKenna Long & Aldridge LLP

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	30	\$775
	9	650

McKenna Long & Aldridge LLP

5	420
Litigation Support Mgr.	350
Paralegals	225

Minami Tamaki LLP

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$750
	15	525
	5	395
	Paralegals	175

Morrison Foerster LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Average Partner	\$865
	Highest Partner	1,195
	Lowest Partner	670
	Lowest Partner	595
	Average Associate	525
	Highest Associate	725
	Lowest Associate	230

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	22	\$775
	11	625
	10	620
	1	335

<u>2009 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	24	\$750

O'Melveny & Myers

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Average Partner	\$715
	Highest Partner	950
	Lowest Partner	615

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	12	\$695
	4	495

Patton Boggs

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
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Patton Boggs

Partners	
14	\$830
29	750
20	750
33	700
27	700
13	575
24	550
14	530
Of Counsel	
30	600
15	500
Associates	
9	450
7	425
3	340
2	315
Senior Paralegals	200-265
Paralegals	170

Pillsbury Winthrop Shaw Pittman LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Average Partner	\$865
	Highest Partner	1,070
	Lowest Partner	670
	Average Associate	520
	Highest Associate	860
	Lowest Associate	375
<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	30	\$705-775
	Other Partners	595-965
	Associates	320-650
	Paralegals/Support Staff	85-380

Quinn Emanuel Urquhart & Sullivan

<u>2013 Rates:</u>	Average Partner	\$915
	Highest Partner	1,075
	Lowest Partner	810
	Average Associate	410

Quinn Emanuel Urquhart & Sullivan

Highest Associate	675
Lowest Associate	320

Reed Smith LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partner	
	36	\$830
	30	805
	17	610-615
	14	570
	Associates	
	8	450-535
	6	495

Robbins Geller Rudman & Dowd LLP *, **

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	26	\$695
	19	575
	Associates	535-345
	Paralegals	295

Rosen, Bien, Galvan & Grunfeld LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	51	\$875
	33	780
	29	660
	16	630
	Of Counsel	
	30	580
	Associates	
	20	550
	10	480
	9	465
	8	445-450
	7	440
	6	435
	5	405
	4	375

Rosen, Bien, Galvan & Grunfeld LLP

3	355
Paralegals	220-280
Litigation Support/ Paralegal clerk	170
Law Clerk/Students	250
Word Processing	80

2012 Rates:

Years of Experience Rate

Partners

50	\$860
32	760
28	640
15	610

Of Counsel

29	570
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Associates

19	540
10	470
9	460
7	400
6	400
5	380
4	360
3	340

Paralegals 215-280

Litigation Support/ 150

Paralegal clerk

Law Clerk/Students 240

Word Processing 80

2011 Rates:

Years of Experience Rate

Partners

49	\$840
31	740
27	625
14	590

Of Counsel

28	540
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Associates

18	525
11	465
10	450

Rosen, Bien, Galvan & Grunfeld LLP

9	440
8	420
6	385
5	365
4	350
3	325
2	315
Paralegals	205-275
Litigation Support/ Paralegal clerk	140-220
Law Clerk/Students	225
Word Processing	75

2010 Rates:

Years of Experience Rate

Partners

48	\$800
30	700
26	575
13	560
Of Counsel	
27	520

Associates

17	510
13	490
9	430
8	415
7	390
5	360
3	325
1	285
Paralegals	200-275
Litigation Support/ Paralegal clerk	135-220
Law Clerk/Students	190
Word Processing	70

Rudy, Exelrod, Zieff & Lowe LLP

2010 Rates:

Years of Experience Rate

Partners

42	\$725
32	725

Rudy, Exelrod, Zieff & Lowe LLP

15	625
Associates	
21	495
13	485
8	450

**Schneider Wallace Cottrell Brayton Konecky
LLP****

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	13-22	\$750
	Associates/Of Counsel	575
	20	535-345
	37	295
	10-13	650
	0-3	350-475
	Paralegals/Law Clerks	135-300

**Schonbrun, DeSimone, Seplow, Harris &
Hoffman****

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	27	\$695
	22	630

Sheppard, Mullin, Richter & Hampton

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$495-820
	Associates	270-620

Sidley Austin

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	33	\$900
	Senior Partners	1,100
	Legal Assistants	120-280

Skadden, Arps, Slate, Meagher & Flom

<u>2013 Rates:</u>	<u>Average Partner</u>	<u>\$1,035</u>
	Highest Partner	1,150
	Lowest Partner	845

Skadden, Arps, Slate, Meagher & Flom

Average Associate	620
Highest Associate	845
Lowest Associate	340

Spiro Moore LLP**

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	30+	\$700
	17	600

Law Offices of Michael D. Thamer

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	31	\$775

Townsend and Townsend and Crew

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$470-475
	Associates	260-460

Wilson Sonsini Goodrich & Rosati PC

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	28	\$875
	Other Partners	650-975
	Associates	290-610
	Paralegals/Litigation	120-300
	Support	

Zelle Hofmann Voelbel & Mason, LLP**

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	Up to \$950
	Associates	Up to \$540
	Paralegals	Up to \$290
	Law Clerks	Up to \$250
<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	38	\$800
	26	685
	23	650
	22	640
	Associates	
	9	500

1 **Zelle Hofmann Voelbel & Mason, LLP****

2	4	435
3	3	415
4	2	405
5	1	395
6	Paralegals	210-290

7 13. The declaration of San Diego attorneys Vincent J. Bartolotta and
8 Timothy Blood, filed with this motion, also support the rates requested here. All of
9 this evidence shows that Plaintiffs' requested rates are well within the range of
10 rates charged in this forum by comparably qualified and experienced attorneys for
11 comparably difficult work.

12 14. In my experience, fee awards are almost always determined based on
13 current rates, *i.e.*, the attorney's rate at the time a motion for fees is made, rather
14 than the historical rate at the time the work was performed. This is a common and
15 accepted practice to compensate attorneys for the delay in being paid. The hourly
16 rates set forth above are those charged where full payment is expected promptly
17 upon the rendition of the billing and without consideration of factors other than
18 hours and rates. If any substantial part of the payment were to be deferred for any
19 substantial period of time, for example, the fee arrangement would be adjusted
20 accordingly to compensate the attorneys for those factors.

21 15. If called as a witness, I could and would competently testify from my
22 personal knowledge to the facts stated herein. I declare under penalty of perjury
23 that the foregoing is true and correct. Executed this 25th day of November 2014, in
24 Berkeley, California.

25 

26 Richard M. Pearl

1 **ADDITIONAL COUNSEL FOR PLAINTIFFS AND THE CERTIFIED CLASS**

2 Timothy D. Cohelan (Bar No. 60827)

3 Michael D. Singer (Bar No. 115301)

4 COHELAN KHOURY & SINGER

5 605 "C" Street, Suite 200

6 San Diego, CA 92101

7 Telephone: (619) 595-3001

EXHIBIT A

RESUME OF RICHARD M. PEARL

RICHARD M. PEARL
LAW OFFICES OF RICHARD M. PEARL
1816 Fifth Street
Berkeley, CA 94710
(510) 649-0810
(510) 548-5074 (facsimile)
rpearl@interx.net (e-mail)

EDUCATION

University of California, Berkeley, B.A., Economics (June 1966)
Boalt Hall School of Law, Berkeley, J.D. (June 1969)

BAR MEMBERSHIP

Member, State Bar of California (admitted January 1970)
Member, State Bar of Georgia (admitted June 1970) (inactive)
Admitted to practice before all California State Courts; the United States Supreme Court; the United States Court of Appeals for the District of Columbia and Ninth Circuits; the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, for the District of Arizona, and for the Northern District of Georgia; and the Georgia Civil and Superior Courts and Court of Appeals.

EMPLOYMENT

LAW OFFICES OF RICHARD M. PEARL (April 1987 to Present): Civil litigation practice (AV rating), with emphasis on court-awarded attorney's fees, class actions, and appellate practice. Selected Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, and 2014.

QUALIFIED APPELLATE MEDIATOR, APPELLATE MEDIATION PROGRAM, Court of Appeal, First Appellate District (October 2000 to 2013) (program terminated).

ADJUNCT PROFESSOR, HASTINGS COLLEGE OF THE LAW (January 1988 to Present): Teach Public Interest Law Practice, a 2-unit course that focuses on the history, strategies, and issues involved in the practice of public interest law.

PEARL, McNEILL & GILLESPIE, Partner (May 1982 to March 1987): General civil litigation practice, as described above.

