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Attorneys for Plaintiff, on a representative basis, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ASHLEY BROWN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MINUTECLINIC DIAGNOSTIC
MEDICAL GROUP OF CALIFORNIA,
INC., a California Corporation; et al.;

Defendants.

Case No.: 30-2021-01185270-CU-OE-CXC
*[Assigned to Hon. Lon F. Hurwitz, Dept
CX103, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: June 23, 2023
Time: 1:30 p.m.
Dept: CX103

Complaint filed: February 22, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest PAGA-only case in
17 California’s history - a \$12.5 million-dollar court approved settlement, which followed extensive
18 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
19 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
27 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **ADEQUACY OF SETTLEMENT**

4 7. The Settlement Class, as conditionally certified by this Court, consists of all
5 current and former non-exempt employees employed by Defendant in California at any time
6 during the Class Period of February 22, 2017, through February 16, 2023.

7 8. As set forth in the Declaration of Nathalie Hernandez on behalf of the Settlement
8 Administrator, Phoenix Settlement Administrators, the Net Settlement Amount is \$372,796.53,
9 after the deductions set forth in the chart here:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 670,000.00
Attorneys’ Fees (1/3)	\$ 233,333.33
Litigation Costs	\$ 14,120.14
Administrator Costs	\$ 9,750.00
PAGA Penalties	\$ 40,000.00
<i>Net Settlement Amount</i>	\$ 372,796.53

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15 9. The process of mailing the Notice Packets was very successful, as 99.6% of the
16 Notice Packets were successfully delivered by the Settlement Administrator.

17 10. The response by the Class Members to this settlement was positive, as 99.7% of
18 the Class elected to participate in the Settlement.

19 11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in
20 the Motion for Final Approval, this Settlement is very favorable to the Class and the release is
21 narrowly limited to the claims alleged.

22 12. Sufficient information existed to allow Class Counsel to intelligently value this
23 case. Given the parties’ arms’ length bargaining facilitated by an experienced wage and hour
24 mediator, the extensive exchange of informal discovery, the experience of Class Counsel, the
25 fact that 99.7% of the Class elected to participate and no objections were submitted, the
26 presumption of fairness is justified.

27 13. I believe that the settlement is fair, reasonable, and adequate, and in the best
28 interests of the Class, given the litigation risks and delay inherent in further litigation and

possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations submitted in support thereof, Defendants vigorously challenged Plaintiff's claims, and Plaintiff faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendants' business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties considered the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The parties determined that it is desirable and beneficial to both the Class and Defendants that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL

AND REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled well over 250 class and representative actions. I have been appointed as class counsel and have successfully resolved approximately half of those cases (while many are ongoing and will successfully resolve in the future) while recovering hundreds of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
2 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

3 16. It has been my experience that the benchmark for attorney fee awards in
4 California state cases is one-third of a common settlement fund, which the CA Supreme Court
5 upheld in the Robert Half case. Here, in accordance with the Settlement Agreement, Class
6 Counsel is seeking a fee of \$233,333.33, which is one-third of the Settlement Amount.

7 17. There are several additional factors why I believe that the Court should award
8 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
9 resulted in a common fund settlement amount, whereby the Class Members will receive \$533.33
10 on average and up to a maximum of 1,844.26 for those employees that worked the longest during
11 the Class Period. This is a very good result in light of the disputed nature of the claims alleged.
12 This result was achieved by the work and success of my office, who negotiated the settlement
13 after extensive preparation, investigation, mediation, and substantial work thereafter.

14 18. Second, Plaintiff faced significant risks going forward with the litigation. As
15 discussed in the motion for preliminary approval, Defendants raised various defenses throughout
16 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
17 Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
18 going forward with this litigation, and it would have taken several more years to realize any
19 recovery in this action along with the possibility of post-trial appeals.

20 19. Third, Class Counsel are experienced class action litigators. This experience and
21 expertise, combined with the high quality of work performed in this case, resulted in the
22 settlement achieved in this case.

23 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
24 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
25 substantial amount of time, money, and resources, and have done so since the inception of this
26 case without any payment or compensation. If Plaintiff had lost this case, we would have
27 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
28 my office, which is a small firm. Indeed, I feel that it is important that Class Counsel be

1 compensated for the hardships and risks we faced litigating this contingency case, so that we are
2 incentivized to take on similar cases in the future on behalf of workers. Indeed, not all
3 class/PAGA cases are successful. Many cases end with no fees or a greatly reduced fee that is
4 far less than lodestar, often due to no fault of counsel (i.e., bankruptcy, change in the law,
5 consolidation- coordination-preemption, being top filed, etc.). As noted in the Mayer Brown
6 LLP's study discussed above, only one-third of class actions are successful, compared to two-
7 thirds that are defeated and result in no payment to the class members.

