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KHESRAWI, and ROXANA EDLYN GARCIA
NUNEZ, on behalf of themselves and 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

ALLONA FRAME, SARA
KHESRAWI, and ROXANA EDLYN
GARCIA NUNEZ, on behalf of
themselves and all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

LUXOTTICA OF AMERICA, INC.,
LUXOTTICA RETAIL NORTH
AMERICA, INC.; and DOES 1-100,

Defendants.

Case No. 37-2020-00026895-CU-OE-CTL

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF PAGA
SETTLEMENT**

Date: September 15, 2023
Time: 10:30 a.m.

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

1 *The Vons Companies, Inc.* (Case No. 37-2014-00006965); *Hilderbrand v. LinkUs*
2 *Enterprises, LLC* (Case No. DR150155); *Martin v. Sysco Central California, Inc.* (Case
3 No. 1:16-cv-00990-DAD-SAB); *Paramo v. Cintas Corporate Services, Inc., et. al.* (Case
4 No. CIVDS1719941); *Cortez v. United Natural Foods, Inc.* (Case No. 5:18-cv-04603-
5 BLF); *Frieri v. Sysco San Diego, Inc.* (Case No. 3:16-cv-1432-JLS-NLS); *Allen v. J.S.*
6 *West Hardister, LLC, et. al.* (Case No. 9000289); *Betts v. Foster Dairy Farms* (Case No.
7 9000320); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-Ramirez v.*
8 *US Foods, Inc.* (Case No. RG15770766); *Rodriguez v. Delta Sierra Beverage, LLC* (Case
9 No. 34-2017-00206727); *Helton v. Pepsi-Cola Sales and Distribution, Inc., et. al.,* (Case
10 No. 3:17-cv-01135-EMC); *Kramer v. XPO Logistics, Inc.* (Case No. 3:16-cv-07039-
11 WHO).

12 9. Plaintiff Allona Frame sent her Notice of Labor Code Violations Pursuant to Labor Code
13 § 2699.3 on May 26, 2020. In the notice, Plaintiff Frame, a former non-exempt employee
14 of Defendants, apprised the LWDA of her claims against Defendants Luxottica of
15 America, Inc. and Luxottica Retail North America, Inc. Her notice alleged that Defendants
16 violated the California Labor Code by failing to pay all straight time wages, failing to pay
17 minimum wages, failing to pay all overtime wages, failing to provide lawful meal and rest
18 periods, failing to provide accurate itemized wage statements, failing to pay all wages
19 owed at termination, and failing to pay wages twice per month. Plaintiff Frame then filed
20 this action against Defendants in the San Diego County Superior Court on July 31, 2020,
21 alleging causes of action on behalf of Plaintiff and those similarly situated aggrieved
22 employees under the PAGA for the above-mentioned wage and hour violations.

23 10. Plaintiff Sara Khesrawi sent her Notice of Labor Code Violations Pursuant to Labor Code
24 § 2699.3 on June 19, 2020. In the notice, Plaintiff Khesrawi, a former non-exempt
25 employee of Defendants, apprised the LWDA of her claims against Defendants Luxottica
26 of America, Inc. and Luxottica Retail North America, Inc. Her notice alleged that
27 Defendants violated the California Labor Code for Defendants' failure to pay wages for
28 all hours worked at minimum wage, failure to pay overtime wages for overtime hours

1 worked, failure to pay overtime wages at the proper overtime rate, failure to authorize or
2 permit meal periods and/or pay meal period premiums, failure to pay meal period
3 premiums at the proper regular rate, failure to authorize or permit rest periods and/or pay
4 rest period premiums, failure to pay rest period premiums at the proper regular rate, failure
5 to provide complete and accurate wage statements, and failure to timely pay all earned
6 and unpaid wages due upon separation of employment. Plaintiff Khesrawi then filed her
7 action against Defendants in the Alameda Superior Court (Case No. RG20072437) on
8 August 24, 2020, alleging a single cause of action on behalf of Plaintiff and those similarly
9 situated aggrieved employees under the PAGA for the above-mentioned wage and hour
10 violations.

11 11. Plaintiff Roxana Edlyn Garcia Nunez sent her Notice of Labor Code Violations Pursuant
12 to Labor Code § 2699.3 on December 23, 2020. In the notice, Plaintiff Nunez, a former
13 non-exempt employee of Defendants, apprised the LWDA of her claims against
14 Defendants Luxottica of America, Inc. and Luxottica Retail North America, Inc. Her
15 notice alleged that Defendants violated the California Labor Code by failing to provide
16 lawful meal and rest periods, failing to pay wages for all hours worked, failing to provide
17 suitable seating, pressuring employees to make purchases, failure to provide commission
18 agreements, failing to provide accurate itemized wage statements, and failing to pay all
19 wages owed at termination. Plaintiff Nunez then filed her action against Defendants in the
20 San Diego Superior Court (Case No. 37-2021-00008375-CU-OE-CTL) on February 26,
21 2021, alleging causes of action on behalf of Plaintiff and those similarly situated aggrieved
22 employees under the PAGA for the above-mentioned wage and hour violations.

23 12. As part of the settlement process, the Parties agreed to the filing of the First Amended
24 Complaint in this action, adding Plaintiffs Khesrawi and Nunez and their respective
25 PAGA claims. The agreed upon First Amended Complaint is attached to the Mara Dec.
26 as **Exhibit 2**. Plaintiffs respectfully request that the Court deem filed the First Amended
27 Complaint and deem it answered with the answer currently on file in this action.

28 13. Through discovery, Plaintiffs sought numerous documents and substantial amounts of

1 data that were needed to evaluate the case. These documents included requests for time
2 and wage records for the Class, employee handbooks in place during the class period, any
3 policies regarding meal breaks, rest breaks, the payment of wages, and employee training
4 in place during the class period. Plaintiffs also requested data surrounding the number of
5 current and former employees, as well as the number of shifts, workweeks, and pay
6 periods worked by Class Members during the relevant time period.

7 14. This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
8 production of numerous documents and thousands of lines of data. Using the time and
9 wage records for Class Members produced by Defendants, and the data surrounding the
10 number of current and former Class Members, Plaintiffs' expert was able to provide
11 numerous data points used in establishing a potential exposure model in preparation for
12 mediation.

13 15. The Parties attended mediation with respected wage and hour mediator Hon. Jay C.
14 Gandhi (Ret.) on October 19, 2022. Shortly after the mediation, the mediator issued a
15 mediator's proposal that was ultimately accepted by the Parties. Since then, the Parties
16 have met and conferred regarding the terms of the settlement and finalized their agreement
17 in the Settlement the Parties now ask the Court to approve.

18 16. Plaintiffs contend that Defendants fail to permit employees to leave the premises for meal
19 and rest periods and use the time effectively for his or her own purposes free from
20 employer control. If they leave during a meal or a rest period, they have to submit
21 themselves to the company's controlling and invasive searches. Employees are thereby –
22 as a matter of policy and practice – prevented from using all their break time free of
23 employer control for off-premises pursuits. For this reason, Defendants do not relinquish
24 all control over employees during their meal and rest periods in violation of California
25 law.

26 17. Defendants argue that employees were unquestionably provided with legally compliant
27 meal and rest periods in which employees can do whatever they choose. Defendants point
28 out that they have written meal and rest period policies that are facially lawful under

1 California, which explicitly state that employees must be completely relieved of all work
2 and allowed to leave their work location during meal periods and rest breaks. Defendants
3 also point out that even if a security search were to occur, as they do not occur during
4 every shift, their policies clearly authorize meal periods of at least thirty (30) minutes and
5 fifteen (15) minute rest periods, permitting employees to take full duration meal and rest
6 periods in compliance with California law.

7 18. Defendants also argue that Plaintiffs would have to ask each employee whether they
8 thought security searches caused them to take meal periods shorter than thirty (30) minutes
9 and rest periods shorter than ten (10) minutes, despite Defendant's policies explicitly
10 providing for a minimum of thirty (30) minutes for meal periods and fifteen (15) minutes
11 for rest periods. Because each employee would have to testify as to their understanding of
12 the policy, Plaintiffs' claims would be unmanageable at trial.

13 19. As discussed previously, Plaintiffs assert that Defendants require employees to undergo
14 security searches before leaving the premises. Similar to the situation in *Frlekin*,
15 Defendants' searches are required pursuant to policy, occur at the workplace, are subject
16 to the same degree of control for the bag searches, are imposed to prevent theft of
17 Defendants' property, and failure to comply subjects the employee to discipline. As these
18 searches occur when the employee is off-the-clock when leaving for a meal period or at
19 the end of their shift, this is compensable time that is not being paid to the aggrieved
20 employees each and every shift.

21 20. Defendants argues that beyond the limited accusations of Plaintiffs, there is no evidence
22 that employees performed *any* work-related tasks for which they were not compensated,
23 and that Defendant has uniform practices and policies *forbidding* employees from working
24 off the clock. Further, Defendants contend that all employees are trained that security
25 searches, if and when they occur, are to be performed while the employee is on the clock,
26 and that Plaintiffs can point to no policy that instructs otherwise.

27 21. As with the meal and rest period claims, Defendants also argue that Plaintiffs would have
28 to ask each employee whether they were subject to security searches while clocked out,

1 despite Defendant's policies explicitly requiring employees to be clocked in for all work-
2 related tasks. Because each employee would have to testify as to their understanding of
3 not only the policy, but whether they were actually subject to an unpaid security search,
4 Plaintiffs' claims would be unmanageable at trial.

5 22. Plaintiffs allege that Defendants maintain a Paid Time Off (PTO) policy matches that of
6 the above example given by the DLSE and does not differentiate between sick and
7 vacation time. However, when an employee is terminated, none of this PTO is paid out to
8 the employee.

9 23. Defendants dispute Plaintiffs' interpretation of the policy and point out that nowhere in
10 the policy does it state that employees will not be paid out their unused PTO at the
11 conclusion of their employment. Defendants contend that California unequivocally
12 permits these types of policies, and that in accordance with the law, Defendants pays
13 employees their unused PTO, along with all other wages and compensations owed to the
14 employee, upon separation of employment.

15 24. Plaintiffs contend that Defendants' attendance policy requires an employee to contact
16 Defendants at least one hour prior to the start of their shift to inform them of any absence,
17 or they will face disciplinary action, including potential termination. Plaintiff argues that
18 this is a clear violation of section 234, as it is clear an employee who attempts to use their
19 legally protected sick leave must provide an hour advance notice or Defendant will treat
20 it as an unscheduled absence that that may lead to or result in discipline or discharge.

21 25. Defendants argue that Plaintiffs are simply cherry-picking a provision out of their
22 attendance policy without giving it any context whatsoever. Defendants claim this does
23 not apply to an employee attempting to use their protected sick leave, and that Defendants'
24 attendance policy is separate and apart from their policy regarding sick leave, which is
25 fully compliant with California law and provides all the requisite protections under Labor
26 Code section 233.

27 26. Plaintiffs also pursued claims for failure to provide accurate itemized wage statements,
28 waiting time penalty claims, and failure to pay all wages owed twice per month. These

claims are derivative of Plaintiffs' underlying meal and rest period claims, as well as their unpaid wages claim. Should Plaintiffs' underlying wages claim fail, these claims would also fail.

27. Defendants also argue that should litigation continue, they will bring a motion challenging the manageability of trial as Defendants do not believe that this case can be tried manageably and will require the testimony of every individual aggrieved employee. Furthermore, while Defendants do not concede that any of their wage and hour policies are unlawful, Defendants claim that any challenges Plaintiffs have posed to these policies are easily refuted by how they are implemented in practice; as a result, no aggrieved employee has suffered any damages.