RICHARD M. PEARL

Page 2

CALIFORNIA RURAL LEGAL ASSISTANCE, INC. (July 1971 to September 1983) (part-time May 1982 to September 1983):

Director of Litigation (July 1977 to July 1982)

Responsibilities: Oversaw and supervised litigation of more than 50 attorneys in CRLA's 15 field offices; administered and supervised staff of 4-6 Regional Counsel; promulgated litigation policies and procedures for program; participated in complex civil litigation.

Regional Counsel (July 1982 to September 1983 part-time)

Responsibilities: Served as co-counsel to CRLA field attorneys on complex projects; provided technical assistance and training to CRLA field offices; oversaw CRLA attorney's fee cases; served as counsel on major litigation.

Directing Attorney, Cooperative Legal Services Center (February 1974 to July 1977) (Staff Attorney February 1974 to October 1975)

Responsibilities: Served as co-counsel on major litigation with legal services attorneys in small legal services offices throughout California; supervised and administered staff of four senior legal services attorneys and support staff.

Directing Attorney, CRLA McFarland Office (July 1971 to February 1974) (Staff Attorney July 1971 to February 1972)

Responsibilities: Provided legal representation to low income persons and groups in Kern, King, and Tulare Counties; supervised all litigation and administered staff of ten.

HASTINGS COLLEGE OF THE LAW, Instructor, Legal Writing and Research Program (August 1974 to June 1978)

Responsibilities: Instructed 20 to 25 first year students in legal writing and research.

CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD, Staff Attorney, General Counsel's Office (November 1975 to January 1976, while on leave from CRLA)

Responsibilities: Prosecuted unfair labor practice charges before Administrative Law Judges and the A.L.R.B. and represented the A.L.R.B. in state court proceedings.

ATLANTA LEGAL AID SOCIETY, Staff Attorney (October 1969 to June 1971)

Responsibilities: Represented low-income persons and groups as part of 36-lawyer legal services program located in Atlanta, Georgia.

RICHARD M. PEARL

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PUBLICATIONS

Pearl, *California Attorney Fee Awards, Third Edition* (Cal. Cont. Ed. Bar 2010) and February 2011, 2012, 2013, and 2014 Supplements

Pearl, *California Attorney Fee Awards, Second Edition* (Cal. Cont. Ed. Bar 1994), and 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements

Graham v. DaimlerChrysler Corp. and *Tipton-Whittingham v. City of Los Angeles*, Civil Litigation Reporter (Cal. Cont. Ed. Bar Feb. 2005)

Current Issues in Attorneys' Fee Litigation, California Labor and Employment Law Quarterly (September 2002 and November 2002)

Flannery v. Prentice: Shifting Attitudes Toward Fee Agreements and Fee-Shifting Statutes, Civil Litigation Reporter (Cal. Cont. Ed. Bar Nov. 2001)

A Practical Introduction to Attorney's Fees, Environmental Law News (Summer 1995)

Wrongful Employment Termination Practice, Second Edition (Cal. Cont. Ed. Bar 1997) (co-authored chapter on "Attorney Fees")

California Attorney's Fees Award Practice (Cal. Cont. Ed. Bar 1982) (edited), and 1984 through 1993 Supplements

Program materials on attorney fees, prepared as panelist for CEB program on Attorneys' Fees: Practical and Ethical Considerations in Determining, Billing, and Collecting (October 1992)

Program materials on Attorney's Fees in Administrative Proceedings: California Continuing Education of the Bar, prepared as panelist for CEB program on Effective Representation Before California Administrative Agencies (October 1986)

Program materials on Attorney's Fees in Administrative Proceedings: California Continuing Education of the Bar, prepared as panelist for CEB program on Attorneys' Fees: Practical and Ethical Considerations (March 1984)

Settlers Beware/The Dangers of Negotiating Statutory Fee Cases (September 1985) Los Angeles Lawyer

Program Materials on Remedies Training (Class Actions), sponsored by Legal Services Section, California State Bar, San Francisco (May 1983)

RICHARD M. PEARL

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Attorneys' Fees: A Legal Services Practice Manual (Legal Services Corporation 1981)

PUBLIC SERVICE

Member, Attorneys' Fee Task Force, California State Bar

Chairperson, Board of Directors, California Rural Legal Assistance Foundation

REPRESENTATIVE REPORTED CASES

Alcoser v. Thomas

(2011) 2011 Cal.App.Unpub.LEXIS 1180

Boren v. California Department of Employment

(1976) 59 Cal.App.3d 250

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(9th Cir. 1992) 973 F.2d 735

Camacho v. Bridgeport Financial, Inc.

(9th Cir. 2008) 523 F.3d 973

Campos v. E.D.D.

(1982) 132 Cal.App.3d 961

Center for Biological Diversity v. County of San Bernardino

(2010) 185 Cal.App.4th 866

Committee to Defend Reproductive Rights v. A Free Pregnancy Center

(1991) 229 Cal.App.3d 633

David C. v. Leavitt

(D. Utah 1995) 900 F.Supp. 1547

Delaney v. Baker

(1999) 10 Cal.4th 23

Employment Development Dept. v. Superior Court (Boren)

(1981) 30 Cal.3d 256

Environmental Protection Information Center, Inc. v. Pacific Lumber Co.

(N.D. Cal. 2002) 229 F. Supp.2d 993, *aff'd* (9th Cir. 2004) 103 Fed. Appx. 627

Center for Biological Diversity

(2010)

Center for Biological Diversity

RICHARD M. PEARL

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Flannery v Prentice

(2001) 26 Cal. 4th 572

Graham v. DaimlerChrysler Corp.

(2004) 34 Cal. 4th 553

Horsford v. Board of Trustees of Univ. of Calif.

(2005) 132 Cal.App.4th 359

Ketchum v. Moses

(2001) 24 Cal.4th 1122

Kievlan v. Dahlberg Electronics

(1978) 78 Cal.App.3d 951, cert. denied (1979)
440 U.S. 951

Lealao v. Beneficial California, Inc.

(2000) 82 Cal.App.4th 19

Lewis v. California Unemployment Insurance Appeals Board

(1976) 56 Cal.App.3d 729

Local 3-98 etc. v. Donovan

(N.D. Cal. 1984) 580 F.Supp. 714,
Aff'd (9th Cir. 1986) 792 F.2d 762

Mangold v. California Public Utilities Commission

(9th Cir. 1995) 67 F.3d 1470

Maria P. v. Riles

(1987) 43 Cal.3d 1281

Martinez v. Dunlop

(N.D. Cal. 1976) 411 F.Supp. 5,
aff'd (9th Cir. 1977) 573 F.2d 555

McQueen, Conservatorship of

(2014) 59 Cal.4th 602 (argued for *amici curiae*)

McSomebodies v. Burlingame Elementary School Dist.

(9th Cir. 1990) 897 F.2d 974

RICHARD M. PEARL

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Representative Reported Cases (cont.)

McSomebodies v. San Mateo City School Dist.
(9th Cir. 1990) 897 F.2d 975

Molina v. Lexmark International
(2013) 2013 Cal.App. Unpub. LEXIS 6684

Moore v. Bank of America
(9th Cir. 2007) 2007 U.S. App. LEXIS 19597

Moore v. Bank of America
(S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 904

Mora v. Chem-Tronics, Inc.
(S.D. Cal. 1999) 1999 U.S. Dist. LEXIS 10752,
5 Wage & Hour Cas. 2d (BNA) 1122

Nadaf-Rahrov v. Nieman Marcus Group
(2014) 2013 Cal.App. Unpub. LEXIS 6975

Pena v. Superior Court of Kern County
(1975) 50 Cal.App.3d 694

Ponce v. Tulare County Housing Authority
(E.D. Cal 1975) 389 F.Supp. 635

Ramirez v. Runyon
(N.D. Cal. 1999) 1999 U.S. Dist. LEXIS 20544

Rubio v. Superior Court
(1979) 24 Cal.3d 93 (amicus)

Sokolow v. County of San Mateo
(1989) 213 Cal. App. 3d 231

S.P. Growers v. Rodriguez
(1976) 17 Cal.3d 719 (amicus)

Tongol v. Usery
(9th Cir. 1979) 601 F.2d 1091,
on remand (N.D. Cal. 1983) 575 F.Supp. 409,
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RICHARD M. PEARL

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United States (Davis) v. City and County of San Francisco

(N.D. Cal. 1990) 748 F.Supp. 1416, *aff'd in part*
and revs'd in part sub nom Davis v. City and County
of San Francisco (9th Cir. 1992) 976 F.2d 1536,
modified on rehearing (9th Cir. 1993) 984 F.2d 345

United States v. City of San Diego

(S.D.Cal. 1998) 18 F.Supp.2d 1090

Vasquez v. State of California

(2008) 45 Cal.4th 243 (amicus)

Velez v. Wynne

(9th Cir. 2007) 2007 U.S. App. LEXIS 2194

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Furnished upon request.