8 21. Fifth, the request for attorney's fees in the amount of one-third of the common
9 fund falls well within the norms accepted by state courts in California in comparable wage and
10 hour actions actually handled by my office. Moreover, the award of a one-third fee recovery
11 under the common fund doctrine was approved by the California Supreme Court in *Laffitte*,
12 *supra*, 1 Cal.5th 480, 503.

13 22. Finally, a one-third fee recovery is only slightly more than our projected lodestar
14 through the conclusion of this case, resulting in a small 1.22 multiplier.

15 23. For all of the above reasons, a common fund fee award here in the amount of one-
16 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

17 24. At my office, this case was primarily handled by my senior associate attorney,
18 Peter Carlson, while I performed the role of the supervising attorney up through mediation, and
19 then largely took over the handling through the settlement and notice process. Mr. Carlson
20 works exclusively with me on employment law matters and has been in practice for 9 years. He
21 bills at the hourly rate of \$575/hour. I have been in practice for 22 years, with most of those
22 years handling complex litigation and for over the last 15 years, my practice has almost entirely
23 consisted of handling class action wage and hour matters. My billing rate is \$775/hour. I
24 believe these rates are consistent with Plaintiff and Defense attorneys who handle complex class
25 action litigation, if not somewhat lower.

26 25. The hourly rates above are comparable to those of other attorneys with equal or
27 similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com
28 indicates that the benchmark rates are: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-

1 19 year attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer Real
2 Rate Report (“Real Rate Report”), provides directly applicable information in this regard. The
3 Real Rate Report is based on an enormous and statistically significant compilation of data. For
4 instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
5 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
6 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
7 partners and associates in major metropolitan areas. In 2018, for the southern California area,
8 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
9 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
10 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
11 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
12 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
13 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
14 fees billed by law firms.

15 26. The table below includes a summary of the hours worked, plus additional hours
16 that I will bill in finalizing and filing the motion, preparing for and attending the approval
17 hearing, and working with the administrator and defense counsel to issue checks, respond to
18 class members and finalize this matter. Our aggregated lodestar is approximately \$191,325,
19 resulting in a small 1.22 multiplier, as follows:

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Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner)	Trial Counsel	22	\$775	129.4²	\$100,285
Peter Carlson (Senior Associate)	Handling Attorney	9	\$575	137.8	\$79,235
Grand Total for All Attorneys				267.2	\$179,520

27. Mr. Carlson primarily handled the day-to-day matters through mediation, wherein I worked in a supervisory role, but after mediation and settlement, we transition the bulk of the workload to me while Mr. Carlson focuses on cases in litigation and discovery. My time spent on this case generally falls into these categories: (1) investigation and litigation (16.4 hours), (2) mediation process (24 hours), (3) settlement agreement, preliminary/final approval motions and notice process (54 hours), and (4) estimated work through and after final approval, 35 hours for the reasons noted in the footnote below. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

28. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediation fees, and other incidental expenses directly related to this action. My firm's expenses through the final approval hearing are estimated to be \$14,120.14, which includes filing this motion, process/server costs, overnight service and travel/parking expenses to the hearing (see

² Includes an estimated 35 hours of future work that will be expended, including 15 hours from preparing this declaration through the final approval hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court's questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on) and 20 hours after the final approval hearing (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendants, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator's declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto).

1 the itemized statement of these costs attached hereto as **Exhibit A**). Since these actual costs are
2 lower than the \$20,000 allowed under the settlement, the savings will be placed in the Net
3 Settlement Amount for distribution to the Class Members. Defendants do not oppose this request
4 for costs.

5 **SUBMISSION TO THE LWDA**

6 29. The Motion for Final Approval and supporting declarations have concurrently
7 been submitted to the LWDA. (See **Exhibit B**).

8 **EXHIBITS AND CONCLUSION**

9 30. The Settlement Agreement is Exhibit 1 to ROA #64.

10 31. Attached hereto as Exhibit A is a true and correct copy of an itemized statement
11 of my firm's litigation costs.

12 32. The LWDA's confirmation of receipt of this Motion and Declaration is attached
13 hereto as Exhibit B.

14 33. For the foregoing reasons, it is respectfully requested that the Court grant final
15 approval of the settlement as being fair, reasonable, and in the best interest of the class, and
16 approve the requested attorneys' fees, costs, and enhancements.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. Executed on June 1, 2023, at Riverside, California.