28. Plaintiffs claim that there are eight (8) core violations under § 2699(f)(2) – failure to provide lawful meal breaks or pay a premium, failure to provide lawful rest breaks or pay a premium, failure to pay all wages, failure to pay accrued vacation at termination, failure to adopt a lawful sick leave policy, failure to pay for failure to provide accurate itemized wage statements, failure to pay wages at the time of termination, and failure to pay wages twice per month – of the Labor Code sections which give rise to PAGA penalties.

29. Each of Plaintiffs' claims, with the exception of Plaintiffs' claims for failure to pay accrued vacation owed at termination and failure to pay wages at the time of termination, occurred at least once in every pay period. Plaintiffs' claims for failure to pay accrued vacation owed at termination and failure to pay wages at the time of termination only occurred in approximately 6,580 pay periods. Thus, Defendants' *maximum* exposure under §2699(f)(2) is \$202,916,000:

\$100 x 6 PAGA violations x 336,000 pay periods = \$201,600,000

\$100 x 2 PAGA violations x 6,580 pay periods = \$1,316,000

Maximum Exposure: \$202,916,000

30. Here, PAGA Counsel applies for an award of attorneys' fees in the sum of \$900,000 (which is 33.33% of the GSA). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair

1 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
2 contingent basis and compensates PAGA Counsel for their efforts, as well as the result
3 achieved for the benefit of the State of California and the Aggrieved Employees.

4 31. I devoted 235 hours to this case. The following is a summary of my tasks and activities
5 performed in the litigation of this matter: initial case intake; research into new case;
6 research into whether other cases are filed against potential new defendant; preparing
7 personnel file request; pre-filing investigation and legal research; reviewing and revising
8 PAGA notice; drafting and revising initial complaint and related documents; researching
9 and investigating legal issues throughout case; interoffice discussions throughout case;
10 investigating Defendant's pay-structures and policies for its employees; conferences with
11 Defendant's Counsel; conferences with co-counsel; discussions with Plaintiff throughout
12 litigation and settlement; analyzing records produced by Defendants relating to its policies,
13 pay-structures, and time keeping; communications with Plaintiffs expert on his analysis of
14 the sampling of Class Member time and wage records; reviewing and revising mediation
15 brief and mediation damage and exposure model; preparing for and attending mediation;
16 reviewing, revising, and negotiating the settlement agreement and the notice to the
17 aggrieved employees; reviewing and revising PAGA settlement approval motion and
18 supporting papers; drafting declaration in support of approval motion; and review
19 Settlement Administrator's declaration.

20 32. My hourly rate is \$850. Based on my hourly rate and the hours expended, 235, my fee is
21 \$199,750, which is reasonable and necessary to the successful litigation of this matter.

22 33. Matthew Crawford is an associate at the Mara Law Firm. Mr. Crawford has been a member
23 of the California Bar since 2016. Mr. Crawford received his training in wage and hour class
24 action and PAGA lawsuits while at Mara Law Firm, PC. He has been substantially
25 involved in all phases of this litigation and in the following sampling of wage and hour
26 class action and PAGA cases, of which our firm is the attorney of record: *Norona v. B&G*
27 *Delivery System, Inc.* (Case No. RG1577005); *Limon v. National Retail Transportation,*
28 *Inc.* (Case No. 2:16-cv-02054); *Medina v. Central Cal Transportation, Inc.* (Case No.

RG15770011); *Shroeder v. YRC Global, Inc.* (Case No. 2:16-cv-06173); *Davidson v. A&B Trucking Services, Inc.* (Case No. 16CECG02390); *Spikes v. Bear Trucking, Inc.* (Case No. 16CECG02389); *Montes v. CORAM Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Valentich v. Hub Construction Specialties, Inc.* (Case No. RIC 1610267); *Roby v. Pan Pacific Petroleum, Inc.* (Case No. BCV-16-101856); *Smith v. Roadrunner Management Services, Inc.* (Case No. BC630949); *Terry v. Hoovestol, Inc.* (Case No. RG16823879); *Belton v. Satellite Affordable Housing Associates* (Case No. RG17885127).

34. Mr. Crawford devoted 202 hours to this case. The following is a summary of his tasks and activities performed in the litigation of this matter: review notice filed with the LWDA; interoffice discussions throughout case; review discovery propounded on Defendant; review Defendant's discovery responses; draft case management statements; appear at case management conferences; analyze documents and information produced by Defendant, including records produced by Defendant relating to its policies, pay-structures, and time keeping; create document summary; communications with Defendant's counsel; communications with co-counsel; discussions with Plaintiff throughout litigation and settlement; draft and revise stipulations for filing in case; numerous discussions with Plaintiffs' expert regarding the data provided by Defendants for mediation; draft and revise mediation brief and damage model; prepare for and attend mediation; draft and negotiate settlement agreement; draft First Amended Complaint for settlement purposes; draft and revise settlement approval motion and supporting paperwork; and review Settlement Administrator's declaration.

35. Mr. Crawford's hourly rate is \$600. Based on his hourly rate and the hours expended, 202, his fee is \$121,200 which is reasonable and necessary to the successful litigation of this matter.

36. PAGA Counsel has worked 684.12 hours to date on this case and have calculated the lodestar fee on those hours at \$467,381.50 at rates reflecting those currently earned in the marketplace. All of the work and tasks performed by PAGA Counsel were reasonable and

necessary to the prosecution of this case and are reflected in the result achieved.

37. As discussed above, this was a highly-contested matter which required a significant amount of time and labor. PAGA Counsel had to investigate and analyze hundreds of pages of documents and Excel spreadsheets of data. In addition, PAGA Counsel had to marshal the evidence in a manner in which it could be adjudicated manageably on behalf of all the Aggrieved Employees, an endeavor which cannot be underscored. So often, lawyers unskilled in PAGA wage and hour cases do not pay attention to or put the work into how the evidence must be presented for adjudication on a representative basis. Strong PAGA cases perish in the hands of inexperienced counsel because the case has not been worked up to succeed in demonstrating manageability. PAGA Counsel here has considerable experience in PAGA litigation and, from the beginning of the case, is marshalling the evidence with a sharp focus on representative proof needed for the matter to make it to trial. This case was no different. This filtering of voluminous evidence into representative proof while keeping an eye on the merits of the litigation resulted in a considerable amount of attorney time and skill.

38. Most importantly, all services were performed by PAGA Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in this case. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal.4th at 1132-33. Here, PAGA Counsel bore the risk that, in spite of all of their efforts and skill employed, there may be no recovery.

39. PAGA Counsel respectfully requests a fee of \$900,000, which, based on the total attorney hours expended and rates, would require a modest 1.925 multiplier to raise the generated fees of \$467,381.50 to the requested amount.

40. PAGA Counsel's hourly rates are between \$150 and \$925 and are in line with rates typically approved in wage and hour class action and PAGA litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts.

- 1 41. My firm seeks reimbursement of litigation costs and expenses of \$13,595.27.
- 2 42. PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$25,679.48.
- 3 These costs were all reasonable and necessary to the prosecution of this case and the results
- 4 achieved, and are fair, reasonable, and unopposed by Defendants.
- 5 43. A true and correct copy of the PAGA Settlement Agreement is attached as **Exhibit 1**.
- 6 44. A true and correct copy of the agreed upon First Amended Complaint to use for settlement
- 7 purposes is attached hereto as **Exhibit 2**.
- 8 45. A true and correct copy of a Summary of Time and Costs is attached hereto as **Exhibit 3**.
- 9 46. A true and correct copy of the Westlaw Court's Express's Legal Billing Report, Volume
- 10 14, Number 3, California Region for December 2012 is attached as **Exhibit 4**.
- 11 47. A true and correct copy of the Declaration of Richard M. Pearl in *Hohnbaum v. Brinker*
- 12 *Restaurant Corp.* SDSC GIC834348 is attached as **Exhibit 5**.
- 13 48. A true and correct copy of the 2012 National Law Journal Survey of Hourly Billing Rates
- 14 for Partners and Associates is attached as **Exhibit 6**.
- 15 49. A true and correct copy of the filing receipt from the upload of this settlement motion to
- 16 the LWDA is attached hereto as **Exhibit 7**.
- 17 50. A true and correct copy of an email from the LWDA confirming that the upload of this
- 18 settlement motion was received is attached hereto as **Exhibit 8**.

19 I hereby declare under penalty of perjury under the laws of the State of California that the

20 foregoing is true and correct.

21 Dated: July 5, 2023

MARA LAW FIRM, PC

22 

23 _____

24 David Mara, Esq.

25 Attorneys for Plaintiffs

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Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to approval by the Court, this Settlement Agreement is between Allona Frame, Sara Khesrawi, and Roxana Edlyn Garcia Nunez (“Plaintiffs”), on behalf of themselves, all other non-exempt, hourly employees who worked in California for Luxottica of America, Inc. formerly known as Luxottica Retail North America, Inc. (“Defendants”). Plaintiffs and Defendants 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 \$50,000. All Administration Costs shall be paid from the Gross Settlement Amount. Any amount not awarded by the Court or needed by the Settlement Administrator will become part of the Net Settlement Amount for distribution to Aggrieved Employees.
- B. **Aggrieved Employees**: All non-exempt, hourly employees who worked in California for Defendants during the PAGA Period.
- C. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- D. **Attorney Fee Award**: The amount, not to exceed one-third of the Gross Settlement Amount or \$900,000, finally approved by the Court and awarded to Plaintiffs’ Counsel. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendants. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Aggrieved Employees.
- E. **Cost Award**: The amount that the Court orders Defendants to pay Plaintiffs’ Counsel for payment of actual litigation costs, which shall not exceed \$50,000. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendants. 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 Aggrieved Employees.
- F. **Counsel for Defendants**: Sage Fahimi and Noah J. Woods of Law Offices of Littler Mendelson, P.C.
- G. **Defendants**: Luxottica of America, Inc. and Luxottica Retail North America, Inc.

- H. **Disbursement of the Settlement:** The dates on which the Settlement Administrator shall disburse the Gross and Net Settlement Amounts as instructed herein.
- I. **Effective Date:** The date on which the following events have occurred: (1) this Settlement Agreement has been executed by all Parties and their counsel; (2) the Court has entered an order granting Approval of the Settlement; (3) the Court has entered a Judgment; (4) the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; i.e., within 60 calendar days after entry of the Judgment; or (6) when any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (vii) when any appeal, writ or other appellate proceeding has upheld the Court's Judgment with no right to pursue further remedies or relief.
- J. **Frame Action:** *Allona Frame v. Luxottica of America, Inc. dba LensCrafters, et al.*, San Diego Superior Court, Case No. 37-2020-00026895-CU-OE-CTL.
- K. **Funding of Settlement:** The Gross Settlement Amount will be wired by Defendants to the settlement administrator within thirty (30) days of the latter of: (1) the Effective Date or (2) the date the Settlement Administrator provides Defendants' counsel (a) a Form W-9 for the Settlement Administrator; and (b) a copy of a cancelled check from the Settlement Administrator's account or a signed letter from the Settlement Administrator's bank that includes: name of bank, account holder, account number, ACH routing number, and bank address.
- L. **Final Judgment:** The final order entered by the Court approving this settlement.
- M. **First Amended Complaint:** The first amended complaint filed in the *Frame* Action to consolidate all matter for settlement purposes.
- N. **Garcia Nunez Action:** *Roxana Edlyn Garcia Nunez v. Luxottica Retail North America, Inc., et al.* San Diego Superior Court, Case No. 37-2021-00008375-CU-OE-CTL.
- O. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Two Million Seven Hundred Thousand Dollars and Zero Cents (\$2,700,000). This is the maximum amount Defendants can be required to pay under this Settlement Agreement. The Gross Settlement Amount includes: (1) the Net Settlement Amount to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiffs' Counsel for attorneys' fees and costs, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment to the LWDA, as approved by the

