

1 ARTHUR R. BOTHAM, JR. (#203072)
2 **LAW OFFICES OF ARTHUR R. BOTHAM, JR.,**
3 **A Law Corporation**
2169 First Avenue
San Diego, California 92101
Phone: (619) 358-9738 Fax: (619) 393-0103

4 ZACHARY T. TYSON (#211185)
5 **LAW OFFICE OF ZACHARY T. TYSON ALC**
2169 First Avenue
San Diego, California 92101
Phone (619) 237-9292

6 David Mara, Esq. (230498)
7 Matthew Crawford, Esq. (310230)
8 **MARA LAW FIRM, PC**
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
9 Telephone: (619) 234-2833
Facsimile: (619) 234-4048

10 Attorneys for ABEL ESCOBEDO and CHRISTOPHER
11 CARVER, on behalf of themselves, all others similarly
situated, and on behalf of the general public.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 ABEL ESCOBEDO and CHRISTOPHER
16 CARVER on behalf of themselves, all others
17 similarly situated, and on behalf of the general
public,

18 Plaintiffs,

19 v.

20 MATHESON TRI-GAS, INC. an unknown
21 business entity; and DOES 1 through 25,
inclusive,

22 Defendants.
23
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25
26
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Case No. 37-2020-00044507-CU-OE-CTL

**DECLARATION OF DAVID MARA IN
SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
SERVICE AWARDS, AND ENTERING OF
FINAL JUDGMENT**

Date: October 20, 2023
Time: 8:30 a.m.
Judge: Hon. Ronald F. Frazier
Dept.: C-65

1 I, DAVID MARA, declare the following:

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

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

10 10. Defendant is a supplier of industrial and specialty gases, and gas handling equipment in the
11 United States. In order to conduct its business, Defendant hires hourly driver employees, such
12 as Plaintiffs and Class Members, to transport these gases and equipment in California.

13 11. On June 8, 2020, Plaintiff Escobedo sent notice to the California Labor and Workforce
14 Development Agency (“LWDA”) of his intent to pursue various wage and our claims against
15 Defendant on behalf of similarly situated aggrieved employees. Shortly thereafter, Plaintiff
16 Escobedo filed a putative class action complaint on December 4, 2020, against Defendant,
17 alleging causes of action for: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime
18 Wages; (3) Failure to Provide Accurate, Itemized Wage Statements; (4) Failure to Permit
19 Meal Periods; (5) Failure to Permit Rest Periods; (6) Waiting time penalties; (7) Civil
20 Penalties Under the Private Attorney General Act of 2004; and (8) Unlawful Business
21 Practices.

22 12. On March 4, 2021, Plaintiff Carver sent notice to the LWDA of his intent to pursue various
23 wage and hour claims against Defendant on behalf of similarly situated aggrieved employees.
24 Shortly thereafter, Plaintiff Carver filed a putative class action complaint on May 10, 2021,
25 against Defendant, alleging causes of action for: (1) Failure to Pay All Straight Time Wages;
26 (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to
27 Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with
28 Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the Time

1 of Termination of Employment; (7) Irregular Pay Periods; (8) Failure to Adopt a Compliant
2 Sick Pay/Paid Time Off Policy; and (9) Violation of Unfair Competition Law. Plaintiff Carver
3 also filed a separate action alleging identical violations of the California Labor Code and
4 seeking civil penalties under the PAGA on May 10, 2021, against Defendant.

5 13. After agreement amongst the Parties to consolidate the matters, Plaintiffs filed a First
6 Amended Complaint in this matter on or around August 30, 2021, which added the entirety
7 of the claims alleged by Plaintiff Carver in the two other actions. The two actions filed by
8 Plaintiff Carver were then dismissed without prejudice.

9 14. Defendant filed an Answer to the First Amended Complaint on or around October 4, 2021.
10 Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing
11 of any kind associated with the claims alleged in this action, and further deny that, for any
12 purpose other than settling this action, this matter is appropriate for class treatment. Defendant
13 further contends that they have complied with all applicable California laws, the California
14 Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law.
15 Defendant finally contends that, if this matter were to be litigated further, they would have
16 strong defenses to oppose class certification and succeed on the merits of Plaintiffs' causes of
17 action.

18 15. Through discovery, Plaintiffs sought numerous documents and substantial amounts of data
19 that were needed to evaluate the case. These documents included requests for time and wage
20 records for the Class, policies and practices in place during the class period, employee training
21 in place during the class period, as well as data surrounding the number of current and former
22 employees.

23 16. This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
24 production of over 10,000 documents and thousands of lines of data, including Defendant's
25 employee policies and practices, and paystubs and time records for Plaintiffs and Class
26 Members. Using the time and wage records for the Class provided and the data surrounding
27 the number of current and former employees, Plaintiffs were able to establish a potential
28 exposure model in preparation for mediation.

- 1 17. As discussed at length in Plaintiffs' Motion for Preliminary Approval, the gravamen of
2 Plaintiffs' claims is that Defendants failed to pay Class Members for all time worked, failed
3 to pay Class Members contractually agreed upon overtime, and failed to provide Class
4 Members with lawful wage statements. This proposed Settlement was only possible following
5 significant discovery and evaluation of Defendants' relevant policies, procedures, and
6 records, which permitted Plaintiffs' Counsel to engage in a comprehensive analysis of liability
7 and potential damages to prepare for the mediation and class certification.
- 8 18. Defendants vigorously deny Plaintiffs' contentions, claiming that Class Members were paid
9 for all time worked, were not contractually promised overtime, and were provided with lawful
10 wage statements. Defendants contend that all of the challenged policies and practices comply
11 with California law and that the limited individualized accusations of Plaintiffs are complete
12 outliers, rendering this matter unsuitable for class certification.
- 13 19. The Parties agreed to attend mediation with mediator Jeff Ross, Esq. on July 28, 2022. Shortly
14 thereafter, Mr. Ross issued a mediator's proposal, which was accepted on August 4, 2022.
15 The Parties then met and conferred regarding all the terms of the settlement and finalized the
16 Settlement Agreement that the Parties now seek to finally approve.
- 17 20. The Parties agreed (subject to and contingent upon the Court's approval) that this action be
18 settled and compromised for the non-reversionary total sum of \$750,000 GFVA which
19 includes, subject to Court approval: (a) attorneys' fees of up to \$250,000 (one-third of the
20 GFVA) to compensate Class Counsel for work already performed and all work remaining to
21 be performed in documenting the settlement, administering the settlement and securing Court
22 approval; (b) litigation costs of \$17,006.94 (originally estimated not to exceed \$20,000); (c)
23 Class Representative Service Payments to the named class representatives, Abel Escobedo
24 and Christopher Carver, in a sum not to exceed \$10,000 each in consideration for general
25 releases of their claims against Defendants and for initiating and prosecuting this Class
26 Action, serving as Class Representatives, work performed, and risks undertaken for the
27 payment of Defendants' attorneys' fees and costs in the event they had been unsuccessful in
28 either matter; (d) claims administration fees and expenses to Phoenix, in the amount of

1 \$7,850.00; and (e) the \$25,000 allocated to Plaintiffs' claims under the PAGA.

2 21. Furthermore, although Plaintiffs are confident in the strengths of their claims and believes this
3 case is suitable for certification on the claimed basis that there are company-wide policies and
4 practices that Plaintiffs contend violate California law and uniformly affect the Class
5 Members, Defendants' counterarguments raise uncertainties with respect to both class
6 certification and success on the merits. As the California Supreme Court ruled in *Sav-On v.*
7 *Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's
8 sound discretion. Decisions following *Sav-On* have reached different conclusions, with
9 respect to certification of wage and hour claims. In light of Defendants' defenses, supporting
10 evidence, and position that the action is not suitable for class treatment, the settlement amount
11 of \$750,000 — **with an average settlement share estimated at \$2,312.60, with a high**
12 **payment of \$5,001.52** — Plaintiffs and their counsel believe this is a reasonable and fair
13 settlement.

14 22. Class Counsel applies for an award of attorneys' fees in the sum of \$250,000 (which is one-
15 third of the GFVA), and litigation costs of \$17,006.94 (originally estimated not to exceed
16 \$20,000).

17 23. As of the date of filing this Motion for Final Approval, Plaintiff's counsel has worked a total
18 of 823 hours on this case and calculated the base lodestar at \$638,800 at rates reflecting those
19 currently earned in the marketplace. All of the work and tasks performed by Plaintiff's counsel
20 were reasonable and necessary to the prosecution of this case. As Class Counsel's lodestar fee
21 is in excess of their fee request, a multiplier on their lodestar fee is not sought herein.

22 24. I devoted 257 hours to this case. The following is a summary of my tasks and the activities I
23 performed in this litigation: initial intake and discussions with potential plaintiff, investigation
24 into Defendants, including whether other cases have been filed against them, research into law
25 in preparation for filing complaints, interoffice discussions about causes of action to plead,
26 draft complaints, review and revise complaints, review and revise notice to the LWDA,
27 coordinate with co-counsel to consolidate actions, review and revise amended complaint,
28 review and revise stipulation for leave to amend, review and revise requests for dismissal,

1 discussions with Plaintiffs and other class members throughout case, interoffice discussions
2 about case and initial litigation strategy, review Defendants' answer, discussions and emails
3 with defense counsel throughout case, review and revise protective order, review and revise
4 discovery propounded on Defendants, review and analyze documents produced by Defendant,
5 create exhibits for use in the case, interoffice discussions about documents produced
6 throughout case, review case file for mediation, draft mediation brief and exposure analysis,
7 interoffice discussions about mediation and mediation brief, prepare for mediation, attend
8 mediation, review and revise long form settlement agreement, negotiate terms of settlement
9 agreement, review and revise preliminary approval motion and supporting papers, draft and
10 revise declaration in support of preliminary approval motion, review weekly reports from
11 settlement administrator, draft and revise final approval motion and supporting papers, and
12 draft and revise declaration in support of final approval motion.

13 25. My hourly rate is \$850. Based on my hourly rate and the hours expended 257, my fee is
14 \$218,450, which is reasonable and necessary to the successful litigation of this matter.

15 26. Matthew Crawford is an associate at the Mara Law Firm. Mr. Crawford has been a member of
16 the California Bar since 2016. Mr. Crawford received his training in wage and hour class action
17 and PAGA lawsuits while at Mara Law Firm, PC. He has been substantially involved in all
18 phases of this litigation and in the following sampling of wage and hour class action and PAGA
19 cases, of which our firm is the attorney of record: *Norona v. B&G Delivery System, Inc.* (Case
20 No. RG1577005); *Limon v. National Retail Transportation, Inc.* (Case No. 2:16-cv-02054);
21 *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Shroeder v. YRC Global,*
22 *Inc.* (Case No. 2:16-cv-06173); *Davidson v. A&B Trucking Services, Inc.* (Case No.
23 16CECG02390); *Spikes v. Bear Trucking, Inc.* (Case No. 16CECG02389); *Montes v. CORAM*
24 *Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Valentich v.*
25 *Hub Construction Specialties, Inc.* (Case No. RIC 1610267); *Roby v. Pan Pacific Petroleum,*
26 *Inc.* (Case No. BCV-16-101856); *Smith v. Roadrunner Management Services, Inc.* (Case No.
27 BC630949); *Terry v. Hoovestol, Inc.* (Case No. RG16823879); *Belton v. Satellite Affordable*
28 *Housing Associates* (Case No. RG17885127).