September 2014

Furnished upon request

10/1/2011

EXHIBIT B

LAFFEY MATRIX

History

Easy Link

Expert Opinion

See the Matrix

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Year	Adjustmt Factor**	Paralegal/ Law Clerk	Years Out of Law School *				
			1-3	4-7	8-10	11-19	20 +
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of

practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT C

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

The National Law Journal

January 13, 2014 Monday

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**THE NATIONAL
LAW JOURNAL**

Section: NLJ'S **BILLING SURVEY**; Pg. 1; Vol. 36; No. 20

Length: 1860 words

Byline: KAREN SLOAN

Body

As recently as five years ago, law partners charging \$1,000 an hour were outliers. Today, four-figure hourly rates for in-demand partners at the most prestigious firms don't raise eyebrows-and a few top earners are closing in on \$2,000 an hour.

These rate increases come despite hand-wringing over price pressures from clients amid a tough economy. But ever-rising standard billing rates also obscure the growing practice of discounts, falling collection rates, and slow march toward alternative fee arrangements.

Nearly 20 percent of the firms included in The National Law Journal's annual survey of large law firm billing rates this year had at least one partner charging more than \$1,000 an hour. Gibson, Dunn & Crutcher partner Theodore Olson had the highest rate recorded in our survey, billing \$1,800 per hour while representing mobile satellite service provider LightSquared Inc. in Chapter 11 proceedings.

Of course, few law firm partners claim Olson's star power. His rate in that case is nearly the twice the \$980 per hour average charged by Gibson Dunn partners and three times the average \$604 hourly rate among partners at NLJ 350 firms. Gibson Dunn chairman and managing partner Ken Doran said Olson's rate is "substantially" above that of other partners at the firm, and that the firm's standard rates are in line with its peers.

"While the majority of Ted Olson's work is done under alternative billing arrangements, his hourly rate reflects his stature in the legal community, the high demand for his services and the unique value that he offers to clients given his extraordinary experience as a former solicitor general of the United States who has argued more than 60 cases before the U.S. Supreme Court and has counseled several presidents," Doran said.

In reviewing billing data this year, we took a new approach, asking each firm on the NLJ 350-our survey of the nation's 350 largest firms by attorney headcount-to provide their highest, lowest and average billing rates for associates and partners. We supplemented those data through public records. All together, this year's survey includes information for 159 of the country's largest law firms and reflects billing rates as of October.

The figures show that, even in a down economy, hiring a large law firm remains a pricey prospect. The median among the highest partner billing rates reported at each firm is \$775 an hour, while the median low partner rate is \$405. For associates, the median high stands at \$510 and the low at \$235. The average associate rate is \$370.

Multiple industry studies show that law firm billing rates continued to climb during 2013 despite efforts by corporate counsel to rein them in. TyMetrix's 2013 Real Rate Report Snapshot found that the average law firm billing rate increased by 4.8 percent compared with 2012. Similarly, the Center for the Study of the Legal Profession at the Georgetown University Law Center and Thomson Reuters Peer Monitor found that law firms increased their rates by an average 3.5 percent during 2013.

Richard Pearl

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

Of course, rates charged by firms on paper don't necessarily reflect what clients actually pay. Billing realization rates-which reflect the percentage of work billed at firms' standard rates- have fallen from 89 percent in 2010 to nearly 87 percent in 2013 on average, according to the Georgetown study. When accounting for billed hours actually collected by firms, the realization rate falls to 83.5 percent.

"What this means, of course, is that- on average-law firms are collecting only 83.5 cents for every \$1.00 of standard time they record," the Georgetown report reads. "To understand the full impact, one need only consider that at the end of 2007, the collected realization rate was at the 92 percent level."

In other words, law firms set rates with the understanding that they aren't likely to collect the full amount, said Mark Medice, who oversees the Peer Monitor Index. That index gauges the strength of the legal market according to economic indicators including demand for legal services, productivity, rates and expenses. "Firms start out with the idea of, 'I want to achieve a certain rate, but it's likely that my client will ask for discounts whether or not I increase my rate,'" Medice said.

Indeed, firms bill nearly all hourly work at discounts ranging from 5 percent to 20 percent off standard rates, said Peter Zeughauser, a consultant with the Zeughauser Group. Discounts can run as high as 50 percent for matters billed under a hybrid system, wherein a law firm can earn a premium for keeping costs under a set level or for obtaining a certain outcome, he added. "Most firms have gone to a two-tier system, with what is essentially an aspirational rate that they occasionally get and a lower rate that they actually budget for," he said.

Most of the discounting happens at the front end, when firms and clients negotiate rates, Medice said. But additional discounting happens at the billing and collections stages. Handling alternative fee arrangements and discounts has become so complex that more than half of the law firms on the Am Law 100-NLJ affiliate The American Lawyer's ranking of firms by gross revenue-have created new positions for pricing directors, Zeughauser said.

THE ROLE OF GEOGRAPHY

Unsurprisingly, rates vary by location. Firms with their largest office in New York had the highest average partner and associate billing rates, at \$882 and \$520, respectively. Similarly, TyMetrix has reported that more than 25 percent of partners at large New York firms charge \$1,000 per hour or more for contracts and commercial work.

Washington was the next priciest city on our survey, with partners charging an average \$748 and associates \$429. Partners charge an average \$691 in Chicago and associates \$427. In Los Angeles, partners charge an average \$665 while the average associate rate is \$401.

Pricing also depends heavily on practice area, Zeughauser and Medice said. Bet-the-company patent litigation and white-collar litigation largely remain at premium prices, while practices including labor and employment have come under huge pressure to reduce prices.

"If there was a way for law firms to hold rates, they would do it. They recognize how sensitive clients are to price increases," Zeughauser said. But declining profit margins-due in part to higher technology costs and the expensive lateral hiring market-mean that firms simply lack the option to keep rates flat, he said.

BILLING SURVEY METHODOLOGY

The National Law Journal's survey of billing rates of the largest U.S. law firms provides the high, low and average rates for partners and associates.

The NLJ asked respondents to its annual survey of the nation's largest law firms (the NLJ 350) to provide a range of hourly billing rates for partners and associates as of October 2013.

For firms that did not supply data to us, in many cases we were able to supplement billing-rate data derived from public records.

In total, we have rates for 159 of the nation's 350 largest firms.

Richard Pearl

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

Rates data include averages, highs and low rates for partners and associates. Information also includes the average full-time equivalent (FTE) attorneys at the firm and the city of the firm's principal or largest office.

We used these data to calculate averages for the nation as a whole and for selected cities.

Billing Rates at the Country's Priciest Law Firms

Here are the 50 firms that charge the highest average hourly rates for partners.