Court. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

- P. Individual Settlement Share(s):** The amount payable to each Aggrieved Employee under the terms of this Agreement.
- Q. Khesrawi Action:** *Sara Khesrawi v. Luxottica of America, Inc., et al.*, Alameda Superior Court, Case No. RG20072437.
- R. LWDA:** California Labor and Workforce Development Agency.
- S. LWDA Payment:** Seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the LWDA.
- T. Net Settlement Amount or NSA:** The NSA is the total amount of money available for payout to Aggrieved Employees and the LWDA, which is the GSA less the Attorney Fee Award, Cost Award, and Administration Costs.
- U. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- V. PAGA Notice or Notice:** The Notice of PAGA Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval, which will accompany each Individual Settlement Share check.
- W. PAGA Period:** May 13, 2019 through the date when this Agreement becomes fully executed.
- X. PAGA Representatives or Plaintiffs:** Allona Frame, Sara Khesrawi, and Roxana Edlyn Garcia Nunez.
- Y. Plaintiff's Counsel:** David Mara and Matthew Crawford of Mara Law Firm, PC, Joseph Lavi of Lavi & Ebrahimian, LLP, Justin Hewgill of Hewgill Cobb Lockard, APC, and Sarah Gallagher of Gold Coast Counsel, APC.
- Z. Qualified Settlement Fund or QSF:** The Parties agree that the Gross Settlement Amount 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.
- AA. Released Claims:** Each of the Aggrieved Employees, including Plaintiffs, shall fully release and forever discharge all claims alleged by Plaintiffs and

Aggrieved Employees in the complaints filed in the *Garcia Nunez, Khesrawi* and *Frame* Actions and the First Amended Complaint for any and all debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, or interest based on any and all PAGA claims seeking civil penalties under California Labor Code sections 2698, et seq., Wage Orders, regulations, and/or other provisions of law alleged or, based on the facts pled in the complaints filed in the *Garcia Nunez, Khesrawi* and *Frame* Actions and the First Amended Complaint and notices to the LWDA, and could have been alleged to have been violated in the complaints filed in the *Garcia Nunez, Khesrawi* and *Frame* Actions and the First Amended Complaint with respect to the Aggrieved Employees, including but not limited to all claims for failure to provide meal periods or pay meal period premiums at the regular rate of pay, all claims for failure to authorize and permit rest breaks or pay rest break premiums at the regular rate of pay, all claims for failure to pay all wages, including overtime and premium wages, all claims for failure to provide compensation for all hours worked, all claims for failure to pay minimum wages, all claims for waiting time penalties, all claims for late and/or untimely payment of wages, all claims for failure to maintain and provide accurate itemized wage statements, all claims for failure to adopt a compliant sick leave/absence control policy, all claims for failing to provide suitable seating or otherwise, all claims, all claims for compelling, coercing or pressuring employees to patronize or otherwise make purchases from their employer, all claims for failure to reimburse for necessary business expenses, and all claims for failure to pay vacation pay owed during the PAGA Period. Aggrieved employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

- BB. Released Parties:** Defendants including their past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, members, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies.
- CC. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Aggrieved Employees and run the names of all Aggrieved Employees through the National Change of Address ("NCOA") database to determine any updated addresses. The Settlement Administrator will mail the Individual Settlement Share checks and Notice by first class U.S. mail to all Aggrieved Employees. The Notice will inform Aggrieved Employees of the resolution of the Action and their entitlement to the enclosed settlement payment.
- DD. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Settlement Administrators ("Phoenix").

EE. Superior Court: San Diego County Superior Court.

II. RECITALS

- A.** Plaintiff Allona Frame sent her Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on May 13, 2020. In the letter, Plaintiff, a former non-exempt employee, apprised the LWDA of her claims against Defendants. Plaintiff's notice alleged that Defendant's violated the California Labor Code by failing to pay all straight time wages, failing to pay minimum wages, failing to pay all overtime wages, failing to provide lawful meal and rest periods, failing to provide accurate itemized wage statements, failing to pay all wages owed at termination, failing to pay wages twice per month, failing to adopt a compliant sick leave/absence control policy, and failure to pay out vacation pay.
- B.** The *Frame* Action was filed by Plaintiff in the San Diego County Superior Court on July 31, 2020. The complaint alleged causes of action on behalf of Plaintiff and those similarly situated aggrieved employees under the PAGA for failure to pay straight time wages, failure to pay overtime, failure to provide meal periods, failure to provide rest periods, failure to provide compliant wage statements, failure to pay all wages due at termination, failing to pay wages twice per month, failing to adopt a compliant sick leave/absence control policy, and failure to pay out vacation pay.
- C.** Plaintiff Sara Khesrawi sent her Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on June 19, 2020. In the letter, Plaintiff, a former non-exempt employee, apprised the LWDA of her claims against Defendants. Plaintiff's notice alleged that Defendant's violated the California Labor Code by failing to pay minimum wages, failing to pay all overtime wages and overtime wages at the regular rate of pay, failing to provide lawful meal and rest periods and premiums at the regular rate of pay, failing to provide accurate itemized wage statements, and failing to pay all wages owed at termination.
- D.** The *Khesrawi* Action was filed by Plaintiff in the Alameda County Superior Court on August 24, 2020. The complaint alleged causes of action on behalf of Plaintiff and those similarly situated aggrieved employees under the PAGA for failing to pay minimum wages, failing to pay all overtime wages and overtime wages at the regular rate of pay, failing to provide lawful meal and rest periods and premiums at the regular rate of pay, failing to provide accurate itemized wage statements, and failing to pay all wages owed at termination.
- E.** Plaintiff Garcia Nunez sent her Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on December 23, 2020. In the letter, Plaintiff, a former non-exempt employee, apprised the LWDA of her claims against Defendants. Plaintiff's notice alleged that Defendant's violated the California Labor Code by failing to pay all straight time wages, failing to pay minimum wages, failing to pay all overtime wages, failing to provide lawful meal and rest periods,

failing to provide accurate itemized wage statements, failing to pay all wages owed at termination, failing to pay wages twice per month, pressuring employees to make purchases from Defendants, failure to provide seating, failure to provide agreed upon commissions, and failure to pay out vacation pay.

- F. The *Garcia Nunez* Action was filed by Plaintiff in the San Diego County Superior Court on February 26, 2021. The complaint alleged causes of action on behalf of Plaintiff and those similarly situated aggrieved employees under the PAGA for failure to pay straight time wages, failure to pay overtime, failure to provide meal periods, failure to provide rest periods, failure to provide compliant wage statements, failure to pay all wages due at termination, failing to pay wages, failing to pay wages twice per month, pressuring employees to make purchases from Defendants, failure to provide seating, failure to provide agreed upon commissions, and failure to pay out vacation pay.
- G. After filing, the Parties conducted informal discovery. Defendant produced hundreds of pages of documents and a sampling of time and wage records for aggrieved employees comprised of hundreds of thousands of lines of data.
- H. The parties attended mediation with respected wage and hour mediator Hon. Jay C. Gandhi (Ret.) on October 19, 2022. Although the matter did not settle at mediation, a mediator's proposal was issued shortly thereafter that was ultimately accepted by the Parties on November 10, 2022.
- I. **Benefits of Settlement to Aggrieved Employees.** Plaintiffs and Plaintiffs' Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiffs and Plaintiffs' 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. Plaintiffs and Plaintiffs' Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiffs and Plaintiffs' Counsel believe the settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Aggrieved Employees.
- J. **Defendants' Reasons for Settlement.** Defendants recognize that the defense of the Action will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- K. **Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort.

Defendants assert a number of defenses to the claims, and have 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 Defendants 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 Plaintiffs against Defendants.

- L. Plaintiffs' Claims.** Plaintiff asserts that Defendants' 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, Aggrieved Employees, or Plaintiff's 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, Aggrieved Employees, and Plaintiff's Counsel will not oppose Defendants' efforts to use this Agreement to prove that Plaintiff and Aggrieved Employees 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 Gross Settlement Amount that Defendants are obligated to pay under this Settlement Agreement is Two Million Seven Hundred Thousand Dollars and Zero Cents (\$2,700,000).

1. Escalator Provision: Defendants make the following representations:

- There were approximately 336,000 pay periods worked by Aggrieved Employees during the PAGA period as of September 15, 2022.

To the extent that this estimate, as represented by Defendants, increases by more than 10% as of September 15, 2022, Defendants will have the option to increase the Gross Settlement Amount proportionately. For example, if the number of workweeks increases by 12%, as of September 15, 2022, then Defendants shall increase the GSA by 2%. If Defendants decline to do so, Plaintiff will have the option to terminate the settlement in its entirety and the Parties will be returned to their respective positions as if no settlement had been contemplated.

- B. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the NSA to each Aggrieved Employee.

1. Calculation.

a. Individual Settlement Share Calculation. Each Aggrieved Employee will receive a proportionate share of the NSA that is equal to (i) the number of pay periods he or she worked for Defendants in California during the PAGA Period based on the Database provided by Defendants, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same Database, which is then multiplied by the NSA. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual Settlement Share ties directly to the amount of pay periods that he or she worked.

2. Tax Withholdings. Each Aggrieved Employee's gross settlement award will be apportioned as 100% penalties and 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.

C. Recipients 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 Plaintiffs' Counsel. Plaintiffs' Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed one third or \$900,000 of the GSA and a Cost Award not to exceed \$50,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the GSA. Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Plaintiffs' Counsel. 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 Plaintiffs' 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 Defendants 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 Plaintiffs' Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Aggrieved Employees.

2. To the Settlement Administrator. The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$50,000. 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 Aggrieved Employees.

3. To the LWDA. The Settlement Administrator will pay the LWDA Payment seventy-five percent (75%) of the Net Settlement Amount to the LWDA.

4. To Aggrieved Employees. The Settlement Administrator will pay Aggrieved Employees according to the Individual Settlement Share calculations set forth above.

D. 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 performing skip traces and NCOA searches on Aggrieved Employee addresses; preparing and mailing Notices and Individual Settlement Share checks to Aggrieved Employees; calculating each Aggrieved Employee's Individual Settlement Share; providing a declaration for submission to the Court prior to the Settlement Approval hearing; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Plaintiff's Counsel; calculating and paying amounts owed, if any, to the appropriate tax authorities; printing and providing Aggrieved Employees with 1099 forms as required under this Agreement and applicable law; providing a due diligence/post-disbursement declaration for submission to the 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 unclaimed property fund in the name of the Aggrieved Employee, in the amounts directed per this Settlement, including the administration of related tax reimbursements, if any; 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.

E. Procedure for Approving Settlement.

1. Amending the Complaint. Prior to filing Plaintiffs' Motion for Settlement Approval or at the time settlement approval is sought, Plaintiffs will file the First Amended Complaint in the *Frame* Action.

2. Motion for Settlement Approval.

- a.** Plaintiffs will move for an order granting approval of the Settlement.
- b.** At the Settlement Approval hearing, the Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting approval of the Settlement.

- c. **Effect of Denial of Settlement Approval.** Should the Court decline to 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, and Administration Costs 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, and Administration Costs shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff or Plaintiffs' Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, and Administration Costs.
 - d. **Proposed Order and Judgment.** Upon Approval of the Settlement, the Parties shall present to the Court a proposed 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.
- 3. **Notice and Disbursement to Aggrieved Employees.** After the Court enters its Approval Order, every Aggrieved Employee will be provided with a Notice accompanying his or her Individual Settlement Share check in accordance with the following procedure:
 - a. **Database.** Within ten (10) days after the Effective Date, Defendants shall deliver to the Settlement Administrator an electronic database, which will list for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number;; and (4) the total number of pay periods during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee ("Database"). If any or all of this information is unavailable to Defendants, Defendants will so inform Plaintiffs' Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Database shall be based on Defendants' payroll, personnel, and other business records. The Settlement Administrator will conduct a skip trace for the address

of all Aggrieved Employees who are former employees of Defendants and an NCOA search on all addresses. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.