1 27. Mr. Crawford devoted 171 hours to this case. The following is a summary of his tasks and
2 activities performed in the litigation of this matter: draft notice to the LWDA, draft and revise
3 amended complaint, draft and revise stipulation for leave to amend, draft and revise requests
4 for dismissal, discussions with Plaintiffs throughout case, discussions and emails with Defense
5 Counsel throughout case, interoffice discussions throughout case, draft and revise discovery
6 propounded on Defendant, review and analyze documents produced in case and create
7 documents summary of key documents, draft case management statements, attend hearings
8 case management conferences, assist in drafting mediation brief, prepare for and attend
9 mediation, review and revise long-form settlement agreement, discuss terms of settlement
10 agreement, obtain bids from settlement administrators, draft motion for preliminary approval
11 and supporting documents, attend preliminary approval hearing, communicate with the
12 settlement administrator throughout the administration process, review weekly reports from
13 settlement administrator, assist in drafting motion for final approval and supporting documents,
14 and attend final approval hearing.

15 28. Mr. Crawford's hourly rate is \$600. Based on his hourly rate and the hours expended 171, his
16 fee is \$102,600 which is reasonable and necessary to the successful litigation of this matter.

17 29. My firm seeks reimbursement of litigation costs and expenses of \$10,996.94.

18 30. Class Counsel seeks reimbursement of the litigation costs and expenses of \$17,006.94
19 (originally estimated not to exceed \$20,000). These costs were all reasonable and necessary to
20 the prosecution of this case and the results achieved and are fair, and reasonable.

21 31. In addition, Plaintiffs agreed to a general release of their claims against Defendants in exchange
22 for the \$10,000 Class Representative Service Payments. Courts routinely approve service
23 payments, or incentive awards, to compensate a named plaintiff for the services he or she
24 provides and the risks he or she incurs during class litigation. Courts have regularly and
25 routinely granted approval of settlements containing such enhancements. In Class Counsel's
26 experience, the typical enhancement award in wage and hour class action settlements ranges
27 from \$5,000 to \$75,000. Very commonly there is more than one class representative who
28 receives an award in the above range.

1 32. The requested payments are appropriate and reasonable and unopposed by Defendants. This
2 payment is made, in part, in exchange for Plaintiffs providing Defendant with a general release
3 of their claims. This general release is far greater than the release signed by class members.
4 There is no question that this case would not have reached the same result but for Plaintiffs'
5 involvement and input at all stages of the litigation.

6 33. The proposed settlement is the product of serious, informed, non-collusive negotiations, has
7 no obvious defects, does not improperly grant preferential treatment to the class representative
8 or segments of the class and falls within the range of fair and reasonable settlements. I believe
9 that this non-reversionary settlement is in the best interests of the class as fair, reasonable, and
10 adequate. Therefore, I recommend approval of the settlement.

11 34. A true and correct copy of the Summary of Time and Costs is attached hereto as **Exhibit 1**.

12 35. A true and correct copy of Westlaw Court Express's Legal Billing Report, Volume 14,
13 Number 3, California Region for December 2012 is attached hereto as **Exhibit 2**.

14 36. A true and correct copy of the 2014 Declaration of Richard Pearl in *Hohnbaum v. Brinker*
15 *Restaurant Corp.* SDSC GIC834348 is attached hereto as **Exhibit 3**.

16 37. A true and correct copy of the 2012 National Law Journal Survey of Hourly Billing Rates for
17 Partners and Associates is attached hereto as **Exhibit 4**.

18 38. A true and correct copy of the Joint Stipulation and Settlement Agreement is attached hereto
19 as **Exhibit 5**.

20 39. A true and correct copy of the filing receipt from Plaintiff's upload of his final approval
21 motion and supporting documents to the LWDA's website is attached as **Exhibit 6**.

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

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

26 Dated: September 28, 2023

27
28


David Mara, Esq.

Exhibit 1

SUMMARY OF TIME AND COSTS

Abel Escobedo and Christopher Carver v. Matheson Tri-Gas, Inc.

San Diego County Superior Court Case No. 37-2020-00044507-CU-OE-CTL

Hours: 428
Lodestar Fees: \$ 321,050.00
Costs: \$ 10,996.94

As of 9/28/2023

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara	2004 (19)	257	\$850	\$218,450.00
Matthew Crawford	2016 (7)	171	\$600	\$102,600.00
MARA LAW FIRM, PC TOTAL:		428		\$321,050.00

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

LITIGATION EXPENSES	
MARA LAW FIRM, PC	\$10,996.94
TOTAL COSTS	\$10,996.94

Abel Escobedo and Christopher Carver v. Matheson Tri-Gas, Inc.
San Diego County Superior Court Case No. RG21112345

Costs Summary

Attorney Service:	\$	162.00
Court Fees:	\$	6,192.72
Mediation:	\$	4,500.00
Legal & Factual Investigation	\$	126.91
Postage:	\$	15.31
TOTAL COSTS	\$	<u>10,996.94</u>

Exhibit 2

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY REGION, BY FIRM

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California Report

FIRM		GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
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	1999	1999	CA	\$ 790.00	0.60	\$ 474.00
	Nate McQuirk	1979	1979	CA	\$ 780.00	39.40	\$ 30,732.00
	Partner	1999	1999	CA	\$ 780.00	90.30	\$ 68,176.50
	Richard Yankovich	1999	1999	CA	\$ 780.00	90.30	\$ 68,176.50
	Partner	2000	2000	CA	\$ 765.00	1.30	\$ 716.50
	Ann Lawrence	2000	2000	CA	\$ 765.00	1.30	\$ 716.50
	Partner	1998	1998	CA	\$ 850.00	12.70	\$ 8,285.00
	Heather Dunn	1998	1998	CA	\$ 850.00	12.70	\$ 8,285.00
	Partner	2002	2002	CA	\$ 840.00	3.10	\$ 1,584.00
	Jeffrey D. Aaronson	2002	2002	CA	\$ 840.00	3.10	\$ 1,584.00
	Of Counsel	2004	2004	CA	\$ 630.00	170.00	\$ 107,100.00
	Ben Gipson	2004	2004	CA	\$ 630.00	170.00	\$ 107,100.00
	Associate	2008	2008	CA	\$ 510.00	67.00	\$ 34,170.00
Gibson Dunn & Crutcher, LLP	Associate	2011	2011	CA	\$ 470.00	1.80	\$ 846.00
	Diana M. Melzer	2011	2011	CA	\$ 470.00	1.80	\$ 846.00
	Associate	2000	2000	CA	\$ 400.00	4.10	\$ 1,640.00
	Thia Bhanthall	2000	2000	CA	\$ 400.00	4.10	\$ 1,640.00
		TOTAL					\$ 254,254.00
Gibson Dunn & Crutcher, LLP	Associate	2010	2010	CA	\$ 445.00	19.20	\$ 8,544.00
	Virginia Pitt	2010	2010	CA	\$ 445.00	19.20	\$ 8,544.00
	Associate	2011	2011	CA	\$ 395.00	12.60	\$ 4,977.00
	Matthew Bouslog	2011	2011	CA	\$ 395.00	12.60	\$ 4,977.00
		TOTAL					\$ 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. (12-10063 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

Loeb & Loeb

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

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

Pachtulski Stang Ziehl Young Jones & Weintraub

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

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

California Report

FIRM

Pedraza & Stang Ziehl Young Jones & Weintraub

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	1979	1979	CA	\$ 975.00	0.80	\$ 780.00
Partner	1982	1983	CA	\$ 875.00	12.80	\$ 11,200.00
Of Counsel	1975	1976	CA	\$ 745.00	4.00	\$ 2,980.00
Partner	1983	1983	CA	\$ 745.00	50.80	\$ 37,845.00
Partner	1983	1984	CA	\$ 725.00	11.10	\$ 8,047.50
Of Counsel	1987	1987	CA	\$ 675.00	15.80	\$ 10,452.50
Of Counsel	1987	1987	CA	\$ 595.00	5.20	\$ 3,094.00
Of Counsel	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
Associate	2004	2010	CA	\$ 525.00	31.00	\$ 16,275.00
Paraprofessional				265.00	2.50	\$ 862.50
Paraprofessional				265.00	7.70	\$ 2,040.50
Paraprofessional				265.00	1.00	\$ 265.00
Case Management				185.00	5.40	\$ 993.00
Case Management				185.00	0.40	\$ 74.00
TOTAL					152.50	\$ 57,198.50

Paul Hastings LLP

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

Seyfarth Shaw LLP

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

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

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

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

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

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

N.J. Ranking: 30
Firm Size: 851

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

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

N.J. Ranking: 50
Firm Size: 733

California Report

FIRM Sidley Austin LLP

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	1995	1995	CA	\$ 875.00	18.10	\$ 12,217.50
Associate	2010	2010	CA	450.00	117.50	53,063.00
Associate	2011	2011	CA	355.00	41.00	14,555.00
TOTAL					177.00	\$ 79,827.50

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

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

NLI Ranking: 10
Firm Size: 1,592

Tenys LLP

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

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

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

NLI Ranking: n/a
Firm Size: 236

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY BILLING RATE

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	John Cameron	1983	1983	CA	\$ 995.00	5.50	\$ 5,472.50
Partner	Shelia Block	1974	1974	CA	\$ 995.00	0.40	388.00
Partner	Richard M. Pachulski	1979	1979	CA	\$ 975.00	0.80	780.00
Partner	Ira D. Kharasch	1982	1982	CA	\$ 875.00	12.80	11,200.00
Partner	J. AL 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	\$ 760.00	39.40	30,732.00
Partner	Ana Lawrance	1989	1989	CA	\$ 755.00	50.30	68,176.50
Of Counsel	Jennifer S. Baldocchi	1983	1983	CA	\$ 755.00	152.40	115,062.00
Of Counsel	James K-T. Hunter	1976	1976	CA	\$ 745.00	0.10	74.50
Of Counsel	James K-T. Hunter	1976	1976	CA	\$ 745.00	4.00	2,980.00
Partner	John D. Fiero	1989	1989	CA	\$ 745.00	50.80	37,846.00
Senior Counsel	Edward P. Christian	1985	1985	CA	\$ 725.00	2.60	1,885.00
Partner	Samuel R. Malzel	1985	1985	CA	\$ 725.00	40.90	29,632.50
Partner	Bruce Grohschal	1983	1984	CA	\$ 725.00	11.10	8,077.50
Partner	Heather Dunn	2000	2000	CA	\$ 705.00	1.30	916.50
Partner	Lance N. Jurth	1987	1987	CA	\$ 695.00	1.90	1,320.50
Associate	Jessica Bullock	2003	2003	CA	\$ 695.00	21.10	14,684.50
Counsel	Ellen Sueda	1983	1983	CA	\$ 675.00	2.40	1,632.00
Of Counsel	Henry Hochman	1987	1987	CA	\$ 675.00	16.50	10,462.50
Partner	Max C. Fischer	1985	1985	CA	\$ 675.00	18.10	12,217.50
Partner	Jeffrey D. Karanson	1988	1988	CA	\$ 650.00	12.70	8,255.00
Partner	Christopher W. Campbell	1989	1989	CA	\$ 650.00	46.20	30,030.00
Of Counsel	Ben Gibson	2002	2002	CA	\$ 640.00	3.10	1,984.00
Associate	Bertrand Pan	2004	2004	CA	\$ 630.00	170.00	107,100.00
Partner	Colleen M. Regan	1985	1985	CA	\$ 620.00	1.50	930.00
Of Counsel	Jeffrey Kamel	1984	1984	CA	\$ 615.00	0.50	307.50
Partner	Malhar S. Pargy	1984	1984	CA	\$ 615.00	1.60	1,107.00
Partner	Scott McFarland	1980	1980	CA	\$ 615.00	47.80	29,337.00
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	0.90	535.50
Of Counsel	Gabriele Rohrer	1997	1997	CA	\$ 595.00	5.20	3,094.00