Billing Rates at the Country's Priciest Law Firms

FIRM NAME	LARGEST AVERAGE		PARTNER ASSOCIATE		HOURLY HOURLY		AVERAGE	HIGH	LOW	
	U.S. OFFICE*	FULL-TIME EQUIVALENT ATTORNEYS*	RATES	RATES	RATES	RATES				
			AVERAGE		HIGH		LOW		AVERAGE	
* Full-time equivalent attorney numbers and the largest U.S. office are from the NLJ 350 published in April 2013. For complete numbers, please see NLJ.com .										
** Firm did not exist in this form for the entire year.										
Debevoise & Plimpton	New York	615	\$1,055	\$1,075	\$955	\$490	\$760	\$120		
Paul, Weiss, Riffkind, Wharton & Garrison	New York	803	\$1,040	\$1,120	\$760	\$600	\$760	\$250		
Skadden, Arps, Slate, Meagher & Flom	New York	1,735	\$1,035	\$1,150	\$845	\$620	\$845	\$340		
Fried, Frank, Harris, Shriver & Jacobson	New York	476	\$1,000	\$1,100	\$930	\$595	\$760	\$375		
Latham & Watkins	New York	2,033	\$990	\$1,110	\$895	\$605	\$725	\$465		
Gibson, Dunn & Crutcher	New York	1,086	\$980	\$1,800	\$765	\$590	\$930	\$175		
Davis Polk & Wardwell	New York	787	\$975	\$985	\$850	\$615	\$975	\$130		
Willkie Parr & Gallagher	New York	540	\$950	\$1,090	\$790	\$580	\$790	\$350		
Cadwalader, Wickersham & Taft	New York	435	\$930	\$1,050	\$800	\$605	\$750	\$395		
Weil, Gotshal & Manges	New York	1,201	\$930	\$1,075	\$625	\$600	\$790	\$300		
Quinn Emanuel Urquhart & Sullivan	New York	697	\$915	\$1,075	\$810	\$410	\$675	\$320		
Wilmer Cutler Pickering Hale and Dorr	Washington	961	\$905	\$1,250	\$735	\$290	\$695	\$75		
Dechert	New York	803	\$900	\$1,095	\$670	\$530	\$735	\$395		
Andrews Kurth	Houston	348	\$890	\$1,090	\$745	\$528	\$785	\$265		
Hughes Hubbard & Reed	New York	344	\$890	\$995	\$725	\$555	\$675	\$365		
Irell & Manella	Los Angeles	164	\$890	\$975	\$800	\$535	\$750	\$395		
Proskauer Rose	New York	746	\$880	\$950	\$725	\$465	\$675	\$295		
White & Case	New York	1,900	\$875	\$1,050	\$700	\$525	\$1,050	\$220		

Richard Pearl

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER ASSOCIATE HOURLY HOURLY RATES RATES					
			AVERAGE	HIGH	LOW AVERAGE	HIGH	LOW	
Morrison & Foerster	San Francisco	1,010	\$865	\$1,195	\$595	\$525	\$725	\$230
Pillsbury Winthrop Shaw Pittman	Washington	609	\$865	\$1,070	\$615	\$520	\$860	\$375
Kaye Scholer	New York	414	\$860	\$1,080	\$715	\$510	\$680	\$320
Kramer Levin Naftalis & Frankel	New York	320	\$845	\$1,025	\$740	\$590	\$750	\$400
Hogan Lovells	Washington	2,280	\$835	\$1,000	\$705	-	-	-
Kasowitz, Benson, Torres & Friedman	New York	365	\$835	\$1,195	\$600	\$340	\$625	\$200
Kirkland & Ellis	Chicago	1,517	\$825	\$995	\$590	\$540	\$715	\$235
Cooley	Palo Alto	632	\$820	\$990	\$660	\$525	\$630	\$160
Arnold & Porter	Washington	748	\$815	\$950	\$670	\$500	\$610	\$345
Paul Hastings	New York	899	\$815	\$900	\$750	\$540	\$755	\$335
Curtis, Mallet-Prevost, Colt & Mosle	New York	322	\$800	\$860	\$730	\$480	\$785	\$345
Winston & Strawn	Chicago	842	\$800	\$995	\$650	\$520	\$590	\$425
Bingham McCutchen	Boston	900	\$795	\$1,080	\$220	\$450	\$605	\$185
Akin Gump Strauss Hauer & Feld	Washington	806	\$785	\$1,220	\$615	\$525	\$660	\$365
Covington & Burling	Washington	738	\$780	\$890	\$605	\$415	\$565	\$320
King & Spalding	Atlanta	838	\$775	\$995	\$545	\$460	\$735	\$125
Norton Rose Fulbright	N/A**	N/A**	\$775	\$900	\$525	\$400	\$515	\$300
DLA Piper	New York	4,036	\$765	\$1,025	\$450	\$510	\$750	\$250
Bracewell & Giuliani	Houston	432	\$760	\$1,125	\$575	\$440	\$700	\$275
Baker & McKenzie	Chicago	4,004	\$755	\$1,130	\$260	\$395	\$925	\$100
Dickstein Shapiro	Washington	308	\$750	\$1,250	\$590	\$475	\$585	\$310
Jenner & Block	Chicago	432	\$745	\$925	\$565	\$465	\$550	\$380
Jones Day	New York	2,363	\$745	\$975	\$445	\$435	\$775	\$205
Manatt, Phelps & Phillips	Los Angeles	325	\$740	\$795	\$640	-	-	-
Seward & Kissel	New York	152	\$735	\$850	\$625	\$400	\$600	\$290
O'Melveny & Myers	Los Angeles	738	\$715	\$950	\$615	-	-	-
McDermott Will & Emery	Chicago	1,024	\$710	\$835	\$525	-	-	-
Reed Smith	Pittsburgh	1,468	\$710	\$945	\$545	\$420	\$530	\$295
Dentons	N/A**	N/A**	\$700	\$1,050	\$345	\$425	\$685	\$210
Jeffer Mangels Butler & Mitchell	Los Angeles	126	\$690	\$875	\$560	-	-	-
Sheppard, Mullin,	Los Angeles	521	\$685	\$875	\$490	\$415	\$535	\$275

Richard Pearl

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FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER ASSOCIATE HOURLY RATES		ASSOCIATE HOURLY RATES		AVERAGE LOW	AVERAGE HIGH	LOW
			AVERAGE	HIGH	AVERAGE	HIGH			
Richter & Hampton	Angeles								
Alston & Bird	Atlanta	805	\$675	\$875	\$495	\$425	\$575	\$280	

THE FOUR-FIGURE CLUB

These 10 firms posted the highest partner billing rates.

Gibson, Dunn & Crutcher	\$1,800
Dickstein Shapiro	\$1,250
Wilmer Cutler Pickering Hale and Dorr	\$1,250
Akin Gump Strauss Hauer & Feld	\$1,220
Kasowitz, Benson, Torres & Friedman	\$1,195
Morrison & Foerster	\$1,195
Skadden, Arps, Slate, Meagher & Flom	\$1,150
Baker & McKenzie	\$1,130
Bracewell & Giuliani	\$1,125
Paul, Weiss, Rifkind, Wharton & Garrison	\$1,120

THE FOUR-FIGURE CLUB

Contact Karen Sloan at ksloan@alm.com

SATELLITE TECHNOLOGY (67%); SUPREME COURTS (63%)

Classification

Company: GIBSON DUNN & CRUTCHER LLP (93%); LIGHTSQUARED INC (83%)

Language: ENGLISH

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Load-Date: January 13, 2014

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The Firms

April 16, 2012 5:20 PM

When It Comes to Billing, Latest Rate Report Shows the Rich Keep Getting Richer

Posted by Sara Randazzo

Hourly rates just keep rising—and the best-paid lawyers are raising their rates faster than everyone else.

Those are two of the key findings contained in the [2012 Real Rate Report](#), an analysis of \$7.6 billion in legal bills paid by corporations over a five-year period ending in December 2011. The report, released Monday, is the second such collaboration between TyMetrix, a company that manages and audits

legal bills for corporate legal departments, and the Corporate Executive Board.

Many of the new rate report's findings echo those contained in the 2010 study, including the fact that rates keep going up, almost across the board, and that the cost of a given matter can vary dramatically depending on a law firm's size and location and its relationship with a particular client.

At the same time, this year's study shows that the legal sector is becoming increasingly bifurcated, with top firms raising rates faster than those at the bottom of the market and large firms charging a premium price based purely on their size.

"What it's really showing is that there's an increased premium being paid for experience and expertise," says Julie Peck, vice president of strategy and market development at TyMetrix. "Some parts of the lawyer market are able to raise rates much more quickly, and are more impervious to economic forces than others."

To compile the current rate report, TyMetrix received permission from its clients to examine legal fees billed to 62 companies across 17 industries including energy, finance, retail, technology, insurance, and health care. The bills, which represent the amount actually paid by the companies in question rather than the amount initially charged, came from more than 4,000 firms in 84 metropolitan areas around the country. Every firm on the 2011 Am Law 100 is represented in the data.

The report's key data points include:

A Widening Gap: Hourly rates charged by lawyers in the legal sector's upper echelon grew faster between 2009 and 2011 than those charged by lawyers toiling on the lower rungs. Particularly striking was the jump in associate rates billed by those falling in the report's top quartile: 18 percent on average, to just over \$600 per hour. Rates billed by top quartile partners, meanwhile, rose 8 percent, to just under \$900 per hour. In the bottom quartile, associate rates rose 4 percent and partner rates rose 3 percent during the same period.