- b. Funding the Settlement:** Defendant shall pay via ACH transfer the Gross Settlement Amount to the Settlement Administrator as set forth in Section I, Paragraph K, above.
- c. Settlement Administrator's Disbursement Duties.** Subject to the Court approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Approval Order and Judgment. The Settlement Administrator shall keep Defendants' Counsel and Plaintiff's Counsel apprised of all distributions from the GSA. The Settlement Administrator shall respond to questions from Defendants' Counsel and Plaintiff's Counsel.
- d. Disbursement:** The Settlement Administrator will disburse the GSA within ten (10) days after funding, as instructed herein. The Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiffs' Counsel, as approved by the Court; (3) the Administration Costs, as approved by the Court; and (4) the LWDA Payment.
- e. Returned Notices and Checks.** If a Notice and Individual Settlement Check are 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 Aggrieved Employee and re-mail the Notice and Individual Settlement Share check to the Aggrieved Employee. The Settlement Administrator will use the NCOA 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 Aggrieved Employee for whom a Notice and Individual Settlement Share check 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; calling Aggrieved Employees to determine an accurate mailing address if none can be found; and promptly re-mailing the Notice and Individual Settlement Check to Aggrieved Employees for whom new addresses are found. If the PAGA Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.

4. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, 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.
5. **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 NSA, and any change to the calculation of the Individual Settlement Shares.
6. **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.
7. **Uncashed Checks.** Aggrieved Employees 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. **Uncashed Checks.** 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 be transmitted by the Settlement Administrator to the State

of California unclaimed property fund in the name of the Aggrieved Employee.

- 8. Defendants' Legal Fees.** Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Action outside of the GSA.

F. Release of Claims. Upon the Effective Date, as defined above, the State of California and its agencies, and each and every Aggrieved Employee, including Plaintiffs, shall release the Released Claims, as defined above, against the Released Parties.

G. Miscellaneous Terms

- 1. No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest liability if the Settlement is not approved. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted 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 Defendants of liability or wrongdoing. This Settlement and Plaintiffs' and Defendants' 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 Individual Settlement Shares paid to Plaintiffs and Aggrieved Employees 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 Aggrieved Employees. The Parties agree that any Individual Settlement Share paid to Plaintiffs or the Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiffs' or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
- 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.** Plaintiffs' Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, 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 Settlement Approval hearing to be conducted by the 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.** Plaintiffs hereby represent, covenants, and warrants that they have 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 Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Aggrieved Employees 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 Aggrieved Employee, such Aggrieved Employee 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 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.

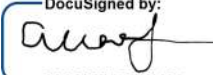
Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 4/4/2023 _____

ALLONA FRAME

DocuSigned by:

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Plaintiff

Dated: _____

SARA KHESRAWI

Plaintiff

Dated: _____

ROXANA EDLYN GARCIA NUNEZ

Plaintiff

Dated: _____

**LUXOTTICA OF AMERICA, INC. formerly
known as LUXOTTICA RETAIL NORTH
AMERICA, INC.**

Defendants

Name:

Title:

Dated: April 10, 2023

MARA LAW FIRM, PC



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

Dated: _____

LAVI & EBRAHIMIAN, LLP

Joseph Lavi, Esq.
Attorneys for Plaintiffs

Dated: _____

HEWGILL COBB LOCKARD, APC

Justin Hewgill, Esq.
Attorneys for Plaintiffs

Dated: _____

GOLD COAST COUNSEL, APC

Sarah Gallagher, Esq.
Attorneys for Plaintiffs

Dated: _____

LITTLER MENDELSON, P.C.

Noah J. Woods, Esq.
Attorneys for Defendants

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: _____

ALLONA FRAME

Plaintiff

Dated: _____

SARA KHESRAWI

Plaintiff

Dated: 4/10/2023

ROXANA EDLYN GARCIA NUNEZ

Roxana G.

Plaintiff

Dated: _____

**LUXOTTICA OF AMERICA, INC. formerly
known as LUXOTTICA RETAIL NORTH
AMERICA, INC.**

Defendants

Name:

Title:

Dated: _____

MARA LAW FIRM, PC

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

Dated: _____

LAVI & EBRAHIMIAN, LLP

Joseph Lavi, Esq.
Attorneys for Plaintiffs

Dated: 04/12/2023

HEWGILL COBB LOCKARD, APC


Justin Hewgill (Apr 12, 2023 13:09 PDT)

Justin Hewgill, Esq.
Attorneys for Plaintiffs

Dated: 4-12-23

GOLD COAST COUNSEL, APC



Sarah Gallagher, Esq.
Attorneys for Plaintiffs

Dated: _____

LITTLER MENDELSON, P.C.

Noah J. Woods, Esq.
Attorneys for Defendants

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.

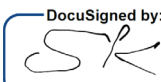
Dated: _____

ALLONA FRAME

Plaintiff

Dated: April 12, 2023

SARA KHESRAWI

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Plaintiff

Dated: _____

ROXANA EDLYN GARCIA NUNEZ

Plaintiff

Dated: May 8, 2023

**LUXOTTICA OF AMERICA, INC. formerly
known as LUXOTTICA RETAIL NORTH
AMERICA, INC.**



Defendants

Name: Sara Francescutto

Title: CFO North America

Dated: _____

MARA LAW FIRM, PC

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

Dated: April 12, 2023

LAVI & EBRAHIMIAN, LLP

DocuSigned by:

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Joseph Lavi, Esq.
Attorneys for Plaintiffs

Dated: _____

HEWGILL COBB LOCKARD, APC

Justin Hewgill, Esq.
Attorneys for Plaintiffs

Dated: _____

GOLD COAST COUNSEL, APC

Sarah Gallagher, Esq.
Attorneys for Plaintiffs

Dated: May 8, 2023

LITTLER MENDELSON, P.C.



Noah J. Woods, Esq.
Attorneys for Defendants

Exhibit A

CALIFORNIA SUPERIOR COURT, COUNTY OF SAN DIEGO
*Allona Frame, Sara Khesrawi, and Roxana Edlyn Garcia Nunez v. Luxottica of America, Inc. and Luxottica
Retail North America, Inc.*
Case No. 37-2020-00026895-CU-OE-CTL

NOTICE OF SETTLEMENT

*This is not a solicitation.
This is not a lawsuit against you and you are not being sued.*

The California Superior Court, County of San Diego has granted approval of a settlement in the above-captioned action. Because your rights are affected by this Settlement, it is important that you read this Notice of Settlement (“Notice”) carefully. The purpose of this Notice is to provide a brief description of the claims alleged in the action and the key terms of the settlement.

WHAT INFORMATION IS IN THIS NOTICE

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1. *Why Have I Received This Notice?*

Luxottica of America, Inc.’s, formerly known as Luxottica Retail North America, Inc., (hereinafter referred to as “Defendant”), records indicate that you worked for Defendant as a non-exempt, hourly paid employee in the State of California at some time between May 13, 2019 and May 8, 2023 (“PAGA Period”).

A settlement hearing was held on September 15, 2023, in the California Superior Court, County of San Diego. The Court granted approval of the settlement. You are receiving this Notice to provide you with a brief description of the settlement and explain why you have received a settlement check.

2. *What Is This Case About?*

The action entitled *Allona Frame, Sara Khesrawi, and Roxana Edlyn Garcia Nunez v. Luxottica of America, Inc. and Luxottica Retail North America, Inc.*, was commenced by Plaintiffs Allona Frame, Sara Khesrawi, and Roxana Edlyn Garcia Nunez (“Plaintiffs”) in the San Diego County Superior Court (Case Number 37-2020-00026895-CU-OE-CTL).

Plaintiffs provided notices to the California Labor and Workforce Development Agency (“LWDA”) of the Private Attorneys General Act of 2004 (“PAGA”) violations they alleged against Defendant. Plaintiffs did not receive any responses from the LWDA. Thereafter, Plaintiff Frame filed this PAGA action in the San Diego Superior Court against Defendant, Plaintiff Khesrawi filed a separate PAGA action against Defendant in the Alameda Superior Court (Case No. RG20072437), and Plaintiff Nunez filed her action against Defendant in the San Diego Superior Court (Case No. 37-2021-00008375-CU-OE-CTL). For settlement purposes, an amended complaint was filed in this matter to bring all three PAGA actions together.

Through the amended complaint, Plaintiffs allege that Defendant violated the California Labor Code by failing

to pay all wages, failing to pay all overtime, failing to provide lawful meal and rest periods, failing to provide accurate itemized wage statements, failing to pay all wages owed at termination, failing to pay wages twice per month, failing to adopt a lawful sick pay/paid time off policy, failing to provide vacation pay, failing to provide suitable seating, pressuring employees to make purchases, and failure to provide commission agreements. Defendant denies all of these allegations.

The Court has not made any determination as to whether Plaintiffs' claims have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs 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.

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

Attorneys for Plaintiffs	Attorneys for Defendant
MARA LAW FIRM, PC David Mara 2650 Camino Del Rio North, Suite 302 San Diego, CA 92108 Telephone: (619) 234-2833 LAVI & EBRAHIMIAN, LLP Joseph Lavi 8889 Olympic Boulevard, Suite 200 Beverly Hills, California 90211 Telephone: (310) 432-0000 HEWGILL COBB LOCKARD Justin Hewgill 1620 5th Avenue, Suite 325 San Diego, CA 92101 Telephone: (619) 432-2520 GOLD COAST COUNSEL Sarah E. Gallagher 121 S Broadway, Suite 644 San Diego, California 92101 Telephone: (833) 727-2442	LITTLER MENDELSON, P.C. Noah J. Woods 501 W. Broadway, Suite 900 San Diego, CA 92101 Telephone: (619) 232-0441

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

All persons who were employed by Defendant as non-exempt, hourly paid employees in the State of California at any time from May 13, 2019 through May 8, 2023 (referred to in this notice as "Aggrieved Employees") release the Released Parties from the Released Claims, as defined below.

Released Parties: Defendant including its past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, members, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies.

Released Claims: All claims alleged by Plaintiffs and Aggrieved Employees in the complaints filed in the *Garcia Nunez*, *Khesrawi* and *Frame* Actions and the First Amended Complaint for any and all debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, or interest based on any and all PAGA claims seeking civil penalties under California Labor Code sections 2698, et seq., Wage Orders, regulations, and/or other provisions of law alleged or, based on the facts pled in the complaints filed in the *Garcia Nunez*, *Khesrawi* and *Frame* Actions and the First Amended Complaint and notices to the LWDA, and could have been alleged to have been violated in the complaints filed in the *Garcia Nunez*, *Khesrawi* and *Frame* Actions and the First Amended Complaint with respect to the Aggrieved Employees.

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

The total maximum amount that Defendant could be required to pay under this Agreement shall be no more than \$2,700,000 ("Gross Settlement Amount" or "GSA"). The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Amount after the deduction of (1) the Settlement Administration Costs to the Settlement Administrator in the amount of \$30,000; and (2) payment to Plaintiff's Counsel in the amount of \$900,000 (33.33% of the Gross Settlement Amount) for attorneys' fees and an amount of \$25,679.48 for litigation costs. All of these payments were subject to court approval.

After deducting the above-referenced items, the remaining Net Settlement Amount, will be divided 75% to the LWDA, pursuant to California Labor Code § 2699, subdivision (i), for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25% to the Aggrieved Employees. Therefore, the LWDA will receive \$1,308,240.39 and \$436,080.13 will be left for distribution to persons who were employed by Defendant as non-exempt, hourly paid employees in the State of California at any time from May 13, 2019 to May 8, 2023.