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Of Counsel	Pachulski Stang Ziehl Young Jones & Weintraub	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
William Ramseyer	Paul Hastings LLP	2007	2008	CA	\$ 775.00	191.70	104,477.50
Robert E. Zivver	Tony's LLP	2007	2007	CA	\$ 555.00	110.00	62,150.00
Adam Siverts	Loeb & Loeb	2007	2007	CA	\$ 550.00	122.30	67,265.00
Ryan M. Aulich	Seyfarth Shaw LLP	1997	1997	CA	\$ 40.00	56.60	30,854.00
Holger Basch	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2010	CA	\$ 525.00	31.00	16,275.00
John W. Lucas	DLA Piper LLP	2008	2008	CA	\$ 510.00	87.00	34,170.00
Diana M. Malzer	Tony's LLP	2008	2008	CA	\$ 500.00	0.50	250.00
Madhew Akoy	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2008	CA	\$ 495.00	8.40	4,158.00
Teddy M. Kumar	Paul Hastings LLP	2009	2009	CA	\$ 485.00	87.10	42,243.50
Liam M. Paez	DLA Piper LLP	2011	2011	CA	\$ 470.00	1.80	846.00
Natasha Hsieh	Sidley Austin LLP	2010	2010	CA	\$ 450.00	117.50	53,055.00
Michael T. Gustafson	Gibson Dunn & Crutcher, LLP	2010	2010	CA	\$ 445.00	19.20	8,544.00
Virginia FRI	Loeb & Loeb	1993	1993	CA	\$ 435.00	18.20	7,917.00
Jeanne C. Wanlass	Kornfield, Nyberg, Bendes & Kuhner, P.C.	1987	1987	CA	\$ 425.00	16.90	7,182.50
Eric A. Nyberg	DLA Piper LLP	2000	2000	CA	\$ 400.00	4.10	1,640.00
Tina 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. Krotts	Loeb & Loeb	2000	2000	CA	\$ 260.00	0.20	52.00
Paraprofessional S. Steadman	Tony's LLP	2000	2000	CA	\$ 260.00	28.20	7,332.00
Paraprofessional Dianna Rajah	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	5.40	595.00
Case Manager Sharita Filman	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	0.40	74.00
Case Manager Dina K. Whaley	Kornfield, Nyberg, Bendes & Kuhner, P.C.	2000	2000	CA	\$ 80.00	0.30	24.00
Paraprofessional Nancy L. Nyberg							

Exhibit 3

DEBRA L. HURST (SBN 106118)
KYLE VAN DYKE (SBN 171186)
JULIE CORBO RIDLEY (SBN 234274)
HURST & HURST
701 "B" Street, Suite 1700
San Diego, CA 92101
Telephone: 619.236.0016
Facsimile: 619.236.8569

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

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

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

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

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

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: GIC834348

CLASS ACTION

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

Date: December 12, 2014

Time: 1:30 p.m.

Dept.: C-69

Judge: Hon. Katherine A. Bacal

Complaint Filed: August 16, 2004

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

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

11 **Professional Background**

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

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

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

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

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

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

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

(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

1 **Whatley Kallas**

2 Years of Experience Rate

3 27 900

4 32 800

5 33 750

6 21 700

7 10 600

8 4 400

9 2 375

10 Paralegal 225

11 Intern 125

12 **Consumer Watchdog**

13 35 \$925

14 19 650

15 4 425

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

21 Partners: \$775-350

22 Associates: \$525-325

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

27 Years Rate

28 39 \$750

 35 730

 13 500

 8 460

 6 440

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

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

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

11 **2013 Rates**

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

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

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

hourly rates reasonable:

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

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

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

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

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

2012 Rates

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

Zelle Hofman

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

Steyer, Lowenthal et al.

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

Cooper & Kirkham

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

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

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

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

1 rates reasonable:

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

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

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

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

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

2000	570
2001	550
2002	520
Law Clerks	250
Paralegals	215

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

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

2011 Rates

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

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

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

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

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

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

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

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

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

23 **2010 Rates**

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

2010 hourly rates reasonable:

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

Rate Information from Surveys

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

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

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

1 **Rates Charged by Other Law Firms**

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

11 **Altshuler Berzon LLP****

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

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

26 Law Clerks 250
27 Paralegals 215

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

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

Altshuler Berzon LLP**

Paralegals	215
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Arnold Porter LLP

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

The Arns Law Firm LLP **

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

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

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

Bingham McCutchen

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

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

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

Blood Hurst & O'Reardon *, **

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

Blood Hurst & O'Reardon*, **

6	510
5	410
1	305
Paralegals	260

Burson & Fisher**

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

Chavez & Gertler*

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

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

Coblentz Patch & Duffy

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

Cohelan Khoury & Singer

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

Cooper & Kirkham

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

Covington Burling

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

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

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

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

Covington Burling

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

Farella Braun & Martell LLP

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

Fenwick & West

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

Furth Firm LLP**

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

Furth Firm LLP**

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

Gibson Dunn & Crutcher LLP

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

Goldstein, Borgen, Dardarian & Ho**

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

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

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

Goldstein, Borgen, Dardarian & Ho**

30	700
24	650
18	600
17	600
16	550

2010 Rates:

Years of Experience Rate

Partners

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

Of Counsel

40	725
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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>
11 44	\$925
12 27	725
13 24	725
14 7	525
15 5	475

15 **Keker & Van Nest, LLP**

16 **2010 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
17 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>
22 38	\$750
23 32	750
24 8	475
25 3	350
Senior Paralegal	250

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

27 **2012 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
28 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>
---------------------------	----------------------------	-------------

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
----	-----

Associates

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

Paralegals	215-280
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Litigation Support/ Paralegal clerk	150
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Law Clerk/Students	240
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Word Processing	80
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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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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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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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(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

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

THE FOUR-FIGURE CLUB

These 10 firms posted the highest partner billing rates.

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

THE FOUR-FIGURE CLUB

Contact Karen Sloan at ksloan@alm.com

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

Classification

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

Language: ENGLISH

Publication-Type: Newspaper

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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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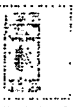
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LAW / April 9, 2013, 4:48 p.m. ET

On Sale: The \$1,150-Per-Hour Lawyer

Lawyer Fees Keep Growing, But Don't Believe Them. Clients Are Demanding, and Getting, Discounts

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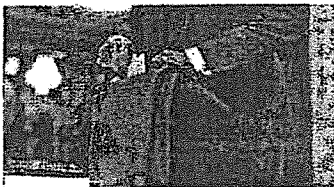
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By JENNIFER SMITH

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.



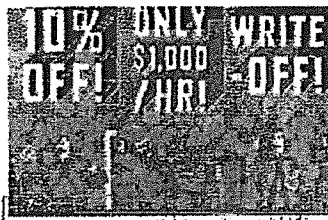
Top partners at leading U.S. law firms are charging more than ever — routinely \$1,150 or more an hour — but after discounts and write-offs the nosebleed rates aren't all they appear to be. Jennifer Smith reports. Photo: Getty Images.

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, [WKL.AE +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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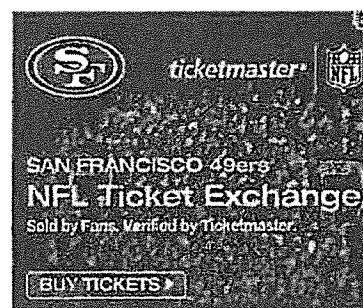
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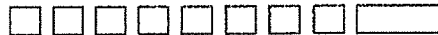
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Exhibit 5

1 **STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 **ARTICLE I**

3 **INTRODUCTION**

4 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
5 the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of
6 this action shall be effectuated upon and subject to the following terms and conditions. Capitalized
7 terms used herein shall have the meanings set forth in the “Definitions” section or as defined
8 elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter “Agreement”).

9 Plaintiffs Christopher Carver (“Carver”) and Abel Escobedo (“Escobedo,” and collectively
10 with Carver, “Representative Plaintiffs”) and the putative Class Members make this agreement with
11 Defendant Matheson Tri-Gas, Inc. (“Defendant” or “Matheson”). Representative Plaintiffs and
12 Defendant collectively are referred to in this Agreement as “the Parties.”

13 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
14 concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total
15 maximum amount of \$750,000.00 (Seven-Hundred Fifty Thousand Dollars and Zero Cents) as
16 provided in Section 5.06 below (“Gross Fund Value Amount”) upon the terms and conditions of this
17 Agreement and for the consideration set forth herein, including but not limited to a release of all
18 claims by Representative Plaintiffs and the Class Members as set forth herein.

19 **ARTICLE II**

20 **RECITALS**

21 This Agreement is made in consideration of the following facts:

22 2.1. WHEREAS on June 8, 2020, Escobedo sent a “PAGA Claim of Abel Escobedo” to
23 the California Labor and Workforce Development Agency (the “LWDA”) alleging that while
24 employed by Defendant, Escobedo and other employees had suffered various violations of the
25 California Labor Code;

26 2.2. WHEREAS, on December 4, 2020, Escobedo filed a complaint in the matter of *Abel*
27 *Escobedo v. Matheson Tri-Gas, Inc., et al.*, Case No. 37-2020-00044507-CU-OE-CTL (*Escobedo*) in
28 the Superior Court of California, County of San Diego, alleging the following claims:

- (1) Failure to Pay Minimum Wage;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Accurate, Itemized Wage Statements;
- (4) Failure to Permit Meal Periods;
- (5) Failure to Permit Rest Periods;
- (6) Waiting time penalties;
- (7) Civil Penalties Under the Private Attorney General Act of 2004; and
- (8) Unlawful Business Practices;

2.3. WHEREAS, on March 4, 2021, Carver sent a “Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3” to the LWDA alleging that while employed by Defendant, Carver and other employees had suffered various violations of the California Labor Code;

2.4. WHEREAS, on May 10, 2021, Carver filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020711-CU-OE-CTL (*Carver I*) in the Superior Court of California, County of San Diego, alleging the following claims:

- (1) Failure to Pay All Straight Time Wages;
- (2) Failure to Pay All Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Authorize and Permit Rest Periods;
- (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;
- (6) Failure to Pay All Wages Due at the Time of Termination of Employment;
- (7) Irregular Pay Periods;
- (8) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; and
- (9) Violation of Unfair Competition Law

2.5. WHEREAS, on May 10, 2021, Carver filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020726-CU-OE-CTL (*Carver II*) in the Superior Court of California, County of San Diego, alleging identical violations of the California Labor Code and seeking civil penalties under the PAGA;

1 2.6. WHEREAS, on August 30, 2021, following consolidation of *Escobedo*, *Carver I*, and
2 *Carver II*, Representative Plaintiffs filed a Class Action Complaint for Damages and for PAGA
3 Remedies (hereafter, the “Complaint”).