The Recession's (Minor) Toll: Even amid the economic downturn, the cost of an hour of a lawyer's time continued to rise faster than key measures of inflation. That said, the legal industry wasn't completely immune to the broader economy's slowdown. After rising 8.2 percent between 2007 and 2008, hourly rates rose just 2.3 percent in 2009. Law firms bounced back a bit last year, with rates climbing 5.1 percent, to an average of \$530 an hour.

Location Counts: Not surprisingly, lawyers working in major metropolitan areas—where, as the rate report notes, rents are typically higher—are the priciest. An address in Boston, Chicago, Los Angeles, San Francisco, or Washington, D.C., alone adds about \$161 to the hourly rate charged by an individual lawyer. Those six cities and Baltimore, Houston, Philadelphia, and San Jose are the ten U.S. markets with the highest hourly rates. With an average partner rate topping \$700 per hour and average associate rate of more than \$450 per hour, New York is the most expensive market in the country. The least expensive? Riverside, California, where the average partner bills at under \$250 per hour and associates bill at just over \$300 an hour.

In the Minority: A small group of lawyers—12 percent—bucked the trend toward higher fees and actually lowered rates between 2009 to 2011—and 3 percent trimmed rates by \$50 or more per hour. (Most of those in the rate-cutting camp were based outside the big six markets identified above.) At the other end of the spectrum, 52 percent of lawyers increased rates by between \$25 and \$200 or more per hour. Another 18 percent increased rates by less than \$25 per hour, and the final 18 percent held rates steady.

First-Year Blues: Even before the recession hit, clients balked at paying for what they considered on-the-job training for first-year associates. The latest rate report is likely to reinforce that reluctance, given its finding that using entry-level lawyers adds as much as 20 percent to the cost of a legal matter. The report offers evidence that firms may be accommodating clients on this front: The percentage of bills attributed to entry-level associates dropped from 7 percent in 2009 to 2.9 percent last year.

Ties That Bind: The more work one firm handles for a client—and the longer the client relationship extends—the higher the average rate the firm charges. For companies that paid one firm \$10 million or more in a single year, the average hourly rate paid was \$553 in 2011. By comparison, clients that limited their spending on an individual firm to \$500,000 paid that firm an average of \$319 per hour.

Four-Digit Frontier: Data has consistently shown that many lawyers hesitate to charge more than \$1,000 an hour, and in 2011 just under 3 percent of the lawyers covered by the rate report had broken that barrier. Of those, the vast majority were working in the six main legal markets identified above and 60 percent of the time, they billed in increments of one hour or less.

Playing Favorites: Across all practice areas, 90 percent of lawyers charged different clients different rates for similar types of work. (The figure for mergers and acquisitions lawyers was 100 percent.) The differences from client to client can be extreme, and were even more pronounced in the current report than in the 2010 edition. Rates charged by intellectual property specialists, for instance, had a median variance of 23.1 percent, while lawyers doing commercial and contract work showed a 18.7 percent median difference.

Who's Doing What? A closer look at law firm bills for work performed on litigation and intellectual property assignments shows that the kind of timekeeper billing on a matter varies by practice type. On patent matters, the report shows, 47 percent of hours billed on average are attributed to paralegals, and 37 percent by partners. By comparison, paralegals account for just 8 percent of the work done on labor and employment litigation hours, while partners handle 45 percent.

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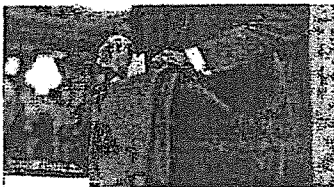
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By JENNIFER SMITH

Top partners at leading U.S. law firms are charging more than ever before, yet those hourly rates aren't all they appear to be.



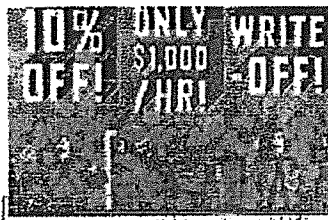
Top partners at leading U.S. law firms are charging more than ever — routinely \$1,150 or more an hour — but after discounts and write-offs the nosebleed rates aren't all they appear to be. Jennifer Smith reports. Photo: Getty Images.

Having blown past the once-shocking price tag of \$1,000 an hour, some sought-after deal, tax and trial lawyers are commanding hourly fees of \$1,150 or more, according to an analysis of billing rates compiled from public filings.

But, as law firms boost their standard rates, many are softening the blow with widespread discounts and write-offs, meaning fewer clients are paying full freight. As a result, law firms on

average are actually collecting fewer cents on the dollar, compared with their standard, or "rack," rates, than they have in years.

Think of hourly fees "as the equivalent of a sticker on the car at a dealership," said legal consultant Ward Bower, a principal at Altman Weil Inc. "It's the beginning of a negotiation.... Law firms think they are setting the rates, but clients are the ones determining what they're going to pay."



James Kobaczewski

the firm's database billed at that level in the first quarter of 2013, up from 158 a year earlier.

Star lawyers still can fetch a premium, and some of them won't budge on price. The number of partners billing \$1,150-plus an hour has more than doubled since this time last year, according to Valeo Partners, a consulting firm that maintains a database of legal rates pulled from court filings and other publicly disclosed information. More than 320 lawyers in

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That glided circle includes tax experts such as Christopher Roman of King & Spalding LLP and Todd Maynes of Kirkland & Ellis LLP, intellectual-property partner Nader A. Mousavi of Sullivan & Cromwell LLP, and deal lawyers such as Kenneth M. Schneider of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Those lawyers and their firms either declined to comment or didn't reply to requests for comment.

When corporate legal departments need a trusted hand to fend off a hostile takeover or win a critical court battle, few general counsels will nitpick over whether a key lawyer is charging \$900 an hour or \$1,150 an hour. But for legal matters where their future isn't on the line, companies are pushing for—and winning—significant price breaks.

"We almost always negotiate rates down from the rack rates," said Randal S. Milch, general counsel for phone giant Verizon Communications Inc. [VZ +0.29%] The result, he said, is a "not-insignificant discount."

For the bread-and-butter work that many big law firms rely on, haggling has become the norm. Many clients grew accustomed to pushing back on price during the recession and continue to demand discounts.

Some companies insist on budgets for their legal work. If a firm billing by the hour exceeds a set cap, lawyers may have to write off some of that time.

Other clients refuse to work with firms who don't discount, lopping anywhere from 10% to 30% off their standard rates. Some may grant rate increases to individual partners or associates they deem worthy. Another tactic: locking in prices with tailored multiyear agreements with formulas governing whether clients grant or refuse a requested rate increase.

In practical terms, that means the gap between law firms' sticker prices and the amount of money they actually bill and collect from their clients is wider than it has been in years.

According to data collected by Thomson Reuters Peer Monitor, big law firms raised their average standard rate by about 9.3% over the past three years. But they weren't able to keep up on the collection side, where the increase over the same period was just 6%. Firms that used to collect on average about 92 cents for every dollar of standard time their lawyers worked in 2007, before the economic downturn, now are getting less than 85 cents. "That's a historic low," said James Jones, a senior fellow at the Center for the Study of the Legal Profession at Georgetown Law.

To be sure, things have certainly picked up some since the recession, when some clients flat-out refused to pay rate increases.

In the first quarter of 2013, the 50 top-grossing U.S. law firms boosted their partner rates by as much as 5.7%, billing on average between \$879 and \$882 an hour, according to Valeo Partners. Rates for junior lawyers, whose labors have long been a profit engine for major law firms, jumped even more.

While some clients resisted using associate lawyers during the downturn, refusing to pay hundreds of dollars an hour for inexperienced first- or second-year attorneys, the largest U.S. law firms have managed to send the needle back up again. This year, for the first time, the average rate for associates with one to four years of experience rose to \$500 an hour, according to Valeo.

The increases continue the upward trend of 2012, when legal fees in general rose 4.8% and associate billing rates rose by 7.4%, according to a coming report by TyMetrix Legal Analytics, a unit of Wolters Kluwer, [WKLAE +0.95%] and CEB, a research and advisory-services company. Those numbers are based on legal-spending data from more than 17,000 law firms.

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More than a dozen leaders at major law firms declined to discuss rate increases on the record, though some said privately that the increase in associate rates could be caused in part by step increases as junior lawyers gain in seniority.

Joe Sims, an antitrust partner at Jones Day and former member of the firm's partnership committee, said clients don't mind paying for associates, as long as they feel they are getting their money's worth.

Sophisticated clients, he said, tend to focus on the overall price tag for legal work, not on individual rates. "They are more concerned about how many people are working on the project and the total cost of the project," Mr. Sims said. "Clients want value no matter who is on the job."