Each Aggrieved Employee will receive a proportionate share of the NSA that is equal to (i) the number of pay periods he or she worked for Defendant in California during the PAGA Period based on the Database provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same Database, which is then multiplied by the NSA. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual Settlement Share ties directly to the amount of pay periods that he or she worked.

The check included with this notice represents your settlement share based on this formula. For purposes of computing taxes, one-hundred percent (100%) of the amount of money you received is considered to be a civil penalty and has not been subjected to tax withholding.

It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or cash it before the **180-day** void date shown on each check. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance will be transmitted to State of California unclaimed property fund under your name.

6. *How Can I Obtain Additional Information or Court Documents?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Plaintiffs' Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Luxottica Settlement.

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

Exhibit 2

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Attorneys for Plaintiffs ALLONA FRAME, SARA
KHESRAWI, and ROXANA EDLYN GARCIA
NUNEZ, on behalf of themselves and 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**

ALLONA FRAME, SARA
KHESRAWI, and ROXANA EDLYN
GARCIA NUNEZ, on behalf of
themselves and all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

LUXOTTICA OF AMERICA, INC.,
LUXOTTICA RETAIL NORTH
AMERICA, INC.; and DOES 1-100,

Defendants.

Case No. 37-2020-00026895-CU-OE-CTL

**PLAINTIFFS' FIRST AMENDED PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime and Doubletime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of the PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of the PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)

7. **Violation of the PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)**
8. **Violation of the PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)**
9. **Violation of the PAGA for Failure to Provide Vacation Pay (Cal. Lab. Code § 2698, et. seq.)**
10. **Violation of the PAGA for Failure to Provide Suitable Seating (Cal. Lab. Code § 2698, et. seq.)**
11. **Violation of the PAGA for Pressuring Employees to Make Purchases (Cal. Lab. Code § 2698, et. seq.)**
12. **Violation of the PAGA for Failure to Provide Commissioned Employees Commission Agreements (Cal. Lab. Code § 2698, et. seq.)**

DEMAND FOR JURY TRIAL

Plaintiffs ALLONA FRAME, SARA KHESRAWI, AND ROXANA EDLYN GARCIA NUNEZ (hereinafter “Plaintiffs”), on behalf themselves and all others similarly aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendants Luxottica of America, Inc. and Luxottica Retail North America, Inc. (collectively “Defendants”) and/or DOES 1-100.

I. INTRODUCTION

1. This is a representative action seeking recovery of penalties under the California Labor Code Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against Defendants and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of herself and other current and former employees to address an employer’s violations of the California Labor Code.
2. This action is brought on behalf of Plaintiffs and all other aggrieved employees of Defendants and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period; worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest break; worked qualifying shifts without receiving second meal periods and second and third rest breaks; were not provided accurate itemized wage statements; were not paid all wages owed twice per month; were not provided paid sick leave, were not properly provided vacation pay, were not paid compensation for all time worked at the straight, overtime, or double time

1 rate; were not paid waiting time penalties; were not provided suitable seating; were pressured
2 into making purchases; and were not provided with commission agreements. Plaintiffs seek
3 penalties on behalf of themselves and all other aggrieved employees of Defendants and/or
4 DOES as provided herein. This Complaint also seeks attorneys' fees and costs under the
5 PAGA, Cal. Lab. Code § 2699(g)(1).

6 3. At all times mentioned herein, Plaintiffs and the other aggrieved employees were not classified
7 as "Exempt" or primarily employed in an executive, professional, or administrative capacity.
8 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
9 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
10 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
11 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
12 paid penalties for not being provided paid sick leave; paid compensation for all time worked
13 at the regular, overtime or double time rate; paid all wages owed twice per month; paid all
14 vacation pay, paid penalties for not being paid timely at the time of termination; provided
15 suitable seating; free of pressure to make purchases; and provided commission agreements.

16 4. At all times mentioned herein, Defendants and/or DOES controlled the working conditions of
17 Plaintiffs and the aggrieved employees including, but not limited to, having the authority to
18 hire and fire Plaintiffs and the other aggrieved employees, setting the wages of Plaintiffs and
19 the other aggrieved employees, and instructing Plaintiffs and the other aggrieved employees
20 when and/or where to work. In addition, Defendants and/or DOES developed, wrote, dictated,
21 approved and/or authorized wage and hour policies and/or practices that Plaintiffs and the
22 aggrieved employees labored under. These policies and/or practices included, but were not
23 limited to, policies and/or practices regarding meal periods, straight time, overtime, double
24 time, rest periods, wage statements, paid sick leave, vacation pay, paying compensation at time
25 of termination, timing of payment, suitable seating, pressure to make purchases, and receipt of
26 commission agreements. Further, Defendants and/or DOES had the ability to prevent Plaintiffs
27 and the other aggrieved employees from working.
28

II. JURISDICTION AND VENUE

5. Plaintiffs are individuals residing in California. Plaintiffs were employed by Defendants and/or DOES in California. Plaintiffs, and each of the aggrieved employees, were employees of Defendants and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiffs and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiffs sent Notices to the State of California Labor and Workforce Development Agency (LWDA).
6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly employees, conducts business, and commits *California Labor Code* violations within San Diego County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiffs and the other aggrieved employees situated within the State of California which has included within San Diego County. Defendants and/or DOES employ numerous aggrieved employees in California and/or San Diego County.
7. Plaintiffs bring this action on behalf of herself and the other aggrieved employees of and/or DOES pursuant to the PAGA. Plaintiffs, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiffs filed their Notices with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.
8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.
9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,

1 according to proof. Defendants and/or DOES either own, maintain offices, transact business,
2 have an agent or agents, have their principal place of business in, and/or otherwise are found
3 within the County of San Diego, California.

4 **III. THE PARTIES**

5 **A. Plaintiff**

6 10. Plaintiff Allona Frame, SARA KHESRAWI, and ROXANA EDLYN GARCIA NUNEZ ,
7 former employees of Defendants and/or DOES, and similar aggrieved employees were and are
8 entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements,
9 payment of wages owed twice a month, paid sick leave, vacation pay, compensation for all
10 time worked at the regular, overtime, and doubletime rate, to be paid timely pursuant to
11 California law and/or to receive timely wages at the time of termination from Defendants
12 and/or DOES, suitable seating, be free from pressure to make purchases, be provided with
13 commission agreements.

14 11. Plaintiff and similar aggrieved employees were and are employed in the State of California
15 by the Defendants and/or DOES as non-exempt hourly employees during the relevant time
16 period. Plaintiffs were employed in a non-exempt capacity.

17 12. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants
18 and/or DOES in California.

19 13. A notice correspondence showing compliance with Cal. Lab. Code § 2699.3 was sent by
20 Plaintiff Frame to the LWDA and Defendants on May 13, 2020, by Plaintiff Khesrawi to the
21 LWDA and Defendants on June 19, 2020, and by Plaintiff Nunez to the LWDA and Defendants
22 on December 23, 2020. These notices demonstrate that Plaintiffs are aggrieved employees and
23 has standing to bring a representative action on behalf of the LWDA and as a private attorney
24 general. No notice of cure by Defendants and/or DOES was provided and no notice of
25 investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day
26 period since the mailing of the notice of the action. Accordingly, Plaintiffs files this action as
27 a “Representative Action” as authorized by Cal. Lab. Code § 2699.3(a)(2)(C).
28

B. Defendants

14. Defendants and/or DOES are engaged in the ownership and operation of industrial work sites located within San Diego County and throughout California. Luxottica dba LensCrafters is the largest optical retailer in North America with 1,000+ stores and as part of an eyewear industry leader, Luxottica dba LensCrafters has been a leader in vision care for over 35 years. During the liability period, Defendants and/or DOES employed Plaintiffss and similarly situated persons as non-exempt employees within California. On information and belief, each of the Defendants and/or DOES is conducting business in California and engaged in the operation of facilities which are used for eyecare and optometry in the State of California.
15. Although Defendants boast that they recognize their “employees’ productivity and hardwork” and claim their people are their “most valuable asset”, Defendants do not pay these employees for all their time worked or provide them the protections owed under the Labor Code. Luxottica <http://careers.luxottica.com/en/what-we-offer>, <http://careers.luxottica.com/en> (Last visited July 18, 2020).
16. However, Defendants do not pay all these employees for all their time worked or provide them the protections owed under the Labor Code, falling far short of any purported high standards Defendants hold, and wholly contradicting any notion that Defendants truly treats its people as its “most valuable asset.”
17. Defendants’ and/or DOES’ principal place of business was/is in the State of California.
18. Defendants and/or DOES have numerous offices and/or contracts in the State of California.
19. California is the nerve center of Defendants’ and/or DOES’ operations.
20. Plaintiffs are ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiffs are informed and believe that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiffs will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

21. Plaintiffs are informed and believe each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

22. Plaintiffs are informed and believe, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

23. During all, or a portion, of the one (1) year period before Plaintiffs filed Notice of their claims with the LWDA, Plaintiffs and each of the aggrieved employees were employed by Defendants and/or DOES in the State of California. Plaintiffs and the other aggrieved employees are composed of all persons who performed services at Defendants' stores, facilities, and centers in the State of California as hourly, non-exempt employees of Defendants and/or DOES in the State of California.

24. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that Plaintiffs and the aggrieved employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiffs' and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

25. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiffs and all aggrieved employees, and by failing to provide compensation for these unprovided meal periods, Defendants and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7, IWC Wage Order No. 4-2001, IWC Wage Order No. 7, and California Code of Regulations, Section 11040(11). In addition, Defendants and/or DOES failed to provide Plaintiffs and the other aggrieved employees another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

- 1 26. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
2 Plaintiffs and the aggrieved employees were entitled to be authorized and/or permitted to take
3 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
4 compensation at Plaintiffs' and the aggrieved employees' regular rate of pay when they were
5 not authorized and/or permitted to take a legally compliant rest period.
- 6 27. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
7 thereof, worked per day by Plaintiffs and all aggrieved employees and by failing to provide
8 compensation for these periods, Defendants and/or DOES willfully violated the provisions of
9 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, IWC Wage Order No. 7, and California
10 Code of Regulations, Section 11040(12).
- 11 28. At all times mentioned herein, Defendants and/or DOES failed to pay all wages owed to
12 Plaintiffs and to other terminated or resigned members of the aggrieved employees and failed
13 to timely pay wages during employment.
- 14 29. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiffs and the
15 aggrieved employees all wages earned twice per month.
- 16 30. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
17 Plaintiffs and the aggrieved employees were entitled to receive complete and accurate pay
18 statements in accordance with California law.
- 19 31. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
20 they were not providing complete and accurate pay statements in accordance with California
21 law to Plaintiffs and the aggrieved employees.
- 22 32. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
23 they failed to adopt a sick pay policy for Plaintiffs and the aggrieved employees that is
24 compliant with California law.
- 25 33. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
26 Plaintiffs and the aggrieved employees were entitled to receive pay statements itemizing the
27 amount of accrued/available sick leave for Plaintiffs and the aggrieved employees in
28 accordance with California law.

1 34. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
2 they had a duty to compensate Plaintiffs and the other aggrieved employees in accordance with
3 California law, and that Defendants and DOES had the ability to pay such compensation, but
4 willfully and intentionally failed to do so, and Defendants and DOES falsely represented to
5 Plaintiffs and the other aggrieved employees that they were properly compensating Plaintiffs
6 and the other aggrieved employees.