4 2.7. WHEREAS, the Parties engaged in informal discovery, exchanging information,
5 documents and reviewing and analyzing extensive data made available by Defendant which enabled
6 the parties to thoroughly evaluate Representative Plaintiffs’ claims, the claims of the putative class,
7 Defendant’s defenses, and the likely outcomes, risks and expense of pursuing litigation;

8 2.8. WHEREAS, on July 28, 2022, the Parties attended a mediation session with
9 professional mediator Jeff Ross via Zoom;

10 2.9. WHEREAS, on August 4, 2022, the Parties accepted a mediator’s proposal from Mr.
11 Ross and agreed to settle this action;

12 2.10. WHEREAS, a bona fide dispute exists as to whether any amount of wages or
13 penalties are due from Defendant to any Class Member and/or to the LWDA and/or to any allegedly
14 aggrieved employees;

15 2.11. WHEREAS, the Parties desire to compromise and settle all issues and claims that
16 have been or could have been brought, based on the allegations in the operative Complaint, against
17 Defendant or related persons in the Action, including all claims brought on a putative class,
18 collective and representative basis in the Action;

19 2.12. WHEREAS, based on the discovery exchanged as well as their own independent
20 investigation and evaluation, the Parties have considered the claims asserted by Representative
21 Plaintiffs, the defenses asserted by Defendant, the risks associated with the continued prosecution of
22 the Action, the cost of continued litigation through trial and appeals, and after considering all the
23 circumstances, the Parties have concluded that the proposed settlement set forth in this Agreement is
24 fair, adequate, and reasonable and confers substantial benefits upon the Class Members;

25 2.13. WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
26 any of the terms of this Agreement, and any documents filed in connection with the Settlement shall
27 not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or
28 evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by

Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, (iv) any waiver of Defendant's right to arbitration or the enforceability of any arbitration agreement, or (v) the propriety of certifying a litigation class or collective (conditionally or otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any Person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement;

2.14. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Representative Plaintiffs for themselves and on behalf of the Participating Class Members and by Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and the Released Class Claims, as defined below, shall be finally and fully compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

ARTICLE III

DEFINITIONS

As used in the Agreement, the following terms have the meanings specified below:

- a. "Action" means the civil action captioned *Abel Escobedo and Christopher Carver v. Matheson Tri-Gas, Inc., et al.*, Case No. 37-2020-00044507-CU-OE-CTL, as well as the *Escobedo*, *Carver I*, and *Carver II* matters.
- b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including the Class Notice, as defined below, attached as Exhibit A.
- c. "Claims Administrator" means the third-party administrator approved by the court who will administer the settlement as set forth below.
- d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in administration of the Settlement, including, but not limited to address verification measures, mailing of notice to the Class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks, administration of uncashed checks, generation of checks to Class Counsel for attorney's fees and costs, generation of the check to the Representative Plaintiffs for

1 their respective Service Awards, generation of a check to the LWDA for its share of PAGA
2 penalties, and generation and submission of all tax-related documents, all pursuant to the terms of
3 this Agreement.

4 e. “Class Claims” means all claims for wages, benefits, and related penalties actually alleged or
5 that could have been alleged in the Action by the Representative Plaintiffs, on behalf of themselves
6 and the California Class Members, based on the facts alleged in the Complaint, including but not
7 limited to: (1) Failure to Pay Minimum and Wage; (2) Failure to Pay Overtime Wages; (3) Failure to
8 Provide Accurate, Itemized Wage Statements; (4) Failure to Permit Meal Periods; (5) Failure to
9 Permit Rest Periods; (6) Waiting Time Penalties; (7) Irregular Pay Periods; (8) Failure to Adopt a
10 Compliant Sick Pay/Paid Time Off Policy; (9) Civil Penalties Under the Private Attorneys General
11 Act (Cal. Lab. Code §2699, *et seq.*); (10) Unlawful business practices; and (11) Attorneys’ Fees and
12 Costs of Litigation associated with this Action. “Class Claims” also includes all claims that the
13 Representative Plaintiffs may have against the Released Parties relating to (i) the payment, taxation
14 and allocation of the Class Counsel Award pursuant to this Settlement Agreement and (ii) the
15 payment, taxation and allocation of Representative Plaintiffs’ Service Awards pursuant to this
16 Settlement Agreement.

17 f. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

18 Arthur R. Botham, Jr.
19 Law Offices of Arthur R. Botham, Jr., A Law Corporation
20 2169 First Avenue
21 San Diego, California 92101
Phone: (619) 358-9738
Fax: (619) 393-0103

22 Zachary T. Tyson
23 Law Office of Zachary T. Tyson ALC
24 2169 First Avenue
San Diego, California 92101
Phone: (619) 237-9292

25 David Mara
26 Matthew Crawford
27 Mara Law Firm, PC
28 2650 Camino Del Rio North, Suite 205
San Diego, CA 92108

1 Phone: (619) 234-2833

2 Fax: (619) 234-4048

3 g. "Class Member(s)" means all non-exempt drivers, truck drivers, truck workers, or similar job
4 designations and titles, and all other similarly situated non-exempt employees of Defendant
5 Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through the date
6 of mediation, July 28, 2022. (which is estimated to consist of approximately 181 current and former
7 employees).

8 h. "Class Notice" means the Notice of Proposed Class Action Settlement attached hereto as
9 Exhibit "A" or in substantially the same form as ultimately approved by the Court.

10 i. "Class Period" means the period from December 4, 2016 through the date of mediation, July
11 28, 2022.

12 j. "Complete and General Release" means an irrevocable and unconditional release given only
13 by Representative Plaintiffs, releasing Defendant and the Released Parties from any and all charges,
14 complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises,
15 damages and liabilities of any kind or nature whatsoever, both at law and equity, known or
16 unknown, suspected or unsuspected, arising from conduct occurring on or before the date
17 Representative Plaintiffs sign this Settlement Agreement, including but not limited to a release of
18 any and all rights Representative Plaintiffs have to sue or bring any type of claim under (a)
19 California state law, the Fair Labor Standards Act; (d) Title VII of the Civil Rights Act of 1964, as
20 amended, 42 U.S.C. § 2000e et seq., (e) the Employment Act of 1967, (f) the Civil Rights Act of
21 1991, (g) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive
22 Order 11246, (i) the Americans with Disabilities Act, 42 U.S.C. § 12101, et. seq, as amended, (j) the
23 Family and Medical Leave Act, as amended, (k) the Equal Pay Act of 1963, as amended, (l) the
24 Immigration and Reform Control Act, as amended, (m) the Occupational Safety and Health Act, as
25 amended, (n) the Sarbanes-Oxley Act of 2002, as amended, (o) the Employment Retirement Income
26 Security Act of 1974, as amended (except vested benefits), (p) the Worker Adjustment and Benefit
27 Protection Act of 1990, as amended, (q) the Worker Adjustment and Retraining Notification Act, as
28 amended, (r) any federal, state or common law claim or cause of action based on any alleged failure

1 to pay wages, breach of contract, wrongful discharge, constructive discharge, retaliation, defamation,
2 slander, liable, intentional or negligent infliction of emotional distress, misrepresentation, fraud,
3 promissory estoppel, (s) any other tort or negligence claim or obligations arising out of any of
4 Defendant's employment policies or practices, employee handbooks, and/or any statements by any
5 employee or agent of Defendant whether oral or written; and (t) for reinstatement, back pay, bonus,
6 attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief,
7 liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering,
8 medical expenses, damage to reputation, damage for personal, emotional or economic injury or
9 damage of any kind. This provision is intended by the Parties to be all-encompassing and to act as a
10 full and total release of any claim, whether specifically enumerated herein or not, that Representative
11 Plaintiffs might have or have had, that exists or ever has existed on or prior to the date this
12 Settlement Agreement is signed. This release includes a 1542 Waiver. The Parties understand and
13 agree that the word "claims" includes all actions, group actions (including any pending or future
14 collective, class, private attorney general or representative actions for which Representative
15 Plaintiffs may otherwise qualify as a putative class member or represented party), complaints and
16 grievances that could potentially be brought by Representative Plaintiffs against the Released
17 Parties.

18 k. "Defendant" shall mean *Matheson Tri-Gas, Inc.*

19 l. "Defense Counsel" means counsel for Defendant, who are:

20 Lindsay E. Hutner
21 Lindsay.Hutner@gtlaw.com
22 Sam Hyde
23 hydes@gtlaw.com
24 Greenberg Traurig, LLP
25 101 Second Street, Suite 2200
26 San Francisco, CA 94105
27 Telephone: (415) 655-1300
28 Facsimile: (415) 707-2010

m. "Final Effective Date" means the date on which the Settlement is approved and the Court's
Final Order and Judgment becomes Final. The Court's Final Order and Judgment becomes final
upon the later of: (i) if an intervention is granted, but no appeal is filed, the expiration date of the

1 time for the filing or noticing of any appeal from, or other challenge to, the Court's Judgment (this
2 time period shall not be less than 60 calendar days after the Court's Judgment is entered); (ii) if an
3 appeal is filed, the date affirmance of an appeal of the Judgment becomes final under the California
4 Rules; (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the
5 final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment;
6 (iv) if objections are filed and overruled, and no appeal is taken of the final approval order, then the
7 Effective Date of final approval will be sixty-five (65) days after the trial court enters final approval;
8 or (v) if no intervention is granted and no objections are filed, the date on which the Court grants
9 final approval of this Agreement on substantially the terms provided herein as the same may be
10 modified by subsequent written agreement of the Parties and signs the Final Order granting final
11 approval of this Agreement.

12 n. "Final Fairness and Approval Hearing" means the hearing to determine whether the proposed
13 Agreement settling the Action should be finally approved as fair, reasonable, and adequate; whether
14 the proposed plan of allocation of the Net Fund Value Amount should be approved; whether the
15 Representative Plaintiffs' Service Award should be approved; and whether the applications of Class
16 Counsel for attorney's fees and costs should be approved.

17 o. "Final Order" refers to the order of the Court granting final approval of this Agreement as to
18 the Final Settlement Class (defined below) and entering a judgment approving this Agreement on
19 substantially the terms provided herein or as the same may be modified by subsequent written
20 agreement of the Parties.

21 p. "Final Settlement Class" refers to the Representative Plaintiffs and all Class Members who
22 do not timely and validly exclude themselves from the class in compliance with the exclusion
23 procedures set forth in Section 5.04.a of this Agreement.

24 q. "Gross Fund Value Amount" means the \$750,000.00 (Seven-Hundred Fifty Thousand
25 Dollars and Zero Cents) to be paid by Defendant as provided by this Agreement to settle this Action.
26 This is an "all in" number that includes, without limitation, all monetary benefits and payments for
27 the Final Settlement Class Members, the Service Awards, the Class Counsel Award, the Settlement
28 Administrator expenses and the PAGA Payment, and all other claims for interest, fees, and costs.

1 Other than the employer's share of payroll taxes, in no event will Defendant pay more than the Gross
2 Fund Value Amount.

3 r. "Individual Settlement Payments" means the amounts of money from the Net Fund Value
4 Amount that shall be paid to the Participating Class Members less employee's portion of payroll
5 taxes owed. Individual Settlement Payments shall be each Participating Class Member's share of the
6 Net Fund Value Amount (which share shall be determined by the calculations provided in this
7 Agreement at Section 5.06.c.).