While a handful of elite lawyers have successfully staked out the high end—the deal teams at Wachtell, Lipton, Rosen & Katz, for example—legal experts say that client pressure to control legal spending means most law firms must be considerably more flexible on price.

"There will always be some 'bet the company' problem where a client will not quibble about rates," said Mr. Jones, the Georgetown fellow. "Unfortunately, from the law firms' standpoint, that represents a small percentage of the work."

Write to Jennifer Smith at jennifer.smith@wsj.com

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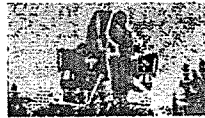
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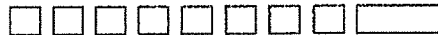
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Exhibit 5

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Miguel Hernandez ("Plaintiff"), and Defendant MJ Industries, Inc. dba MJ Tank Lines ("Defendant" or "MJ"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$7,500. All Administration Costs shall be paid from the Gross Settlement Amount ("GSA"). If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- C. **Attorney Fee Award**: The amount, not to exceed 33 1/3% of the GSA or \$50,000, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the GSA and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- D. **Class**: All individuals employed by Defendant as drivers at any time between January 25, 2013, through preliminary approval of the settlement.
- E. **Class Counsel**: David Mara and Matthew Crawford of Mara Law Firm, PC.
- F. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- G. **Class Notice or Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- H. **Class Period**: January 25, 2013, through preliminary approval of the settlement.
- I. **Class Representative or Plaintiff**: Miguel Hernandez.

- J. Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff, which will not exceed \$10,000. This payment shall be paid from the GSA and will not be opposed by Defendant. This payment is offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, the time and effort Plaintiff put into pursuing the litigation and in return for a General Release, and reasonable fears of being blacklisted from future employment. If the Court awards less than the amount requested, any amount not awarded will become part of the NSA for distribution to Participating Class Members.
- K. Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$15,000. The Cost Award will be paid from the GSA and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. Counsel for Defendant:** Christine D. Baran and Colin P. Calvert of Fisher & Phillips LLP.
- M. Defendant:** MJ Industries, Inc. dba MJ Tank Lines
- N. Disbursement of the Settlement:** The dates on which the Settlement Administrator shall disburse the Gross and Net Settlement Amounts as instructed herein.
- O. Effective Final Settlement Date:** The Effective Final Settlement Date will be (a) if no objections to the settlement are filed, the date the Court enters judgment granting final approval of the settlement; (b) if objections to the settlement are filed and overruled, and no appeal is taken, the date the Court enters judgment granting final approval of the settlement ; (c) if objections to the Settlement are filed and withdrawn, the date the Court enters judgment granting final approval of the Settlement by the Court; or (d) if any appeal is taken from the Court's overruling of objections to the settlement, then the Effective Final Settlement Date shall be 20 days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final and can no longer be appealed.
- P. Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities shall be paid from the GSA.
- Q. First Amended Complaint:** As part of the Settlement and prior to filing Plaintiff's Motion for Preliminary Approval, the Parties agree to stipulate to permit Plaintiff leave to file his First Amended Complaint. This stipulation will

also request that the Court deem the First Amended Complaint responded to via Defendant's Answer on file. Prior to filing the Motion for Preliminary Approval, Plaintiff will send out required Notice to the LWDA and follow all pre-filing requirements under California Labor Code sections 2699, *et. Seq.*

- R. **Final Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- S. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000). This is the gross amount Defendant can be required to pay under this Settlement Agreement. The GSA includes: (1) the Net Settlement Amount to be paid to Participating Class Members (the payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee and employer's tax liability for the share); (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court . No portion of the GSA will revert to Defendant for any reason.
- T. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- U. **LWDA:** California Labor and Workforce Development Agency.
- V. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, the portion of the PAGA Payment paid to the LWDA, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement. The payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee and employer's tax liability for the share.
- W. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).

- X. **PAGA Payment:** The PAGA Payment consists of \$5,000 of the GSA allocated to satisfy the PAGA penalties claim as alleged in the Complaint. Seventy-five percent (75%) of the PAGA Payment (\$3,750) shall be paid to the LWDA, and twenty-five percent (25%) (\$1,250) of the PAGA Payment shall be part of the Net Settlement Amount distributed to Participating Class Members.
- Y. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- Z. **Parties:** Plaintiff Miguel Hernandez as an individual and as Class Representative, and Defendant MJ Industries, Inc. dba MJ Tank Lines.
- AA. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- BB. **Qualified Settlement Fund or QSF:** The Parties agree that the GSA is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- CC. **Released Claims:** Class Members who do not opt out of the settlement will release all known and unknown state law claims that were alleged or that could have been alleged based on the facts of the complaints filed in the matter, including for meal and rest breaks, unpaid wages, including minimum wages, regular wages, overtime and double time wages, wage statement violations; separation pay violations; unfair business practices; failure to timely pay wages; failure to keep accurate payroll records; and PAGA. The release will be as to the Released Parties. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position).
- DD. **Released Parties:** Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.
- EE. **Response Deadline:** Thirty (30) calendar days from the initial mailing of the Notice.

- FF. First Installment:** The First Installment shall be comprised of \$50,000. The First Installment shall be funded and wired to the Settlement Administrator fifteen (15) days after the Effective Final Settlement Date.
- GG. Second Installment:** The Second Installment shall be comprised of \$50,000. The Second Installment shall be funded no later than ninety (90) days after funding the First Installment.
- HH. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members and to all former employee Class Members at the address resulting from the skip trace. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
- II. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Simpluris.
- JJ. Superior Court:** Superior Court of the State of California, County of San Diego
- KK. Third Installment:** The Third Installment shall be comprised of \$50,000. The Third Installment shall be funded no later than ninety (90) days after funding the Second Installment.

II. RECITALS

- A.** The Action was filed by Plaintiff Miguel Hernandez in the Superior Court of the State of California, County of San Diego on January 25, 2017. The complaint alleged causes of action on behalf of Plaintiff and those similarly situated hourly/non-exempt employees for failure to pay all straight time wages, failure to pay overtime, failure to provide meal periods, failure to authorize and permit rest periods, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination of employment, and violation of the California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*).
- B.** Defendant Answered the Complaint on July 5, 2017. In its answer Defendant affirmatively denied generally and specifically all claims raised in the complaint.
- C.** Plaintiff propounded two rounds of special interrogatories and one set of demands for production of documents to which Defendant responded. Defendant propounded two rounds of requests for production of documents and

one set of form interrogatories to which Plaintiff responded. Thereafter, Plaintiff conducted the deposition of two of Defendant's People Most Qualified to testify on designated subject areas related to the allegations in the complaint. Defendant also took the deposition of Plaintiff.

- D. In addition, Class Counsel reviewed a substantial amount of data and documents relating to the size and scope of the class that permitted an evaluation of the class-wide claims.
- E. The parties attended a full day mediation with Jeff Krivis on January 22, 2018. The matter did not settle at the mediation.
- F. On May 3, 2019, Plaintiff filed his Motion for Class Certification. Defendant opposed this motion. The Court held a hearing on Plaintiff's motion on July 12, 2019, and the Court issued an order granting Plaintiff's Motion for Class Certification. The Court granted a class comprised of all drivers who are or were employed by Defendant in the state of California at any time from January 25, 2013 to the date of the Court's order. The Court also granted five subclasses: unlawful on-duty meal break subclass, untimely or no first meal break subclass, untimely or no second meal break subclass, unlawful on-duty rest break subclass, and no third rest break subclass.
- G. On November 6, 2019, Defendant filed its Motion for Summary Judgment or, in the alternative, Motion for Summary Adjudication arguing that the certified class claims were preempted by the Federal Motor Carrier Safety Administration's ("FMCSA") hours of service regulations and the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") administrative determination that California's meal period rules are preempted, in addition to arguing that Plaintiff's individual claims failed as a matter of law.
- H. The parties continued to negotiate at arms-length in the following months and, on January 14, 2020, the parties reached an agreement in principle to settle the case, the terms of which are reflected herein.
- I. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals, including the possibility of Defendant's Motion for Summary Judgment succeeding. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- J. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- K. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims, some of which are included in its Motion for Summary Judgment, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant.
- L. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum GSA, that Defendant is obligated to pay under this Settlement Agreement is One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000).
- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of all claims asserted or that could have been asserted on behalf of Class Members in the Action. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement. The Parties agree that the Court's Order Granting Plaintiff's Motion for Class Certification, entered on September 27,

2019, will have no effect on Plaintiff or the Class Members' ability to participate in this settlement.

- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of all claims asserted or that could have been asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Miguel Hernandez shall be appointed as representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.
- 2. Tax Withholdings.** Each putative class member's gross settlement award will be apportioned as follows: 33 1/3% wages, 33 1/3% interest, and 33 1/3% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid

as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

G. Constituents of GSA Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the GSA as directed later on herein to the following:

- 1. To the Named Plaintiff:** In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Miguel Hernandez, will receive up to Ten Thousand Dollars and Zero Cents (\$10,000). The Settlement Administrator will pay the Class Representative Enhancement Payment out of the GSA. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to the Plaintiff with respect to his Class Representative Enhancement Payment.
- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed one-third (33 1/3%) or \$50,000 of the GSA and a Cost Award not to exceed \$15,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Class Members' portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities. The Settlement Administrator will also calculate and forward Defendant's share of taxes payable on the wage portion of each person's Individual Settlement Share, which shall be paid from the NSA. The payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount.

4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$7,500. This will be paid out of the GSA. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
5. **To the LWDA.** The Settlement Administrator will pay \$5,000 of the GSA allocated to satisfy the PAGA penalties claim as alleged in the First Amended complaint. Seventy-five percent (75%) of the PAGA Payment shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment shall be part of the NSA distributed to Participating Class Members.
6. **To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above.

H. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree to the appointment of the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the Class Members; keeping track of any objections or requests for exclusion (opt-outs) from Class Members; performing skip traces and remailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion (opt-outs) that have been received; providing a due diligence declaration for submission to the Court no later than thirty (30) calendar days prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the PAGA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; calculating and paying amounts owed to the appropriate tax authorities; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the State of California, in the amounts directed per this Settlement, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

I. Procedure for Approving Settlement.

1. Amending the Complaint.

- a.** Prior to filing Plaintiff's Motion for Preliminary Approval, the Parties agree to stipulate to permit Plaintiffs leave to file their First Amended Complaint. This stipulation will also request that the Court deem the First Amended Complaint responded to via Defendant's Answer on file.

2. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiff will move for an order conditionally certifying the Class on all claims that were alleged or that could have been alleged in the Action for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice.
- b.** At the Preliminary Approval hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class on all claims that were alleged or that could have been alleged in the Action and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c. Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class on all claims that were alleged or that could have been alleged in the Action or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to

award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancements.

3. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a. Class Data.** Within seven (7) business days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; (5) last known email address; and (6) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class (“Database”). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Class Members who are former employees of Defendant. The Database shall be based on Defendant’s payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.
- b. Notice Mailing.** Within fourteen (14) business days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant employee Class Members.
- c. Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to

Class Members for whom new addresses are found. The Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.

- d. Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed and emailed (if applicable), the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion (opt-outs) or objections received.
- e. Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline or at the request of the Parties, whichever comes first, the Settlement Administrator will provide the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the time the Motion for Final Approval is filed. Before the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

4. Objections to Settlement. The Class Notice will provide the method and timing for objections to the Settlement.

- a. Timing.** The objection must be submitted to the Settlement Administrator by mail, postmarked by the Response Deadline.
- b. Format.** Any Objections shall state: (a) the case name (e.g. *Hernandez v. MJ Tank Lines*) and case number (37-2017-00003218-CU-OE-CTL); (b) the objecting person's or his/her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class.

- c. **Notice of Intent to Appear.** Class Members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than the Response Deadline. If a Class Member objects to the Settlement, the Class Member will remain a Participating Class Member and if the Court approves this Settlement, the objecting Class Member will be deemed a Participating Class Member and be bound by the terms of the Settlement and Final Approval in the same way and to the same extent as a Class Member who does not object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

- 5. **Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion by the Response Deadline. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement (*e.g.* "I want to exclude myself from this settlement. I also understand that I retain all rights to sue the Defendant for the claims asserted in this lawsuit."); (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline. If a class member previously opted out in response to the "Notice of Pendency of Class Action" mailed on November 4, 2019, this has no effect on the class member's ability to recover fully for their meal and rest period claims in addition to all other claims encompassed by this settlement. If a class member did not opt out in response to the "Notice of Pendency of Class Action" mailed on November 4, 2019, this has no effect on the class member's ability to opt out of this settlement in its entirety and become free to pursue his or her individual claims for meal periods, rest periods, and all other claims asserted in the Lawsuit.

- a. **Effect of "Opt-Out."** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement.
- b. **Failure to "Opt-Out."** A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement

Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

- c. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity.
 - d. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
6. **No Solicitation of Objections or Requests for Exclusion.** Neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment. If a Class Member requests to be excluded from the Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Class Member to participate in separate litigation against Defendant.
7. **Class Member Disputes.** If a Class Member disputes the basis for the calculation of their Individual Settlement Share, the Class Member must provide notice, in writing, to the Settlement Administrator before the Response Deadline. Any such challenge shall include the reasons supporting the challenge, as well as any documentation supporting his or her contention that the Individual Settlement Share calculation is incorrect. In the absence of such evidence, the Database will be controlling. The Settlement Administrator will consult with the Parties about how to resolve the challenge, evaluate the information provided, and will make a final and unappealable decision as to the outcome of the challenge. If the Individual Settlement Share calculation is adjusted following a challenge, then the Settlement Administrator shall notify the Class Member of the adjustment.
8. **Motion for Final Approval.**

- a. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members.
 - b. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the GSA or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorney Fee Award, Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - c. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
9. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

10. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the GSA, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

11. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the GSA. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the GSA. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. **Funding the Settlement:** Defendant shall wire to the Settlement Administrator the GSA in three installments: (1) the First Installment shall be comprised of \$50,000 and shall be funded and wired to the Settlement Administrator fifteen (15) days after the Effective Final Settlement Date; (2) the Second Installment shall be comprised of \$50,000 and shall be funded no later than ninety (90) days after funding the First Installment; and (3) the Third Installment shall be comprised of \$50,000 and shall be funded no later than ninety (90) days after funding the Second Installment.
- b. **Disbursement:** The Settlement Administrator will disburse the GSA in two installments. First, within ten (10) days after funding of the Second Installment as instructed herein, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members (the payment of employee and employer side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee and employer's tax liability for the share); (2) the Cost Award to Class Counsel for attorneys' costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class

Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court. Second, within five (5) days after funding of the Third Installment as instructed herein, the Settlement Administrator shall disburse the Attorney Fee Award to Class Counsel for attorneys' fees, as approved by the Court.

12. Final Report by Settlement Administrator. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

13. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

a. Reminder Postcard. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

b. Unclaimed Funds. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining un-cashed, shall escheat to the State of California unclaimed property fund in the name of the Class Member.

14. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Fund.

J. Release of Claims. As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion, release the Released Parties from the Released Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.

K. Plaintiff's Release of Claims and General Release. In exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to

exceed \$10,000.00 (Ten Thousand Dollars and No Cents), Plaintiff shall, irrevocably and unconditionally release, acquit and forever discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney's fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, in connection with the Action, Plaintiff's employment with Defendant, and/or including but not limited to, employment claims, rights arising out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, or any legal restrictions on Defendant's right to hire, refusal to hire or terminate its employees, or any federal, state or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Fair Employment and Housing Act (which Acts prohibit discrimination based upon race, religion, sex, sexual orientation, age, color, national origin, disability, medical condition and marital status); (4) Section 503 of the Rehabilitation Act of 1973; (5) The Fair Labor Standards Act (including Equal Pay Act); (6) the California and the United States Constitution; (7) The California Labor Code and the Private Attorney General Act pursuant to *Labor Code* Section 2699, et seq; (including any and all provisions authorizing [Plaintiff/Employee] to seek civil penalties against [Defendant/Employer] for wage-hour violations and/or relief under California Labor Code section 132(a)); (8) the California Business and Professions Code Section 17200, et. seq.; (9) the Employee Retirement Income Security Act, as amended; (10) the Family and Medical Leave Act; (11) the California Family Rights Act; (12) the Americans with Disabilities Act; (13) The California Pregnancy Discrimination Act; (14) the Worker Adjustment and Retraining Notification Act; (15) The National Labor Relations Act; (16) the Immigration Reform and Control Act; (17) the California Government Code; (18) The California Wage Orders, and; (19) California's Occupational Safety and Health Act, or the Federal equivalent (hereinafter collectively referred to as "Claim" or "Claims"), which Plaintiff now has, owns or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or held, or claimed to have, own or hold against any of the Releasees up to and including, as of the Effective Final Settlement Date. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any release of any claims not permitted to be released by law.

L. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- 3. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 4. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate

its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

5. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
6. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Superior Court.
7. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
8. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
9. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
10. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
11. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this

Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 12. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- 13. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 14. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 15. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 16. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 4/22/2020 _____

MIGUEL HERNANDEZ

Miguel Hernandez

Plaintiff

Dated: _____

MJ INDUSTRIES, INC. DBA MJ TANK LINES

Defendant
Name:
Title:

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff

Dated: _____

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.
Colin P. Calvert, Esq.
Attorneys for Defendant

Dated: _____

MIGUEL HERNANDEZ

Plaintiff

Dated: _____

MJ INDUSTRIES, INC. DBA MJ TANK LINES

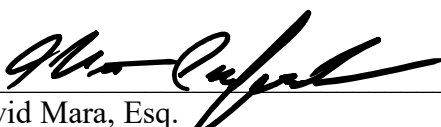
Defendant

Name:

Title:

Dated: April 23, 2020

MARA LAW FIRM, PC



David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff

Dated: _____

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.
Colin P. Calvert, Esq.
Attorneys for Defendant

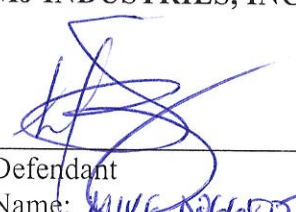
Dated: _____

MIGUEL HERNANDEZ

Plaintiff

Dated: 4/13/2020

MJ INDUSTRIES, INC. DBA MJ TANK LINES



Defendant

Name: MIKE DUGGETT

Title: PRESIDENT

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.

Matthew Crawford, Esq.

Attorneys for Plaintiff

Dated: _____

FISHER & PHILLIPS LLP

Christine D. Baran, Esq.

Colin P. Calvert, Esq.

Attorneys for Defendant

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff

Dated: __5/4/20_____

FISHER & PHILLIPS LLP



Christine D. Baran, Esq.
Colin P. Calvert, Esq.
Attorneys for Defendant

Exhibit A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Miguel Hernandez, on behalf of himself, all others similarly situated, and on behalf of the general public v. MJ Industries, Inc.; MJ Tank Lines and Does 1-100
Case No. 37-2017-00003218-CU-OE-CTL

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All individuals employed by Defendant MJ Industries, Inc. dba MJ Tank Lines as drivers at any time between January 25, 2013, through [preliminary approval of the settlement]. (“Class”).

The Superior Court of California, County of San Diego has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned lawsuit (“Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All individuals employed by Defendant as drivers at any time between January 25, 2013, through [preliminary approval of the settlement].

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

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1. *Why Have I Received This Notice?*

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described below, from January 25, 2013, through [preliminary approval of the settlement] (the "Class Period").

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the Superior Court of California, County of San Diego. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing], 2020 at [time a.m./p.m.], before the Honorable Ronald L. Styn in Department C-74, located at 330 West Broadway, San Diego, California 92101.

2. *What Is This Case About?*

The Action was commenced on January 25, 2017 in the San Diego County Superior Court (Case Number 37-2017-00003218-CU-OE-CTL). This action was brought against Defendant seeking damages, restitution, penalties, interests, costs and attorney's fees and other relief based on the following alleged causes of action: 1) failure to pay all straight time or overtime wages including time shaving; 2) failure to pay compensation for all time worked; 3) failure to provide meal periods; 4) failure to authorize and permit rest periods; 5) knowing and intentional failure to comply with itemized employee wage statement provisions; 6) waiting time penalties; and 7) violation of the Unfair Competition Law. The Action was later amended to allege a cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

The Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to Class Members.

3. *Am I A Class Member?*

You are a Class Member if you are employed or were employed by Defendant in California as a driver for the period of January 25, 2013 through [preliminary approval of the settlement].

4. *How Does This Class Action Settlement Work?*

Plaintiff brings this action on behalf of himself and all other similarly situated employees who are or were employed by Defendant in California as a driver for the period of January 25, 2013, through [preliminary approval of the settlement]. Plaintiff and these other current and former employees comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents,

which explain the settlement in greater detail. If you would like copies of the settlement documents, you can contact the Settlement Administrator or Class Counsel.

5. *Who Are the Attorneys Representing the Parties?*

Class Counsel (Attorneys for Plaintiff and the Class)	Attorneys for Defendants
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048	FISHER & PHILLIPS LLP Christine D. Baran Colin P. Calvert Ashton M. Riley 2050 Main Street, Suite 1000 Irvine, California 92614 Telephone: (949) 851-2424 Facsimile: (949) 851-0152

The Court has decided that Mara Law Firm, PC is qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and may receive a payment from the Settlement. You will be bound to the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the settlement, you will not receive an Individual Settlement Share payment and you will not give up the right to sue Defendant and the Released Parties for the Released Claims as defined in Section No. 9 below.

- **OBJECT:** You may file a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

The Final Judgment entered, following Final Approval of the Settlement by the Court, will bind all Class Members who do not request exclusion from the Settlement.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) the case name (e.g. *Hernandez v. MJ Tank Lines*) and case number (37-2017-00003218-CU-OE-CTL); (b) your full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class.

Class Members who timely file valid objections to the Settlement may appear at the Final Approval hearing, either in person or through the objector’s own counsel, provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than [the Response Deadline].

If the Court rejects your objection, you will receive a settlement payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendant and the Released Parties¹ from the Released Claims. The Released Claims are as follows:

¹ “Released Parties” means Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and

Class Members who do not opt out of the settlement will release all known and unknown state law claims that were alleged or that could have been alleged based on the facts of the complaints filed in the matter, including for meal and rest breaks, unpaid wages, including minimum wages, regular wages, overtime and double time wages, wage statement violations; separation pay violations; unfair business practices; failure to timely pay wages; failure to keep accurate payroll records including itemized employee wage statements; and PAGA. The release will be as to the Released Parties. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position).

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Settlement is no more than \$150,000 (“Gross Settlement Amount” or “GSA”).

The “Net Settlement Amount” or “NSA” means the portion of the GSA available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payment to Plaintiff in an amount not to exceed \$10,000, for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$7,500; (3) a payment of \$3,750 (75% of \$5,000 allocated to the Labor Code Private Attorneys General Act of 2004 claims) to the California Labor Workforce Development Agency (“LWDA”) (4) payment to Class Counsel in an amount not to exceed \$50,000 (1/3 of the GSA) for attorneys’ fees and an amount not to exceed \$15,000.00 for litigation costs; and (5) Defendant’s employer payroll taxes. All of these payments are subject to court approval.

A. How Your Payment Is Calculated.

After deducting the above-referenced items, the remaining NSA, will be proportionately distributed amongst all Class Members who have not opted out. The Settlement Administrator will assign to each Participating Class Member² a settlement share which shall be calculated as follows: (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or she worked.

B. Your Estimated Settlement Payment.

Your exact share of the NSA cannot be precisely calculated until after the time during which individuals may object or opt out of the Settlement concludes. However, based upon the calculation above, your *estimated* share of the Net Settlement Amount is: \$ [REDACTED], less taxes. This is based on Defendant’s records which shows you worked [REDACTED] workweeks during the Class Period.

affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

² A Participating Class Member is a Class Member who does not exclude themselves (opt out) from the Settlement.

C. Tax Treatment

One-third (1/3) of each Individual Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendant's share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and will also be paid out of the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Settlement Share.

One-third (1/3) of the Individual Settlement Share is intended to settle each Class Member's claims for interest and one-third (1/3) of the Individual Settlement Share is intended to settle each Class Member's claim for penalties (collectively, the "Non-Wage Portion"). The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Settlement Share.

D. What Happens If I Don't Cash My Check?

It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or deposit it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the uncashed amounts will be sent to the California State Controller's Office – Unclaimed Property Fund in your name, where you will be able to claim your settlement payment at a future date.

11. How Will Class Counsel Be Paid?

Subject to Court approval, Class Counsel (the attorneys for Plaintiff and the Class) shall be paid an amount not to exceed one-third (1/3) of the GSA (\$50,000) for attorney fees and up to \$15,000.00 for litigation costs. Subject to Court approval, Plaintiff will be paid an amount not to exceed \$10,000.00, for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and risks of being blacklisted from future employment.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the MJ Tank Lines Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 330 West Broadway, San Diego, California 92101. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.