7 35. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
8 Plaintiffs and the other aggrieved employees were entitled to timely wages at the time of
9 termination. Defendants and/or DOES did not pay all timely wages owed, straight-time wages
10 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

11 36. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiffs and the other
12 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
13 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

14 37. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
15 Plaintiffs and the other aggrieved employees were entitled to be provided with suitable seating
16 for use when they were not engaged in the active duties of their employment.

17 38. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
18 they were not permitted to pressure Plaintiffs and the other aggrieved employees into
19 purchasing goods or services from Defendants and/or DOES.

20 39. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
21 Plaintiffs and the other aggrieved employees were entitled to be provided with commission
22 agreements.

23 40. Plaintiffs brings this action on behalf of themselves and all other aggrieved employees defined
24 as all non-exempt hourly employees of Defendants and/or DOES in California, employed
25 beginning one year prior to the date Plaintiffs sent Notice to the LWDA.

26 41. Plaintiffs reserve the right to amend or modify the definition of aggrieved employees with
27 respect to the issues or in any other way.
28

FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code §2698 et. seq.).

42. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

43. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab. Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

44. Cal. Lab. Code § 1197.1 of the California Labor Code states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

45. Defendants and/or DOES have a continuous policy of not paying Plaintiffs and the aggrieved employees for all hours worked. Defendants and/or DOES have not paid for all the time Plaintiffs and the aggrieved employees worked throughout the day. Including, but not limited to, time spent working through meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of their employer and/or otherwise had work duties.

46. Defendants and/or DOES have a continuous policy of not paying Plaintiffs and the aggrieved employees for all hours worked. Defendants and/or DOES have not paid for all the time Plaintiffs and the aggrieved employees worked throughout the day. Including, but not limited to, time spent working through meal periods, and/or any other time in the day when Plaintiffs

1 and all aggrieved employees were performing work tasks, subject to the control of their
2 employer and/or otherwise had work duties. Plaintiffs and the aggrieved employees have had
3 to follow Defendants' and/or DOES' policies which subjected them to Defendants' and/or
4 DOES' control while off the clock.

5 47. Plaintiffs and the aggrieved employees have not been paid for all time under Defendants'
6 and/or DOES' control. This includes time under Defendants' and/or DOES' control pre-shift,
7 post-shift, and during unpaid lunches, such as time spent clocking in, opening, closing, or
8 undergoing security and bag checks while off the clock.

9 48. Plaintiffs and the aggrieved employees were employed by Defendants and/or DOES at all
10 relevant times. Defendants and/or DOES were required to compensate Plaintiffs for all hours
11 worked and were prohibited from making deductions that had the effect of reducing the agreed
12 upon wage.

13 49. Plaintiffs and the aggrieved employees were entitled to be paid the minimum wage for all time
14 worked. By failing to pay for all work performed, including time spent subject to Defendants'
15 and/or DOES' control, Defendants' and/or DOES' compensation to Plaintiffs and the
16 aggrieved employees fell below the applicable minimum wage.

17 50. Plaintiffs and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
18 wages, and lost interest on such wages, and expenses.

19 51. Defendants and/or DOES committed the acts alleged herein knowingly and willfully, with the
20 wrongful and deliberate intention of injuring Plaintiffs and the aggrieved employees.
21 Defendants and/or DOES acted with malice or in conscious disregard of Plaintiffs' and the
22 aggrieved employees' rights.

23 52. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants
24 and/or DOES in California.

25 53. Plaintiffs, as former non-exempt employees of Defendants and/or DOES who Defendants'
26 and/or DOES' failed to pay all wages, are aggrieved employees with standing to bring an action
27 under the PAGA. Plaintiffs have satisfied all prerequisites to serve as representatives of the
28 general public to enforce California's labor laws, and the penalty provisions identified in Cal.

Lab. Code § 2699.5.

54. Plaintiffs, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

55. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

56. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages Owed

57. Plaintiffs re-alleges and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

58. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

59. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In

1 addition, any work in excess of eight hours on any seventh day of a workweek shall be
2 compensated at the rate of no less than twice the regular rate of pay of an employee.

3 60. Defendants and/or DOES failed to pay overtime when employees worked over eight (8) hours
4 per day and when employees worked over 40 hours per week. Plaintiffs and the aggrieved
5 employees frequently worked over 8 hours per day or over 40 hours per week.

6 61. Defendants and/or DOES failed to pay proper double time when Plaintiffs and the aggrieved
7 employees worked seven days in a row or over twelve hours in a day.

8 62. Defendants and/or DOES have a continuous policy of not paying Plaintiffs and the aggrieved
9 employees for all hours worked. Plaintiffs and the aggrieved employees have been subject to
10 Defendants' and/or DOES' control pre-shift, post-shift, and during unpaid meal periods
11 resulting in unpaid overtime where they are not getting paid, which, when working overtime
12 eligible shifts results in underpaid overtime compensation.

13 63. Defendants and/or DOES have a continuous policy of not paying Plaintiffs and the aggrieved
14 employees for all hours worked. Defendants and/or DOES have not paid for all the time
15 Plaintiffs and the aggrieved employees worked throughout the day. Including, but not limited
16 to, time spent working through meal periods, and/or any other time in the day when the
17 employees were performing work tasks, subject to the control of their employer and/or
18 otherwise had work duties. Plaintiffs and the aggrieved employees frequently work over eight
19 daily and forty weekly hours, and, therefore, this compensable time is owed at the overtime
20 rates of Plaintiffs and the aggrieved employees.

21 64. Defendants and/or DOES failed to pay Plaintiffs and the aggrieved employees at the
22 appropriate rate of pay, such as overtime pay. Specifically, Defendants and/or DOES failed to
23 incorporate bonuses, split shift premiums, or commissions into overtime pay calculations.

24 65. Plaintiffs and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
25 wages, and lost interest on such wages, and expenses.

26 66. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants
27 and/or DOES in California.

28 67. Plaintiffs, as representatives of the people of the State of California, will seek any and all

penalties otherwise capable of being collected by the Labor commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

68. Plaintiffs, as representatives of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

69. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

70. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

71. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

72. Under Cal. Lab. Code § 512, and IWC Wage Order 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30)

1 minute meal period.

2 73. In addition, an employer may not employ an employee for a work period of more than ten (10)
3 hours per day without providing the employee with another meal period of not less than thirty
4 (30) minutes.

5 74. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in
6 accordance with the above requirements, the employer shall pay the employee one (1) hour of
7 pay at the employee's regular rate of compensation for each workday that the meal period is
8 not provided.

9 75. Defendants and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to
10 its hourly, non-exempt employees who worked for work periods of more than five (5)
11 consecutive hours. As such, Defendants and/or DOES non-exempt workers were required to
12 work over five (5) consecutive hours at a time without being provided a thirty (30) minute
13 uninterrupted meal period within that time.

14 76. Defendants and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to
15 its Non-Exempt employees for every five (5) continuous hours worked.

16 77. Defendants and/or DOES has a consistent policy and/or practice of not providing meal periods
17 to Plaintiffs and all aggrieved employees and/or providing compensation in lieu thereof.
18 Specifically, Defendants and/or DOES' business model was such that Plaintiffs and the
19 aggrieved employees were assigned too much work that could not be reasonably completed in
20 their assigned shift. The result is that Defendants and/or DOES employees routinely and
21 regularly are forced to eat their meals while working.

22 78. Defendants and/or DOES have a consistent policy and/or practice of not providing meal
23 periods to Plaintiffs and all aggrieved employees and/or providing compensation in lieu
24 thereof. As a matter of policy and practice, Defendants and/or DOES do not provide employees
25 with full 30-minute meal periods for each day worked where they are free from Defendants'
26 and/or DOES' control, such as the time Plaintiffs and the aggrieved employees have spent
27 undergoing security measures, bag checks, or clocking in. As a matter of policy and practice,
28 Defendants and/or DOES do not provide 30-minute meal periods before the end of the fifth

1 hour. As a matter of policy and practice, Defendants and/or DOES do not provide a full 30-
2 minute second meal period when employee shifts eclipse 10-hours wherein employees are free
3 from Defendants' and/or DOES' control. Defendants and/or DOES do not provide a second
4 30-minute meal periods before the end of the tenth hour. Due to the thrust of business,
5 Defendants' and/or DOES' policies and practices encourage employees to stay working on the
6 production floor, as opposed to encouraging the rest and nourishment meal periods are
7 designed to provide. As a matter of policy and practice, Defendants and/or DOES fails to
8 relinquish all control over employees to permit them with reasonable opportunities to take meal
9 periods.

10 79. Moreover, Defendants and/or DOES did not have a policy of providing a second meal period
11 to employees before the end of the tenth hour.

12 80. Further, Defendants and/or DOES failed to compensate Plaintiffs and the aggrieved employees
13 for late, missed, short, on-premise, on-duty, and/or interrupted meal periods at the appropriate
14 rate of pay. Specifically, Defendants and/or DOES failed to incorporate bonuses, split shift
15 premiums, or commissions into Plaintiffs' and the aggrieved employees' regular rate of pay
16 for purposes of paying premium payments for the failure to provide lawful meal periods.

17 81. By failing to provide statutory first and/or second meal periods, and by failing to provide
18 compensation for unprovided meal periods, as alleged above, Defendants willfully violated the
19 provisions of the Cal. Lab. Code §§ 226.7 and 512.

20 82. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants
21 and/or DOES in California.

22 83. Plaintiffs, as non-exempt employees who unlawfully were deprived of first and second meal
23 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiffs
24 have satisfied all prerequisites to serve as a representative of the general public to enforce
25 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

26 84. Plaintiffs, as representatives of the people of the State of California, will seek all penalties
27 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
28 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section

2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

85. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

86. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff are not seeking wages pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

87. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

88. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

89. At all times mentioned herein, Defendants and/or DOES failed to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

90. Defendants and/or DOES has had a consistent policy and/or practice of not providing rest periods to Plaintiffs and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Plaintiffs and the aggrieved employees work up to twelve (12) hour shifts but did not receive first, second, third, or fourth rest breaks.

1 91. As a matter of policy and practice, Defendants and/or DOES do not authorize and permit
2 employees to take net ten-minute rest breaks every four hours or major fraction thereof.
3 Defendants' and/or DOES' policies and practices encourage production over breaks. Likewise,
4 Defendants' and/or DOES' policies and practices fail to relinquish all control over employees
5 during breaks. In sum, this time is counted as part of Plaintiffs, and the aggrieved employees'
6 rest period, even though they remain subject to Defendants' and/or DOES' control, thereby
7 denying Plaintiffs and the aggrieved employees of the right to be completely free from
8 employer control under California law.

9 92. Defendants and/or DOES have a consistent policy and/or practice of not providing net ten-
10 minute rest breaks to Plaintiffs and all aggrieved employees and/or providing compensation in
11 lieu thereof. Plaintiffs and the aggrieved employees are required to work through rest periods
12 to complete the demanding duties required by Defendants and/or DOES, thereby denying them
13 their right to be completely free from employer control under California law.

14 93. Furthermore, Defendants and/or DOES breached the legal duty to provide rest periods to
15 employees by failing to provide Plaintiffs and all aggrieved employees with a suitable resting
16 facility in which to take their rest breaks in violation of Industrial Welfare Commission Order
17 No. 4-2001 section 13(B).

18 94. Defendants and/or DOES breached the duty to provide rest periods to employees by imposing
19 a continuous and consistent policy requiring employees undergo security measures and bag
20 checks. Because Defendants and/or DOES subjects employees to security measures and bag
21 checks during breaks it violates Cal. Lab. Code § 226.7's and Wage Order 4-2001's
22 requirement that rest periods, like meal periods, be free of all employer restraints and controls.
23 Employees working time-qualifying shifts, then, have not received compliant rest periods and
24 have been entitled to the Cal. Lab. Code § 226.7 premiums.