8 s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.

9 t. "LWDA" means the California Labor and Workforce Development Agency.

10 u. "Net Fund Value Amount" means the Gross Fund Value Amount of \$750,000.00 (Seven-
11 Hundred Fifty Thousand Dollars and Zero Cents) less all of the following amounts approved by the
12 Court: (1) Class Counsel's court-approved attorney's fees (not to exceed one-third of the Gross Fund
13 Value Amount, or \$250,000.00 (Two-Hundred Fifty Thousand Dollars and Zero Cents)); (2) Class
14 Counsel's court-approved collective litigation costs (not to exceed Twenty Thousand Dollars
15 (\$20,000.00)); (3) the court-approved Service Award to be paid to the Representative Plaintiffs, not
16 to exceed Ten Thousand Dollars (\$10,000.00) each; (4) the amount of court-approved PAGA
17 penalties to be paid to the LWDA (\$18,750.00), representing 75% of the total amount allocated for
18 PAGA Penalties; and (5) the Claims Administrator's court-approved fees in the anticipated amount
19 of not more than Five Thousand Dollars (\$10,000.00). The estimated Net Fund Value Amount is
20 estimated to be \$431,250.00 plus any residuals from amounts requested in this paragraph which are
21 not ultimately distributed to the respective Parties due to invoicing of a lesser amount by the Claims
22 Administrator or court approval of a lesser amount than requested.

23 v. "Non-Participating Class Member(s)" means those Class Members who submit to the Claims
24 Administrator a valid and timely written request to be excluded from the Class pursuant to Section
25 5.04.a below.

26 w. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code sections
27 2698, *et seq.*

x. “Participating Class Member(s)” means those Class Members who do not submit valid requests for exclusion.

y. “Parties” means Representative Plaintiffs and Defendant as defined herein.

z. “Released Parties” means (i) Matheson Tri-Gas, Inc. and its past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, and (ii) the past, present, and future shareholders, officers, directors, members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in (i).

aa. “Released Class Claims” means the Class Claims, and if Class Members cash the checks for their Individual Settlement Payments, that the Final Settlement Class Members are fully and irrevocably releasing in exchange for the consideration provided by this Settlement Agreement, whether arising at law, in contract or in equity, and whether for economic or non-economic damages, restitution, injunctive relief, penalties or liquidated damages from December 4, 2016, through the date of mediation, July 28, 2022.

bb. “Representative Plaintiffs” means named Plaintiffs Abel Escobedo and Christopher Carver.

cc. “Service Award” means a monetary amount not to exceed Ten Thousand Dollars (\$10,000.00) to each Representative Plaintiff which, subject to Court approval, shall be paid pursuant to Section 5.06.b.3 of the Agreement, as provided below.

dd. “Settlement” means the disposition of this Action and all related claims effectuated by this Agreement.

ARTICLE IV

CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

4.1. Certification Of Class and Claims. Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court may certify a class consisting of “all non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through the date of mediation, July 28, 2022.”

4.4. Appointment Of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class Action Settlement Administration Solutions shall be appointed to serve as Settlement Administrator.

4.6. Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

4.7. Arbitrability of Claims. The Settlement is not intended to and may not be deemed to affect the enforceability of any arbitration agreement between Defendant and Representative Plaintiffs and/or between Defendant and any Class Member.

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

Because the Parties have stipulated to the certification of the Class for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth in Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Court does not grant either the

1 Preliminary or Final Approval of the settlement, the fact that the Parties were willing to stipulate to
2 class certification for the purposes of this Agreement shall have no bearing on, or be admissible in
3 connection with, the issue of whether any class should be certified in a non-settlement context. If the
4 Final Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no
5 force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.
6 Defendant expressly reserves the right to challenge the propriety of class certification for any
7 purpose if the settlement does not become final.

8 The Parties and their respective counsel shall take all steps that may be requested by the
9 Court relating to the approval and implementation of this Agreement and shall otherwise use their
10 respective best efforts to obtain Court approval and implement this Agreement. The procedure for
11 obtaining Court approval of and implementing this Agreement shall be as follows.

12 **Section 5.01: Motion for Conditional Class Certification and Preliminary Approval**

13 a. Representative Plaintiffs shall bring a motion before the Court for an order
14 conditionally certifying the Class based on the preliminary approval of this Agreement, including the
15 Class Notice attached hereto as Exhibit "A." The date that the Court grants preliminary approval of
16 this Agreement shall be the "Preliminary Approval Date."

17 b. Representative Plaintiffs shall serve a notice of settlement on the LWDA at the same
18 time they file motion for preliminary approval.

19 c. The Parties stipulate to the form of, and agree to submit to the Court for its
20 consideration, this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
21 the Class Notice (Exhibit A) and a [Proposed] Preliminary Approval Order approved by both Parties.

22 d. The [Proposed] Preliminary Approval Order shall:

- 23 • Conditionally grant class certification;
- 24 • Conditionally appoint Representative Plaintiffs and Class Counsel as
25 representatives of the proposed Class Members;
- 26 • Appoint Phoenix Class Action Administration Solutions as the Settlement
27 Administrator, and order the Settlement Administrator to provide notice of the
28 settlement as outlined below;

- Confirm that the procedure for distributing the Class Notice (discussed below)
 - (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, and their right to exclude himself from or object to the proposed settlement and to appear at the Final Fairness and Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of, due process, and any other applicable rules or law;
- Confirm the notice of settlement served by Representative Plaintiffs on the LWDA satisfies the requirements of the PAGA.
- Impose a stay on all litigation of the Action pending the Final Fairness and Approval Hearing, or Class Members from prosecuting any claims against Defendant or the Released Parties pending the Final Fairness and Approval Hearing unless they have timely opted-out of the settlement; and;
- Order that the preliminary approval of the Settlement, certification of the Class Claims and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in material part by the Court (i.e. not including modification of the amount of Attorney's Fees, Attorney's Costs, or Class Representative Enhancement by the Court), or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

Section 5.02: The Claims Administrator

A court-appointed third-party Claims Administrator will serve to administer this Settlement pursuant to the terms herein. The Claims Administrator will administer the settlement by performing

1 address verification for the Class Members, distributing the Class Notice and Reminder Postcards, if
2 necessary, performing skip traces, receiving and recording completed Settlement Opt-Outs,
3 adjudicating Class Members' disputes over workweeks worked during the Class Period in the
4 relevant positions as an hourly and/or non-exempt employee, providing Class Counsel and counsel
5 for Defendant with weekly updates on the status of Opt-Outs, and handling any potential inquiries
6 about the calculation of the Individual Settlement Amounts. The Claims Administrator shall provide
7 the Parties with the names of individuals who submitted timely Opt-Outs after the expiration of the
8 claims period for inclusion in the proposed final approval Order. The actions of the Claims
9 Administrator shall be governed by the terms of this Stipulation. The Parties, through their counsel,
10 may provide written information needed by the Claims Administrator pursuant to the Stipulation.

11 All costs of administering the Settlement, including but not limited to all costs and fees
12 associated with preparing, issuing, and mailing any and all notices to Class Members, all costs and
13 fees associated with computing, processing, reviewing, and mailing the Individual Settlement
14 Payments, all costs and fees associated with preparing any tax returns and any other filings required
15 by any governmental taxing authority or agency, all costs and fees associated with preparing any
16 other notices, reports, or filings to be prepared in the course of administering disbursements from the
17 Net Fund Value Amount, and any other costs and fees incurred and/or charged by the Claims
18 Administrator in connection with the execution of its duties under this Agreement ("Claims
19 Administration Costs"), anticipated to be not more than Ten Thousand Dollars (\$10,000.00), shall be
20 paid out of the Gross Fund Value Amount.

21 **Section 5.03: Notice to Class Members**

22 **a. Initial Identification of Class Members:** Within seven (7) business days following
23 entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a
24 confidential list in Excel spreadsheet format containing the name and last known address, telephone
25 number, and social security number of each Class Member. This list shall also contain the
26 workweeks worked by each individual Class Member as an hourly or non-exempt employee for
27 Defendant during the Class Period and the commencement dates and termination dates (if
28

1 applicable) relating to each individual Class Member during the Class Period. This information shall
2 be treated as confidential.

3 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member information
4 from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class
5 Members from the U.S. Postal Service and Accurint. Within fourteen (14) calendar days after receipt
6 of the Class Member information from Defendant, or receipt of any updated addresses from the U.S.
7 Postal Service, whichever is later, the Claims Administrator shall mail the Class Notice to all Class
8 Members via first-class mail using the updated address information. With respect to each Class
9 Notice that is returned as undeliverable, the Claims Administrator shall promptly attempt to
10 determine a correct address using an additional skip trace service such as Experian and shall re-send
11 the Class Notice via first-class mail to any new address thereby determined within 10 days of
12 receiving the notice that the Class Notice was undeliverable.

13 **c. Notification to Counsel:** No later than ten (10) days prior to the Final Fairness and
14 Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class Counsel with
15 a declaration attesting to completion of the notice process, including any attempts to obtain valid
16 mailing addresses for and re-sending of any returned Class Notices, as well as the number of valid
17 opt-outs that the Claims Administrator received. Upon approval by the court, compliance with the
18 procedures described in this Section 5.03.b shall constitute due and sufficient notice to Class
19 Members of this proposed Settlement and the Final Fairness and Approval Hearing and shall satisfy
20 the requirement of due process. Nothing else shall be required of the Parties, Class Counsel, Defense
21 Counsel, or the Claims Administrator to satisfy the requirements of providing notice of the proposed
22 Settlement and the Final Fairness and Approval Hearing.

23 **Section 5.04: Responses to Notice**

24 **a. Requests for Exclusion from Class**

25 For any other Class Member to validly exclude himself or herself from the Class and this
26 Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by the Class
27 Member or his or her authorized representative, and must be sent to the Claims Administrator,
28 postmarked by no later than thirty (30) days after the date the Claims Administrator initially mails

1 the Class Notice to the Class Members. For Notices re-mailed by the Claims Administrator pursuant
2 to section 5.03.b, the written request for exclusion must be postmarked by no later than thirty (30)
3 days of the initial mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is
4 later. The Class Notice shall contain individualized estimated payments, set forth instructions on
5 how to opt-out and include the language to be used in a request for exclusion. The date of the initial
6 mailing (or re-mailing for Class Notices re-mailed) of the Class Notice and the date the signed
7 request for exclusion was postmarked, shall be conclusively determined according to the records of
8 the Claims Administrator. Any Class Member who timely and validly requests exclusion from the
9 Class and this Settlement shall become a Non-Participating Class Member and shall not be entitled
10 to any Individual Settlement Payment, shall not be bound by the terms and conditions of this
11 Agreement, and shall not have any right to object, appeal, or comment thereon.

12 Final Settlement Class members may exclude themselves or “opt out” from a release of Class
13 Claims by not depositing or cashing their Individual Settlement Payment checks. The Class Notice
14 and Individual Settlement Payment check will conspicuously advise Final Settlement Class of such.