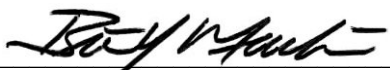
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20 By: 
21 Brian J. Mankin, Esq.
22
23
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EXHIBIT “A”

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00450 Brown v MinuteClinic
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Ashley Brown</u> <u>14000-00450 Brown v MinuteClinic</u>									
02-16-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	75.00	0.00	1.00	75.00
Order Number: ORD-000096395 to submit letter to LWDA Case Number: LWDA-CM-821553-21									
02-23-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	1,496.61	0.00	1.00	1,496.61
One Legal Order #15908565 to file Complaint									
02-24-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	14.25	0.00	1.00	14.25
One Legal Order #15914951 to file summons									
02-24-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	14.25	0.00	1.00	14.25
One Legal Order #15916257 to resubmit summons									
02-26-2021	Approved		Non-Billable	E101 Copying	Aguilera, Sophia J.	0.20	0.00	90.00	18.00
6 copies @ \$0.20 for Demand for docs 84 copies @ \$0.20 for LWDA letter and letter to employers									
02-26-2021	Approved		Non-Billable	E108 Postage	Aguilera, Sophia J.	32.21	0.00	1.00	32.21
Postage for the month of February 2021									
03-03-2021	Approved		Non-Billable	Attorney Service	Aguilera, Sophia J.	60.25	0.00	1.00	60.25
Bosco Inv 5397216 Serve: Minuteclinic Diagnostic Medical Group of San Diego, Inc., a California Corporation Summons: Class Action Complaint; Civil Case Cover Sheet; Guidelines All Complex Civil Departments; ADR Court: Orange County Superior Court - Civil Complex Center									
03-03-2021	Approved		Non-Billable	Attorney Service	Aguilera, Sophia J.	106.20	0.00	1.00	106.20
Bosco Inv 5397093 Serve: Minuteclinic Diagnostic Medical Group of California, Inc., a California Corporation Summons: Class Action Complaint; Civil Case Cover Sheet; Guidelines All Complex Civil Departments; ADR Court: Orange County Superior Court - Civil Complex Center									
03-03-2021	Approved		Non-Billable	Attorney Service	Aguilera, Sophia J.	60.25	0.00	1.00	60.25
Bosco Inv 5397189 Serve: Minuteclinic Diagnostic Medical Group of Orange County, Inc., a California Company Summons: Class Action Complaint; Civil Case Cover Sheet; Guidelines All Complex Civil Departments; ADR Court: Orange County Superior Court - Civil Complex Center									
03-08-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	14.67	0.00	1.00	14.67
One Legal Order #15969115 to file POS									
04-23-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	14.67	0.00	1.00	14.67
One Legal Order #16197144 to file FAC									

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00450 Brown v MinuteClinic
(Active Only)

Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Ashley Brown</u> <u>14000-00450 Brown v MinuteClinic</u>									

07-15-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	35.26	0.00	1.00	35.26
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One Legal Order #16582392 to file stip to continue Case Management Conference

09-16-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	35.26	0.00	1.00	35.26
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One Legal Order #16906081 to file stip to continue Case Management Conference

01-05-2022	Approved		Non-Billable	E125 Mediation fees	Aguilera, Monica A	10,000.00	0.00	1.00	10,000.00
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Inv dated 1-4-2022 for 3-10-2022 mediation with Serratore Law

03-14-2022	Approved		Non-Billable	E119 Experts	Grossi, Tracie L.	1,625.00	0.00	1.00	1,625.00
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Berger Consulting Group Inv #5706

03-17-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	35.78	0.00	1.00	35.78
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OneLegal Order #17853198 - file ntc of settlement and stip to cont CMC

06-22-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	15.19	0.00	1.00	15.19
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OneLegal Order #18428817 - File Joint Statement

08-01-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	76.96	0.00	1.00	76.96
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OneLegal Order #18643192 - file MPA

08-02-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	15.19	0.00	1.00	15.19
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OneLegal Order #18659793 - File Ntc of COA

08-18-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	35.78	0.00	1.00	35.78
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OneLegal Order #18736276 - File Stip and Order to Cont CMC

01-30-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	15.65	0.00	1.00	15.65
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OneLegal Order #19736312 - file Supplemental Declaration and Proposed Order

02-21-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	8.06	0.00	1.00	8.06
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Orange County Superior Court fees for copy of signed order on PA

02-22-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	15.65	0.00	1.00	15.65
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OneLegal Order #19877773 - File Proof of Service

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00450 Brown v MinuteClinic
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Ashley Brown</u>									
<u>14000-00450 Brown v MinuteClinic</u>									
06-01-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	300.00	0.00	1.00	300.00
Estimated costs to file MFA and supporting documents to via OneLegal									
Project Total									14,120.14
Client Total									14,120.14
Grand Total									14,120.14

EXHIBIT “B”