25 95. Further, Defendants and/or DOES failed to compensate Plaintiffs and the aggrieved employees
26 for late, missed, short, on-premise, on-duty, and/or interrupted rest periods at the appropriate
27 rate of pay. Specifically, Defendants and/or DOES failed to incorporate bonuses, split shift
28 premiums, or commissions into Plaintiffs' and the aggrieved employees' regular rate of pay

- for purposes of paying premium payments for the failure to provide lawful rest periods.
96. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided periods, as alleged above, Defendants and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7.
97. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants and/or DOES in California.
98. Plaintiffs—non-exempt employees who were unlawfully deprived of paid ten (10) minute rest periods—are aggrieved employees with standing to bring an action under the PAGA. Plaintiffs have satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 and Industrial Welfare Commission Order No. 4-2001 § 20 for violations of Cal. Lab. Code § 226.7 and Industrial Welfare Commission Order No. 4-2001 § 12(A).
99. Plaintiffs, as representatives of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.
100. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
101. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

102. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

103. Defendants and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiffs and the other aggrieved employees who left Defendants' and/or DOES' employ or who were terminated.

104. Plaintiffs and/or the other aggrieved employees who ended their employment with Defendants and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

105. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

106. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to pay Plaintiffs and the other aggrieved employees who are no longer employed by Defendants and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendants' and/or DOES' employ.

107. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to pay Plaintiffs and the aggrieved employees who are no longer employed by Defendants and/or DOES their holiday and vacation pay, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendants' and/or DOES' employ.

108. Defendants' and/or DOES' failure to pay Plaintiffs and the aggrieved employees who are no longer employed by Defendants and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendants' and/or DOES' employ, is in violation of

- 1 Cal. Lab. Code §§ 201 and 202.
- 2 109. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
3 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
4 from the due date thereof at the same rate until paid or until and action is commenced; but the
5 wages shall not continue for more than thirty (30) days.
- 6 110. Plaintiffs, as non-exempt employees who Defendants and/or DOES failed to pay all wages due
7 at termination, are aggrieved employees with standing to bring an action under the
8 PAGA. Plaintiffs have satisfied all prerequisites to serve as a representative of the general
9 public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab.
10 Code § 2699.5.
- 11 111. Plaintiffs, as representatives of the people of the State of California, seek all penalties
12 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
13 Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Cal. Lab.
14 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
15 following provisions: sections 201 through 203.
- 16 112. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants
17 and/or DOES in California.
- 18 113. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of
19 themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one
20 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
21 per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved
22 employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
- 23 114. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other
24 aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant
25 to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare
26 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages
27 pursuant to Cal. Lab. Code § 558(a).
28

1 **SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
2 **Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply**
3 **with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 *et. seq.*).**

4 115. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein
5 as if fully plead.

6 116. Cal. Lab. Code § 226 subdivision (a) requires Defendants and/or DOES to itemize in wage
7 statements all deductions from payment of wages and to accurately report total hours worked
8 by Plaintiffs and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendants
9 and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees,
10 either as an detachable part of the check, draft, or voucher paying the employee’s wages, or
11 separately when wages are paid by personal check or cash, an accurate itemized statement in
12 writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the
13 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
14 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
15 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
16 dates of the period for which the employee is paid, (7) the name of the employee and only the
17 last four digits of his or her social security number or an employee identification number other
18 than the social security number, (8) the name and address of the legal entity that is the
19 employer...(9) all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate and the corresponding number of hours worked at
21 each hourly rate by the employee....”

22 117. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of
23 wages shall be recorded in ink or other indelible form, properly dates, showing the month, day
24 and year, and a copy of the statement and the record of the deductions shall be kept on file by
25 the employer for at least three years at the place of employment or at a central location within
26 the State of California.”

27 118. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to
28 provide Plaintiffs and the aggrieved employees with wage statements at the time of each

1 payment.

2 119. Even if the wage statements were provided adequately, Defendants and/or DOES have
3 knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on each and every
4 wage statement provided to Plaintiffs and the other aggrieved employees.

5 120. Defendants and/or DOES knowingly and intentionally failed to accurately itemize the gross
6 wages earned on Plaintiffs' and the aggrieved employees' wage statements.

7 121. In every pay period during the period of the relevant statute of limitations, Defendants and/or
8 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
9 as Cal. Lab. Code § 226, subsection (a), requires. In every pay period during the period of the
10 relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not
11 include the total hours worked on wage statements and failed to include this information
12 accurately. Defendants and/or DOES therefore knowingly and intentionally failed to itemize
13 the total hours worked on Plaintiffs' and the aggrieved employees' wage statements.

14 122. Defendants and/or DOES had a uniform policy of deducting 30-minutes each workday from
15 Plaintiffs' and the aggrieved employees' wages for meal periods, despite Plaintiffs and the
16 aggrieved employees working during and throughout the time period of the deduction.
17 Defendants and/or DOES violated the Cal. Lab. Code § 226, subdivision (a) requirement of
18 itemizing all deductions from wages. As Defendants and/or DOES knew or had reason to know
19 Plaintiffs and the aggrieved employees worked during meal periods, Defendants and/or DOES
20 knowingly and intentionally failed to comply with Cal. Lab. Code § 226, subdivision (a).

21 123. In every pay period during the period of the relevant statute of limitations, Defendants and/or
22 DOES knowingly and intentionally did not include the name of the legal entity that is the
23 employer thereby failing to furnish accurate itemized statements. *See, e.g.*, Cal. Lab. Code
24 226(a)(8). Plaintiffs and the aggrieved employees could not promptly and easily determine the
25 employer's name from the wage statements alone.

26 124. In every pay period during the period of the relevant statute of limitations, Defendants and/or
27 DOES knowingly and intentionally did not include the net wages earned on wage statements.

28 125. In every pay period during the period of the relevant statute of limitations, Defendants and/or

DOES knowingly and intentionally did not include Plaintiffs' and the aggrieved employees net wages on wage statements and failed to itemize this amount accurately.

126. In every pay period, Defendants and/or DOES have a consistent policy and/or practice of not itemizing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee or providing accurate rates as well as the corresponding number of hours worked at each rate.

127. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include all deductions on Plaintiffs' and the aggrieved employees' wage statements and/or failed to itemize deductions accurately.

128. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include the inclusive dates for which the employees are paid or the last four digits of the aggrieved employees social security number or an employee identification number and/or failed to itemize this information accurately.

129. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not itemize the amount of paid sick leave/paid time off Plaintiffs and the aggrieved employees have available on Plaintiffs' and the aggrieved employees' wage statements.

130. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include the name of the legal entity that is the employer thereby failing to furnish accurate itemized statements.

131. Throughout the statutory period, because of the knowing and intentional failure by Defendants and/or DOES to comply with itemized employee wage statement provisions, Plaintiffs and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

132. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants and/or DOES in California.

133. Plaintiffs, as non-exempt employees who Defendants and/or DOES failed to provide accurate and itemized wage statements, are aggrieved employees with standing to bring an action under

the PAGA. Plaintiffs have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

134. Plaintiffs, as representatives of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

135. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

136. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

137. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

138. Cal. Lab. Code § 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

139. Cal. Lab. Code § 226 subdivision (a) provides "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in

advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

140. Defendants and/or DOES have a consistent policy and/or practice of failing to pay Plaintiffs and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendants and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

141. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to pay Plaintiffs and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

142. Defendants and/or DOES failure to pay Plaintiffs and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code § 204.

143. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants and/or DOES in California.

144. Plaintiffs, as non-exempt employees who Defendants and/or DOES failed pay all wages owed twice per month, are aggrieved employees with standing to bring an action under the PAGA. Plaintiffs have satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 204.

145. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

146. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant

to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698 et. seq.)

147. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

148. Section 246(a)(1) of the California Labor Code states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

149. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

150. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

151. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

152. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

1 153. Defendants and/or DOES have failed to provide Plaintiffs and the aggrieved employees with
2 paid sick days in compliance with Section 246 and Section 246.5. Defendants and/or DOES
3 have had a policy and practice which denied Plaintiffs and the aggrieved employees from
4 accruing paid sick days after having been employed by Defendants and/or DOES for 30 or
5 more days. Defendants and/or DOES have a policy and practice which denied Plaintiffs and
6 the aggrieved employees of using their paid sick days after having been employed by
7 Defendants and/or DOES for 90 or more days.

8 154. Further, Defendants and/or DOES have adopted a policy and practice that denies Plaintiffs and
9 the aggrieved employees the ability to use their sick days in compliance with Labor Code
10 Sections 233 and 246.5. For example. Defendants and/or DOES threaten to discipline or
11 discharge the aggrieved employees for failing to provide Defendants and/or DOES with
12 sufficient advanced notice of their intent to use their paid sick days in clear violation of Labor
13 Code Section 234. Plaintiffs and the aggrieved employees were entitled to actual damages or
14 one day's pay pursuant to Labor Code Section 233(d).

15 155. Defendants and/or DOES' sick pay policy has failed to pay sick pay for all appropriate and
16 protected purposes enumerated in Labor Code section 233, 234, 246, and 246.5.

17 156. Defendants and/or DOES fail to itemize the amount of accrued/available sick leave employees
18 have on wage statements each pay period.

19 157. These claims are on behalf of Plaintiffs and all non-exempt hourly employees of Defendants
20 and/or DOES in California.

21 158. Plaintiffs, as non-exempt employees subject to Defendants and/or DOES' unlawful sick pay
22 policy, are aggrieved employees with standing to bring an action under the PAGA. Plaintiffs
23 have satisfied all prerequisites to serve as a representative of the general public to enforce
24 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
25 violations of Cal. Lab. Code §§ 233, 234, and 246.

26 159. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of
27 themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one
28 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation

per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

160. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

NINTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Provide Vacation Pay (Cal. Lab. Code § 2698 et. seq.)

161. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.

162. Pursuant to Section 227.3 of the Labor Code, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.

163. Defendants and/or DOES implement a policy and practice that denying Plaintiff and the aggrieved employees of their vacation pay at their final rates of pay at termination. And, Defendants and/or DOES have failed to pay Plaintiffs as well as the aggrieved employees their vacation pay at their final rates of pay at termination.

164. These claims are for Plaintiffs and all non-exempt hourly employees of Defendants and/or DOES in California.

165. Plaintiffs, as representatives of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code section 2699.5 for violations of section 227.3.

1 166. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of
2 themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one
3 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
4 per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved
5 employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

6 167. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other
7 aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant
8 to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare
9 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages
10 pursuant to Cal. Lab. Code § 558(a).

11 **TENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
12 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Suitable Seating (Cal.**
13 **Lab. Code § 2698 *et. seq.*)**

14 168. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein
15 as if fully plead.

16 169. Wage Order 7, at 14(A), section provides that “[a]ll working employees shall be provided with
17 suitable seats when the nature of the work reasonably permits the use of seats.” Section 14(B)
18 provides that “[w]hen employees are not engaged in the active duties of their employment and
19 the nature of the work requires standing, an adequate number of suitable seats shall be placed
20 in reasonable proximity to the work area and employees shall be permitted to use such seats
21 when it does not interfere with the performance of their duties.”

22 170. Defendants and/or DOES did not provide seating to Plaintiff and the aggrieved employees as
23 required under the Wage Order. Defendants and/or DOES could have provided stools or chairs
24 behind cash registers (point of sales station) or elsewhere in the show floor area of the stores
25 but did not do so. Defendants and/or DOES prohibited Plaintiffs and the aggrieved employees
26 from sitting while on duty. There are many instances in which sitting on duty would not
27 interfere with the work of Plaintiffs and the aggrieved employees.