15 **b. Objections to Settlement**

16 For any Class Member to object to this Agreement, or any term of it, the person making the
17 objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no later than
18 thirty (30) days after the Class Notice was initially mailed to the Class Members, file with the Court
19 and serve on Class Counsel and Defense Counsel, a written statement of the grounds of objection,
20 signed by the objecting Class Member or his or her attorney, along with all supporting papers. For
21 Class Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, written statements
22 of the grounds for objection must be filed and served no later than thirty (30) days after the initial
23 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The date of
24 mailing or re-mailing of the Class Notice to the objecting Class Member shall be conclusively
25 determined according to the records of the Claims Administrator. The Court retains final authority
26 with respect to the consideration and admissibility of any Class Member objections.

27 Counsel for the Parties shall file any response to the objections submitted by objecting Class
28 Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or

ten (10) days after the receipt of the notice of objection, whichever is later.

c. Failure to Object

Any Class Member who fails to timely file and serve such a written statement of his or her intention to object shall be foreclosed from making any objection to this settlement, unless otherwise ordered by the Court.

d. Failure to Timely Opt Out

Any Class Member who fails to submit a timely request for exclusion from the Class automatically shall be deemed a member of the Final Settlement Class whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order, and by the other rulings in the Action.

e. Right of Defendant to Void Agreement

If more than ten percent (10%) of Class Members make a valid request to be excluded from the Class as described in Section 5.04.a above and thus become Non-Participating Class Members, Defendant shall have the right, but not the obligation, to void the Agreement. If Defendant exercises that right to void the Agreement, then the Parties shall have no further obligations under the Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant shall pay the Claims Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises their right to void the Agreement. Defendant shall notify Class Counsel and the Court whether they are exercising the right to void the Agreement no later than ten (10) calendar days after the Claims Administrator notifies the Parties of the final total number of valid requests to be excluded.

f. Right of Plaintiffs to Void Agreement

The Gross Fund Value Amount was calculated with, and is premised on, the understanding that there are approximately 181 Class Members and 25,504 workweeks during the time period of December 4, 2016, through July 28, 2022. To the extent that either of the forgoing estimates, as represented by Defendant, increases by more than 5%, Defendant will have the option to increase the Gross Fund Value Amount proportionately by the amount exceeding 5%. For example, if the number

1 of workweeks increases by 7% then Defendant shall increase the GSA by 2% if it exercises this
2 option. Likewise, if the number of class members increases by 7% then Defendant shall increase the
3 GSA by 2%. If Defendant declines to do so, Plaintiffs shall have the right, but not the obligation, to
4 terminate the settlement in its entirety and the Parties will be returned to their respective positions as
5 if no settlement had been contemplated.

6 **Section 5.05: Final Fairness and Approval Hearing**

7 **a. Final Approval Hearings**

8 On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be
9 approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed
10 Class Action Settlement, or on a reasonable date as set forth by the Court, a Final Fairness and
11 Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine
12 whether the Court should give it final approval; and (2) to consider any timely objections made
13 pursuant to Section 5.04.b above and all responses by the Parties to such objections. At the Final
14 Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this
15 Agreement and shall submit to the Court a proposed Final Order approving the Settlement and which
16 shall be entered in the Action.

17 Representative Plaintiffs shall file a motion requesting final approval of the Settlement
18 approved by all Parties, the entry of which is a material condition of this Settlement. The Final
19 Approval Order shall adjudge that, among other things:

- 20 • The Settlement Administrator has fulfilled its initial notice and reporting
21 duties under the Settlement and that the Class Notice (i) constituted the best
22 practicable notice; (ii) constituted notice that was reasonably calculated, under
23 the circumstances, to apprise Class Members of the pendency of the Action,
24 and their right to exclude himself from or object to the proposed settlement
25 and to appear at the Final Approval Hearing; (iii) was reasonable and
26 constituted due, adequate, and sufficient notice to all persons entitled to
27 receive notice; and (iv) met all applicable requirements of due process, and
28 any other applicable rules or law.

- The Settlement is fair, reasonable, and adequate;
- Representative Plaintiffs and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- The Settlement Administrator is to execute the distribution of proceeds pursuant to the terms of this Agreement;
- The Final Approval Order and Judgment of dismissal shall be final and entered forthwith;
- Without affecting the finality of the Final Approval Order and Judgment, the Court retains continuing jurisdiction over Representative Plaintiffs, Defendant, the Final Settlement Class as to all matters concerning the administration, consummation, and enforcement of this Settlement Agreement;
- As of the Final Approval Date, the Representative Plaintiffs, the Final Settlement Class, and their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have received actual notice of the proposed Settlement, have conclusively compromised, settled, discharged, and provided: the Complete and General Release (in the case of Representative Plaintiffs) and the release of Released Class Claims (in the case of the Final Settlement Class Members), and are bound by the provisions of this Settlement Agreement;
- Notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests for exclusion do not apply to the PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are

also extinguished;

- This Settlement Agreement and the Final Approval order and Judgment to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that encompass the claims of Representative Plaintiffs and Final Settlement Class members and/or their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf;
- Representative Plaintiffs and the Final Settlement Class members are permanently barred from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the claims released herein; and
- The Settlement provided for herein, and any proceedings undertaken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or that PAGA representative claims may validly be pursued; provided, however, that reference may be made to this Settlement in such proceedings as may be necessary to effectuate the provisions of this Settlement.

b. Vacatur, Reversal, or Material Modification of Final Order and Judgment on Appeal or Review

If, after a notice of appeal, petition for review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that there is a material modification to the Settlement and that court's decision is not completely reversed, and the Final Order and Judgment is not fully affirmed on review by a higher court, then Representative Plaintiffs and Defendant shall each have the right, but not the obligation, to void the Settlement,

1 which the Party must do by giving written notice to the other Parties, the final reviewing court, and
2 the Court not later than ten (10) business days after the final reviewing court's decision vacating,
3 reversing, or materially modifying the Final Order becomes final and non-appealable. If either Party
4 exercises its right to void the Agreement under this section, then the Parties shall have no further
5 obligations under the Agreement, including any obligation by Defendant to pay the Gross Fund
6 Value Amount, or any amounts that otherwise would have been owed under this Agreement. The
7 Party exercising its right to void the Agreement shall pay the Claims Administrator's reasonable fees
8 and expenses incurred as of the date the Party exercises its right to void the Agreement. If the Parties
9 mutually agree to void the Agreement, then the Claims Administrator's reasonable fees and expenses
10 incurred as of the date the Parties exercise their right to void the Agreement shall be split equally. A
11 vacatur, reversal, or modification of the Court's award of the Service Award or Class Counsel's fees
12 or costs shall not constitute a vacatur, reversal, or material modification of the Final Order and
13 Judgment within the meaning of this paragraph.

14 **Section 5.06: Settlement Payment Procedures**

15 **a. Settlement Sum**

16 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross
17 Fund Value Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00),
18 exclusive of employer-side payroll taxes. The Settlement Sum includes Class Counsel's attorney's
19 fees not to exceed Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) and litigation
20 costs of not more than Twenty Thousand Dollars (\$20,000.00), a Service Award for Representative
21 Plaintiffs of not more than Ten Thousand Dollars (\$10,000.00) each, the PAGA penalty payment of
22 Twenty Five Thousand Dollars (\$25,000.00), which includes the payment of Eighteen Thousand
23 Seven Hundred Fifty Dollars (\$18,750.00) to the LWDA, and the Claims Administration Costs
24 anticipated to be not more than Ten Thousand Dollars (\$10,000.00).

25 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action and
26 subject to this Settlement being approved by the Court, Defendant shall pay Seven Hundred Fifty
27 Thousand Dollars and Zero Cents (\$750,000.00), (the "Gross Fund Value Amount"). The Gross
28 Fund Value Amount shall be paid to the Claims Administrator no later than fifteen (15) calendar

1 days after the Final Effective Date. If the Court does not grant final approval upon the material terms
2 of the settlement (other than modification of the requested attorney's fees, costs or class
3 representative service award) or if more than 10% of the putative class members opt out as set forth
4 in Section 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no further
5 obligation under this Agreement. If the Court grants final approval of the settlement, the settlement
6 funds shall be disbursed as follows:

7 **1. Reasonable attorney's fees and litigation expenses:** Class Counsel have
8 stated they shall request that the Court award them reasonable attorney's fees in an amount up to
9 one-third of the Gross Fund Value, or Two Hundred Fifty Thousand Dollars and Zero Cents
10 (\$250,000.00) and litigation costs in an amount up to Twenty Thousand Dollars (\$20,000.00).
11 Defendant has agreed neither to oppose nor adversely comment on the fees and litigation costs
12 request. The award of reasonable attorney's fees and litigation costs granted by the Court shall be
13 paid out of the Gross Fund Value Amount within twenty-five (25) calendar days of the Final
14 Effective Date in accordance with Section 5.06.d.2–3, below.

15 **2. Reasonable expenses of the Claims Administrator:**
16 The Claims Administrator shall be paid out of the Gross Fund Value Amount and such
17 payment shall not constitute payment to any Participating Class Member(s). The Claims
18 Administration Costs, expected not to exceed Ten Thousand Dollars (\$10,000.00), shall be paid out
19 of the Gross Fund Value Amount within twenty-five (25) calendar days after the Final Effective
20 Date in accordance with Section 5.06.d.1, below.

21 **3. Reasonable Service Award to the Representative Plaintiffs:**
22 Subject to Court approval, the Representative Plaintiffs shall make a separate application for
23 up to Ten Thousand Dollars (\$10,000.00) as a Service Award. The Service Award shall be paid by
24 check made payable to each Representative Plaintiff, which shall be delivered by the Claims
25 Administrator to Class Counsel within twenty-five (25) calendar days after the Final Effective Date.
26 The Service Award shall be paid out of the Gross Fund Value Amount and shall not constitute
27 payment(s) to any Participating Class Member(s).

28 It is the intent of the Parties that the Service Awards represent payment to Representative

1 Plaintiffs for the additional risks undertaken in prosecuting this action and their service to the Class
2 Members, and not wages, thus, the Claims Administrator shall not withhold any taxes from the
3 Service Award. The Service Award shall be reported on a Form 1099, which shall be provided by
4 the Claims Administrator to the Representative Plaintiffs and to the pertinent taxing authorities as
5 required by law. Although it is the contemplation of the Parties that the Service Award does not
6 represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other
7 taxing authority may take the position that some or all of the Service Award constitutes wages for
8 income tax and withholding purposes. The Representative Plaintiffs agree to assume the
9 responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and
10 any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant
11 from the Service Awards paid under this Agreement.

12 **4. PAGA Payment:** A payment of Twenty Five Thousand Dollars (\$25,000.00)
13 shall be allocated to PAGA penalties, Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00)
14 of which shall be payable to the California LWDA within twenty-five (25) calendar days of the Final
15 Effective Date. The PAGA penalties shall be paid out of the Gross Fund Value Amount. The
16 remaining portion of the PAGA payment shall be distributed pro-rata to the Final Settlement Class
17 as set forth below in Section 5.06.c.1.

18 **5. Allocation to Participating Class Members:** The amount remaining from
19 the Gross Fund Value Amount after deducting the court-awarded reasonable attorney's fees and
20 litigation costs, reasonable Claims Administration Costs, reasonable Service Award payments, and
21 PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed
22 to members of the Class in accordance with the formula set forth below in Section 5.06.c. Final
23 Settlement Class members are not eligible to receive any compensation other than the Individual
24 Settlement Payments discussed below.

25 **c. Individual Settlement Payments:** The Individual Settlement Payments shall be
26 calculated as follows:

27 **1. Calculation:** Each Class Member of the Final Settlement Class who does not Opt-
28 Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on

1 information contained in Defendant's pertinent payroll records, and calculated as follows:

2 i) Each Class Member of the Final Settlement Class shall be allocated a
3 payment that is equal to (i) the number of weeks he or she worked for Defendant in
4 California, as a Class Member in an hourly or non-exempt position, based on the Class Data
5 provided by Defendant, divided by (ii) the total number of weeks worked by all Participating
6 Class Members based on the same Class Data, which is then multiplied by the Net Fund
7 Value Amount. One day worked in a given week will be credited as a work week for
8 purposes of this calculation. Therefore, the value of each Class Member's Individual
9 Settlement Payment ties directly to the amount of weeks that he or she worked..

10 ii) The employee's share of the payroll taxes shall be deducted and paid from
11 the Individual Settlement Payment. The Claims Administrator shall calculate the Individual
12 Settlement Payments and the amount of the employee's share of payroll taxes to be deducted
13 therefrom in order to determine the net Individual Settlement Payment.

14 **2. Dispute Resolution:** The Claims Administrator shall have the initial responsibility of
15 resolving all disputes that arise during the claims administration process, including, without
16 limitation, disputes, if any, regarding the calculation of the total number of gross wages earned by
17 each Class Member in their respective positions as residential managers (or otherwise similar job
18 duties and/or title) where the information submitted by Defendant based on their employment
19 records differs from the information submitted by Class Members. In resolving such disputes,
20 Defendant's employment records shall be presumed to be accurate and correct, and shall be final and
21 binding, unless the information submitted by the Claimant (e.g., pay stubs, employment records,
22 etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a
23 review of the available information, the Claims Administrator shall request a conference call
24 between the Claims Administrator, Class Counsel, and Defense Counsel to discuss and resolve the
25 dispute. After such call, the Claims Administrator shall resolve the dispute, and such resolution shall
26 be final and binding on the Class Member. In advance of the conference call, the Claims
27 Administrator shall fax or email copies of all available information to all counsel.

28 **3. Fair Formula:** The Parties hereby agree that the formula for allocating payments to

1 Participating Class Members as provided herein is reasonable and designed to provide a fair
2 settlement to the Participating Class Members.

3 **4. Allocation of Net Fund Value Amount Payments and Taxes:** All Individual
4 Settlement Payments made to Participating Class Members under this Agreement shall be allocated
5 as one-third wages, one-third penalties, and one-third interest. The Claims Administrator shall
6 deduct from each Individual Settlement Payment all employee portions of payroll taxes from the
7 amount allocated to wages. Those Individual Settlement Payments shall be treated by the parties as
8 wages, subject to withholding and reporting on a Form W-2. Participating Class Members shall
9 report such Individual Settlement Payments as wages received, and Defendant shall report such
10 Individual Settlement Payments as wages paid, on their respective federal and state income tax
11 returns. No part of the Individual Settlement Payments shall be classified as a penalty or allocated to
12 a penalty for purposes of Section 62(f) of the Internal Revenue Code of 1986, but rather shall be
13 classified as wages. Defendant shall not make as part of this Agreement, nor be required to make,
14 any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or
15 profit-sharing plans related to monies paid as a result of this Agreement.

16 The Parties understand and agree that Defendant is not providing tax or legal advice, or
17 making representations regarding tax obligations or consequences, if any, related to this Agreement,
18 and that the members of the Final Settlement Class will assume any such tax obligations or
19 consequences that may arise from this Agreement, and that Final Settlement Class Members shall
20 not seek any indemnification from Defendant in this regard. The Parties agree that, in the event that
21 any taxing body determines that additional taxes are due from any Final Settlement Class Member,
22 such Class Member assumes all responsibility for the payment of any such taxes.

23 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no later than
24 twenty (20) calendar days following the Final Effective Date, Defendant shall remit the full Gross
25 Fund Value Amount to the Claims Administrator via wire transfer (or other method reasonably
26 calculated to be received by the Claims Administrator within twenty (20) calendar days after the
27 Final Effective Date) for the purposes of making the payments described herein. Payments from the
28

Gross Settlement Fund shall fund the settlement and meet the obligations of Section 5.06.b and be paid by the Claims Administrator within the time frames set forth below in sections 5.06.d.1-5.

Payments of the following from the Gross Fund Value Amount shall be made in accordance with the following subparagraphs:

1. Claims Administrator: The Claims Administrator shall be paid the Claims Administration costs from the Gross Fund Value, expected to be not more than Ten Thousand Dollars (\$10,000.00), twenty-five (25) calendar days after the Final Effective Date.

2. Class Counsel's Fees: The amounts approved by the Court for Class Counsel's fees shall be paid by the Claims Administrator within twenty-five (25) calendar days after the Final Effective Date and the Claims Administrator shall pay the total attorney's fee award to Class Counsel.

3. Class Counsel's Costs: The amount approved by the Court for Class Counsel's costs shall be paid by the Claims Administrator within twenty-five (25) days after the Final Effective Date.

4. Class Representatives' Service Awards: The amount approved by the Court for the Class Representatives' Service Awards shall be paid by the Claims Administrator to Class Counsel within twenty-five (25) calendar days after the Final Effective Date.

5. Individual Settlement Payments: Within fifteen (15) days of the last date for Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and 5.04.b, above, the Claims Administrator shall provide to the Parties a written statement of all Individual Settlement Payments to be paid to all Participating Class Members and all required payroll taxes. The Claims Administrator will distribute the Individual Settlement Payments to all Participating Class Members within twenty-five (25) calendar days of the Final Effective Date. Claims Administrator shall issue to each Participating Class Member a check in the amount of his or her Individual Settlement Payment, as described in Section 5.06.c.1 (less applicable taxes and withholdings) via first-class mail. Uncashed checks not negotiated within 180 days of their issuance are void. All Final Settlement Class Members shall be bound by this Agreement and the release herein even if the Class Member does not cash the settlement check issued to him or her comprising his or her Individual

1 Settlement Payment. If any Settlement Class Member has not cashed his or her Settlement Payment
2 check within ninety (90) days of issuance, the Settlement Administrator shall mail that Class
3 Member a postcard reminding him/her of the deadline to cash such check and providing information
4 as to how to obtain a reissued check in the event the check was lost, stolen or misplaced. Any checks
5 issued to Class Members shall remain valid and negotiable for one hundred eighty (180) days from
6 the date of issuance. After all settlement funds have been distributed and all checks issued to
7 Settlement Class Members have either been cashed or have remained uncashed and gone stale, the
8 Settlement Administrator shall deposit any residual funds from uncashed checks with the California
9 State Controller's Office – Unclaimed Property.

10 **e. Residuals**

11 If any amount of the Gross Fund Value Amount remains unallocated as a result of
12 modification to the requested attorney's fees, costs, Class Representative Service Award or Claims
13 Administration Costs, this amount shall become part of the Net Fund Value Amount and be
14 distributed pursuant to Section 5.06.c.

15 **f. Circular 230 Disclaimer**

16 Each party to this agreement (for purposes of this section, the "acknowledging party" and
17 each party to this agreement other than the acknowledging party, an "other party") acknowledges
18 and agrees that (1) no provision of this agreement, and no written communication or disclosure
19 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
20 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
21 within the meaning of united states treasury department circular 230 (31 CFR part 10, as amended);
22 (2) the acknowledging party (a) has relied exclusively upon his or its own, independent legal and tax
23 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into
24 this agreement based upon the recommendation of any other party or any attorney or advisor to any
25 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
26 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party;
27 and (3) no attorney or adviser to any other party has imposed any limitation that protects the
28 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such

1 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax
2 structure of any transaction, including any transaction contemplated by this agreement.

3 **ARTICLE VI**

4 **LIMITATIONS ON USE OF THIS SETTLEMENT**

5 **Section 4.01: No Admission**

6 Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed
7 to comply with the law in any respect, that Defendant has any liability to anyone based upon the
8 claims asserted in the Action, and Defendant asserts that but for this Settlement a class should not be
9 certified in this Action. This Agreement is entered into solely for the purpose of compromising
10 highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission
11 of liability or wrongdoing by Defendant.

12 Defendant has concluded that any further defense of this litigation would be protracted and
13 expensive for all Parties. Substantial amounts of time, energy, and resources of Defendant have been
14 spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the
15 Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in
16 reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms
17 set forth in this Agreement to put to rest the Claims as set forth in the Action.

18 As to the claims and allegations in this Action, including but not limited to wage claims,
19 meal and rest period claims, overtime pay claims, minimum wage claims, claims for uncompensated
20 work time, wage statement claims, claims for waiting time penalties, unfair business practices
21 claims, claims for reimbursement of business expenses, and claims for PAGA penalties, Defendant
22 denies and continues to deny each of those claims and contentions alleged by Representative
23 Plaintiffs and the Class in the Action. Defendant has repeatedly asserted and continues to assert
24 defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability
25 arising out of any of the facts or conduct alleged in the Action.

26 **Section 4.02: Non-Evidentiary Use**

27 Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor
28 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or

1 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
2 including but not limited to, evidence of a presumption, concession, indication, or admission by any
3 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
4 disclosed, referred to, or offered in evidence against any of the Released Parties in any further
5 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except
6 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to
7 establish that a Class Member has resolved any of his/her claims released through this Agreement.

8 **Section 4.03: Nullification**

9 The Parties have agreed to the certification of the Class for the sole purpose of effectuating
10 this Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the
11 Court should for any reason fail to approve this Settlement in the form agreed to by the Parties
12 (except for the amount of attorney's fees, costs and Service Awards awarded), or (c) the Court
13 should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or
14 declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this
15 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
16 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
17 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
18 stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
19 admissible in connection with, the issue of whether a class should be certified in a non-settlement
20 context in this Action or any other action, and in any of those events, Defendant expressly reserves
21 the right to oppose any motion for class certification.

22 Invalidation of any material portion of this Agreement, except for the amount of attorney's
23 fees, costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
24 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

25 **ARTICLE VII**

26 **RELEASES**

27 **Section 7.01: Releases by Class Members**

28 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

1 **Section 7.02: Release of All Claims Relating To The Action**

2 Upon the court's final approval of the class settlement and entry of Final Order and
3 Judgment, each member of the Final Settlement Class shall be deemed to have released and
4 discharged each Defendant and all of its former and present parents, and affiliates, and their officers,
5 directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns
6 or legal representatives from any and all claims that were asserted and that could have been asserted
7 based on the facts contained in the Complaint filed in this Action and which were included leading
8 up to and during mediation, including without limitation to, any and all alleged claims for unpaid
9 wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest
10 break premiums, itemized wage statement penalties, unreimbursed business expenses, failure to
11 provide requisite writings, waiting time penalties under the California Labor Code and Business &
12 Professions Code (including Section 17200 et seq.); claims for penalties brought under the Labor
13 Code Private Attorneys General Act of 2004 (Labor Code Section 2698 *et seq.*); claims for
14 restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement
15 Class Members during the Class Period.

16 Final Settlement Class Members who cash or deposit their Individual Settlement Payment
17 checks will also release their Class Claims.