28 171. These claims are for Plaintiffs and all non-exempt hourly employees of Defendants and/or

- DOES in California.
172. Plaintiffs, as representatives of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code section 2699.5 for violations of sections 558 and 1198.
173. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
174. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

ELEVENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Pressuring Employees to Make Purchases (Cal. Lab. Code § 2698 et. seq.)

175. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.
176. Labor Code section 450 prohibits employers from pressuring or forcing employees from purchasing goods or services from employers, or associated firms. Labor Code section 2802 requires employers to indemnify employees for all costs incurred in the execution of their duties.
177. Defendants and/or DOES have and do regularly pressure Plaintiffs and the aggrieved employees to make purchases of merchandise “to make monthly sales quotas”, of the store the respective employee worked for in violation of Labor Code sections 450 and 2802.
178. These claims are for Plaintiffs and all non-exempt hourly employees of Defendants and/or

- DOES in California.
179. Plaintiffs, as representatives of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code section 2699.5 for violations of sections 450 and 2802.
180. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
181. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).
- TWELFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Commissioned Employees Commission Agreements (Cal. Lab. Code § 2698 *et. seq.*)**
182. Plaintiffs re-allege and hereby incorporate each and every paragraph of this Complaint herein as if fully plead.
183. Labor Code section 2751 requires employers to provide employees paid, even if only in part by commissions, with commission agreements.
184. Defendants and/or DOES have failed to provide Plaintiff and the aggrieved employees who are paid at least in part in commission with commission agreements in violation of Labor Code section 2751.
185. These claims are for Plaintiffs and all non-exempt hourly employees of Defendants and/or DOES in California.
186. Plaintiffs, as representatives of the people of the State of California, will seek all penalties

otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code section 2699.5 for violations of section 2751.

187. Pursuant to Cal. Lab. Code § 2699(f), Plaintiffs, as aggrieved employees, on behalf of themselves and the other aggrieved employees, seek recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

188. In the alternative, Plaintiffs, as aggrieved employees, on behalf of themselves and other aggrieved employees, seek penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiffs are not seeking wages pursuant to Cal. Lab. Code § 558(a).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, as individuals and on behalf of all other aggrieved employees, prays for relief and judgment against Defendants and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*

- 1 for failure to timely pay wages at separation;
- 2 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 3 for failure to provide compensation at the regular, overtime, and double time rate for all time
- 4 worked;
- 5 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 6 for failure to provide compensation at the minimum wage;
- 7 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 8 for failure to provide accurate, itemized wage statements;
- 9 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 10 for failure to pay employees all wages owed twice per month;
- 11 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 12 for failure to adopt a sick pay policy compliant with California law;
- 13 L. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 14 for failure to provide vacation pay compliant with California law;
- 15 M. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 16 for failure to provide suitable seating;
- 17 N. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 18 for pressuring employees to make purchases;
- 19 O. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 20 for failure to provide employees with commission agreements; and
- 21 P. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

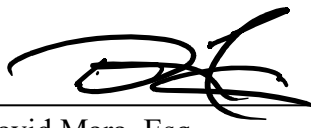
22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs demand a jury trial.

24 **MARA LAW FIRM, PC**

25

26 Date: July 5, 2023

Signed: 

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

Exhibit 3

SUMMARY OF TIME AND COSTS

Allona Frame, et al. v. Luxottica of America, Inc., et al.

San Diego County Superior Court Case No. 37-2020-00026895-CU-OE-CTL

Hours: 437
Lodestar Fees: \$ 320,950.00
Costs: \$ 13,595.27

As of 7/5/2023

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara	2004 (19)	235	\$850	\$199,750.00
Matthew Crawford	2016 (7)	202	\$600	\$121,200.00
MARA LAW FIRM, PC TOTAL:		437		\$320,950.00

LITIGATION EXPENSES	
MARA LAW FIRM, PC	\$13,595.27
TOTAL COSTS	\$13,595.27

Allona Frame, et al. v. Luxottica of America, Inc., et al.
San Diego County Superior Court Case No. 37-2020-00026895-CU-OE-CTL

Costs Summary

Attorney Service:	\$	94.00
Court Fees:	\$	1,837.44
Mediation:	\$	5,350.00
Legal & Factual Investigation	\$	52.67
Postage:	\$	11.16
Experts:	\$	6,250.00

TOTAL COSTS	\$	13,595.27
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Exhibit 4

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY REGION, BY FIRM

Table of Contents (Alphabetical by Firm Name)

<u>FIRM</u>	<u>PAGE</u>
Akin Gump Strauss Haver & Field LLP	3
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Kornfeld, Nyberg, Bendes & Kuttner, P.C.	4
Loeb & Loeb	4
Pachnis Stang Ziehl Young Jones & Weintraub	4-5
Paul Hastings LLP	5
Seyfarth Shaw LLP	5
Slidley Austin LLP	6
Torjs LLP	7

California Report

FIRM		GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Akin Gump Strauss Hauer & Feld LLP	Partner	1993	1993	CA	\$ 825.00	8.10	\$ 6,682.50
	David P. Simonds	1993	1993	CA	\$ 725.00	2.60	\$ 1,885.00
	Senior Counsel Edward P. Christian	1993	1993	CA	\$ 725.00	10.70	\$ 8,567.50
TOTAL							
DLA Piper LLP							
Partner	Nate McQuirk	1979	1979	CA	\$ 790.00	0.60	\$ 474.00
Partner	Richard Yankovich	1979	1979	CA	\$ 790.00	39.40	\$ 30,732.00
Partner	Ann Lawrence	1989	2000	CA	\$ 755.00	90.30	\$ 68,176.50
Partner	Heather Dunn	2000	2001	CA	\$ 705.00	1.30	\$ 916.50
Partner	Jeffrey D. Aaronson	1998	1998	CA	\$ 650.00	12.70	\$ 8,255.00
Of Counsel	Ben Gipson	2002	2002	CA	\$ 640.00	3.10	\$ 1,984.00
Associate	Bethand Pan	2004	2004	CA	\$ 630.00	170.00	\$ 107,100.00
Associate	Diana M. Melzer	2008	2008	CA	\$ 510.00	67.00	\$ 34,170.00
Associate	Natasha Heleth	2011	2011	CA	\$ 470.00	1.80	\$ 846.00
Associate	Thia Bhanthall	2000	2000	CA	\$ 400.00	4.10	\$ 1,640.00
TOTAL						390.30	\$ 254,254.00
Gibson Dunn & Crutcher, LLP							
Associate	Virginia Pitt	2010	2010	CA	\$ 445.00	18.20	\$ 8,544.00
Associate	Matthew Bouslog	2011	2011	CA	\$ 395.00	12.60	\$ 4,977.00
TOTAL						31.80	\$ 13,521.00

U.S.B.C New York Southern
Private Airline Corp (12-11343 REG)

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

NLI Ranking: 40
Firm Size: 791

U.S.B.C Delaware
Trident Microsystems, Inc. (12-10083 CSS)

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

NLI Ranking: 2
Firm Size: 3,348

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: 21
Firm Size: 1,039

California Report

FIRM

Kornfield, Nyberg, Bander & Kuhrner, 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

FIRM

Loeb & Loeb
Partner Lance N. Jurich
Partner Christopher W. Campbell
Associate Ryan M. Audin
Associate Jeanna C. Wanless
Paraprofessional S. Steadman

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1987	1987	CA	\$ 695.00	1.50	\$ 1,320.50
1999	2000	CA	550.00	46.20	30,030.00
2007	2007	CA	550.00	122.30	67,255.00
1993	1993	CA	435.00	18.20	7,917.00
			280.00	0.20	52.00
TOTAL					\$ 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

FIRM

Pachtulski Stang Ziehl Young Jones & Weintraub
Of Counsel James K. T. Hunter
Partner Samuel R. Matzel
Of Counsel Jeffrey Kandell
Partner Mahira S. Pagay
Partner Scotta McFarland
Of Counsel Mary Lane
Partner Nina Hong
Associate Teddy M. Kapur
Librarian Leslie A. Forrester
Paraprofessional Felice Harrison

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1976	1976	CA	\$ 745.00	0.10	\$ 74.50
1985	1985	CA	725.00	40.90	29,552.50
1984	1984	CA	615.00	0.50	307.50
1987	1987	CA	615.00	1.80	1,107.00
1980	1980	CA	615.00	47.80	29,397.00
1976	1976	CA	595.00	3.80	2,261.00
1995	1995	CA	595.00	0.50	297.50
2004	2006	CA	495.00	8.40	4,158.00
			295.00	1.10	324.50
			275.00	23.00	6,325.00
TOTAL					\$ 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	\$ 33,416.00

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. (09-10138)

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	398.00
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 Lawrance	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	1983	1984	CA	\$ 705.00	11.10	8,047.50
Partner	Lance N. Jurth	1987	1987	CA	\$ 705.00	1.30	916.50
Associate	Jessica Bullock	2003	2003	CA	\$ 695.00	1.50	1,320.50
Counsel	Ellen Sueda	1983	1983	CA	\$ 695.00	2.40	1,654.50
Of Counsel	Henry Hochman	1987	1987	CA	\$ 675.00	15.50	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	45.20	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	1987	CA	\$ 615.00	1.60	1,107.00
Partner	Scott McFarland	1980	1980	CA	\$ 615.00	47.80	29,337.00
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	2,261.00
Partner	Nina Hong	1986	1986	CA	\$ 595.00	0.50	287.50
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	\$ 755.00	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	42,243.00
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 Bhattachali	Gibson Dunn & Crutcher, LLP	2011	2011	CA	\$ 395.00	12.60	4,977.00
Matthew Bourisog	Paul Hastings LLP	2010	2010	CA	\$ 385.00	97.00	37,545.00
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	\$ 295.00	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 5

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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

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

6. I also have extensive experience litigating the merits of class actions, 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."

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
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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

9 **Kaye, McLane, Bednarski & Litt ****

10 **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

20 **Kemnitzer, Barron & Krieg**

21 **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
----	-----

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

Cabrera v. Martin

(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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Representative Reported Cases (cont.)

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,
revs'd (9th Cir. 1985) 762 F.2d 727

RICHARD M. PEARL

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Tripp v. Swoap

(1976) 17 Cal.3d 671 (amicus)

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

REFERENCES

Furnished upon request.

September 2014

Furnished upon request

10/1/2011

EXHIBIT B

LAFFEY MATRIX

History

Easy Link

Expert Opinion

See the Matrix

Contact us

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Link

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 indemand 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 everrising 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

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

FIRM NAME	LARGEST AVERAGE		PARTNER ASSOCIATE					
	U.S. OFFICE*	FULL-TIME EQUIVALENT ATTORNEYS*	HOURLY RATES	HOURLY RATES				
			AVERAGE	HIGH	LOW	AVERAGE	HIGH	LOW
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

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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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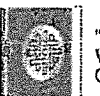
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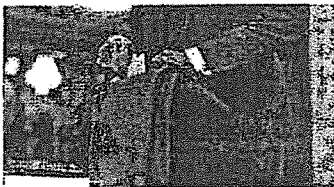
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By JENNIFER SMITH

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.



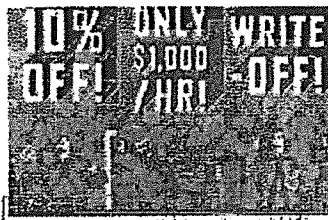
Top partners at leading U.S. law firms are charging more than ever — routinely \$1,150 or more an hour — but after discounts and write-offs the nosebleed rates aren't all they appear to be. Jennifer Smith reports. Photo: Getty Images.

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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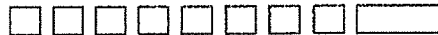
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Exhibit 6

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