18 **Section 7.03: 1542 Release by Representative Plaintiffs**

19 In addition to the Settlement Class Members' Released Class Claims described above, in
20 exchange for the consideration recited in this Agreement, including but not limited to the court-
21 approved Class Representative Service Awards, Representative Plaintiffs hereby enter into a
22 Complete and General Release which releases, acquits, and discharges any covenants not to sue any
23 of the Releasees for any claim, whether known or unknown, which Representative Plaintiffs have
24 ever had, or hereafter may claim to have, arising on or before the date that they sign this Agreement,
25 including without limitation, any claims relating to or arising out of any aspect of their employment,
26 or the termination of their employment, with Defendant, any claims for unpaid compensation,
27 wages, reimbursement for business expenses, penalties, or waiting time penalties under the
28 California Labor Code, the California Business and Professions Code, the federal Fair Labor

Standards Act, 29 U.S.C. section 201, *et seq.*, or any federal, state, county or city law or ordinance regarding wages or compensation; any claims for employee benefits, including without limitation, any claims under the Employee Retirement Income Security Act of 1974; any claims of employment discrimination on any basis, including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code, or any other federal, state, county or city law or ordinance regarding employment discrimination. Representative Plaintiffs acknowledge and agree that the foregoing general release is given in exchange for the consideration provided to them under this Agreement by Defendant. However, this release shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, pension or retirement benefits, or any other claim or right that as a matter of law cannot be waived or released.

Representative Plaintiffs expressly waive any rights or benefits available to them under the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Representative Plaintiffs understand fully the statutory language of Civil Code section 1542 and, with this understanding, nevertheless elect to, and hereby do, assume all risks for claims that have arisen, whether known or unknown, which they ever had, or hereafter may claim to have, arising on or before the date of their signatures to this Agreement, and specifically waive all rights they may have under California Civil Code section 1542.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01: Amendments or Modification

The terms and provisions of this Agreement may be amended or modified only by an express

1 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

2 **Section 8.02: Representations and Warranties of Defendant's Records**

3 Defendant represents and warrants that the documents provided to Class Counsel during and
4 after mediation that constituted a material condition to this Settlement are substantially accurate to
5 the best of their knowledge.

6 **Section 8.03: Assignment**

7 None of the rights, commitments, or obligations recognized under this Agreement may be
8 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
9 written consent of each other Party and their respective counsel. The representations, warranties,
10 covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under
11 this Agreement and shall not be construed to confer any right or to avail any remedy to any other
12 person.

13 **Section 8.04: Governing Law**

14 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
15 shall be determined, in accordance with the laws of the State of California, irrespective of the State
16 of California's choice of law principles.

17 **Section 8.05: Entire Agreement**

18 This Agreement, including the Exhibit referred to herein, which forms an integral part hereof,
19 contains the entire understanding of the Parties hereto with respect of the subject matter contained
20 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
21 text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be
22 controlling. There are no restrictions, promises, representations, warranties, covenants, or
23 undertakings governing the subject matter of this Agreement other than those expressly set forth or
24 referred to herein. This Agreement supersedes all prior agreements and understandings among the
25 Parties hereto with respect to the settlement of the Action including correspondence between Class
26 Counsel and Defense Counsel. No rights hereunder may be waived except in writing.

27 **Section 8.06: Counterparts and Fax Signatures**

28 This Agreement, and any amendments hereto, may be executed in any number of

1 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
2 each of which when executed and delivered shall be deemed to be an original and all of which
3 counterparts taken together shall constitute one instrument. It shall not be necessary in making proof
4 of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
5 A fax or electronic signature on this Agreement shall be as valid as an original signature.

6 **Section 8.07: Meet and Confer Regarding Disputes**

7 Should any dispute arise among the Parties or their respective counsel regarding the
8 implementation or interpretation of this Agreement, a representative of Class Counsel and a
9 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
10 disputes prior to submitting such disputes to the Court.

11 **Section 8.08: Agreement Binding on Successors**

12 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest
13 of each of the Parties.

14 **Section 8.09: Cooperation in Drafting**

15 The Parties have cooperated in the negotiation and preparation of this Agreement. This
16 Agreement shall not be construed against any Party on the basis that the Party, or the Party's
17 counsel, was the drafter or participated in the drafting of this Agreement.

18 **Section 8.10: Fair Settlement**

19 Representative Plaintiffs, Defendant, Class Counsel, and Defense Counsel have arrived at
20 this Agreement through arm's-length negotiation and believe that this Agreement reflects a fair,
21 reasonable, and adequate settlement of the Action considering all relevant factors, current and
22 potential, and believe the Agreement is consistent with public policy and fully complies with
23 applicable provisions of law.

24 **Section 8.11: Headings**

25 The descriptive heading of any section or paragraph of this Agreement is inserted for
26 convenience of reference only and does not constitute a part of this Agreement and shall not be
27 considered in interpreting this Agreement.

1 **Section 8.12: Notice**

2 All notices, demands, or other communications given under this Agreement shall be in
3 writing and deemed to have been duly given as of the third business day after mailing by first-class
4 United States mail, addressed as follows:

5 *To Representative Plaintiffs and the Class:*

6 Arthur R. Botham, Jr.
7 Law Offices of Arthur R. Botham, Jr., A Law Corporation
8 2169 First Avenue
9 San Diego, California 92101
10 Phone: (619) 358-9738
11 Fax: (619) 393-0103

12 Zachary T. Tyson
13 Law Office of Zachary T. Tyson ALC
14 2169 First Avenue
15 San Diego, California 92101
16 Phone: (619) 237-9292

17 David Mara
18 Matthew Crawford
19 Mara Law Firm, PC
20 2650 Camino Del Rio North, Suite 205
21 San Diego, CA 92108
22 Phone: (619) 234-2833
23 Fax: (619) 234-4048

24 *To Defendant:*

25 Lindsay E. Hutner
26 Lindsay.Hutner@gtlaw.com
27 Sam Hyde
28 hydes@gtlaw.com
29 Greenberg Traurig, LLP
30 101 Second Street, Suite 2200
31 San Francisco, CA 94105
32 Telephone: (415) 655-1300
33 Facsimile: (415) 707-2010

34 **Section 8.13: Enforcement and Continuing Jurisdiction of the Court**

35 To the extent consistent with class action procedure, this Agreement shall be enforceable by
36 the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
37 continuing jurisdiction over this Action and over all Parties and Class Members to the fullest extent
38

1 to enforce and effectuate the terms and intent of this Agreement.

2 **Section 8.14: Mutual Full Cooperation**

3 The Parties agree to fully cooperate with each other to accomplish the terms of this
4 Agreement, including but not limited to execution of such documents, and to take such other action
5 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
6 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to
7 effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach
8 agreement on the form or content of any document needed to implement the Settlement, or on any
9 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
10 Parties agree to seek the assistance of the Court.

11 **Section 8.15: Authorization to Act**

12 Class Counsel warrant and represent that they are authorized by the Representative Plaintiffs,
13 and Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action
14 required to effectuate the terms of this Agreement, except for signing the documents, including but
15 not limited to this Agreement, that are required to be signed by the Parties.

16 **Section 8.16: No Reliance on Representations**

17 The Parties have made such investigation of the facts and the law pertaining to the matters
18 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
19 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any
20 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
21 rights, or with regard to the advisability of making and executing this Agreement, or with respect to
22 any such matters. No representations, warranties, or inducements have been made to any Party
23 concerning this Agreement other than those expressly set forth or referred to herein.

24 **Section 8.17: No Collateral Attack**

25 This Agreement shall not be subject to collateral attack by any Class Member or any
26 recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall
27 include but not be limited to claims that the Class Member failed for any reason to receive timely
28 notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

1 **Section 8.18: No Public Comment/Non-Disparagement Clause**

2 Representative Plaintiffs and Class Counsel will not make any public disclosure of the
3 settlement terms until after the settlement is preliminarily approved by the Court. Class Counsel will
4 take all steps necessary to ensure Representative Plaintiffs is aware of, and will encourage her to
5 adhere to, the restriction against any public disclosure of the settlement terms until after the
6 settlement is preliminarily approved by the Court. None of these prohibitions on public comment
7 shall prohibit Class Counsel's communications with the Court as necessary to finalize the settlement.

8 Representative Plaintiffs and Defendant represent and agree that they have not and will not
9 directly or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For
10 the purposes of this Agreement, "disparage" shall include making or publishing any statement or
11 other content, whether in written, oral, electronic, digital or other form, truthful or otherwise, which
12 may reasonably be expected to adversely affect the business, public image, reputation or goodwill of
13 the other Party, including, without limitation, their operations, employees, directors or related
14 persons, and their past, present or future products or services and the facts relating to Representative
15 Plaintiffs' past employment.

16 **Section 8.19: Interim Stay of Proceedings**

17 The Parties agree to the Court staying and holding all proceedings in the Action, except such
18 proceedings necessary to implement and complete the Settlement, in abeyance pending the
19 Settlement Hearing to be conducted by the Court.

20 [signatures on the following page]
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22
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EXECUTION BY PARTIES AND COUNSEL

Dated: 9/21/2022

DocuSigned by:
Chris Carver CMC
64896488E99245B...
Christopher Carver, Representative Plaintiff

Dated:

Abel Escobedo, Representative Plaintiff

Dated: 9/9/2022

DocuSigned by:
Stephen Stroud
D74B8134F8444F6...
By: Stephen Stroud
For Defendant Matheson Tri-Gas, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: 9/21/2022

DocuSigned by:
David Mara
C2B24CA3897E405...
David Mara
Matthew Crawford
Mara Law Firm, PC
Attorneys for Representative Plaintiff Christopher Carver

Dated:

Arthur R. Botham, Jr.
Law Offices of Arthur R. Botham, Jr., A Law Corporation
Attorney for Representative Plaintiff Abel Escobedo

Dated:

Zachary T. Tyson
Law Office of Zachary T. Tyson ALC
Attorneys for Representative Plaintiff Abel Escobedo

Dated: 9/8/2022

DocuSigned by:
Lindsay Hutner
411FEB97F9BF45B...
Lindsay E. Hutner
Sam Hyde
Greenberg Traurig, LLP
Attorneys for Defendant Matheson Tri-Gas, Inc.

1 EXECUTION BY PARTIES AND COUNSEL

2
3 Dated:

4 Christopher Carver, Representative Plaintiff

5
6 Dated:

7 Abel Escobedo, Representative Plaintiff

8 Dated: 9/9/2022

DocuSigned by:
9 Stephen Stroud
By: Stephen Stroud
For Defendant Matheson Tri-Gas, Inc.

10 APPROVED AS TO FORM AND CONTENT:

11
12 Dated:

13 David Mara
14 Matthew Crawford
15 Mara Law Firm, PC
Attorneys for Representative Plaintiff Christopher Carver

16
17 Dated: 9/21/22

18 Arthur R. Botham, Jr.
19 Law Offices of Arthur R. Botham, Jr., A Law Corporation
Attorney for Representative Plaintiff Abel Escobedo

20
21 Dated: 9/21/2022

22 Zachary T. Tyson
23 Law Office of Zachary T. Tyson ALC
Attorneys for Representative Plaintiff Abel Escobedo

24
25 Dated: 9/8/2022

DocuSigned by:
26 Lindsay E. Hutner
Lindsay E. Hutner
27 Sam Hyde
Greenberg Traurig, LLP
28 Attorneys for Defendant Matheson Tri-Gas, Inc.

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TABLE OF EXHIBITS

Exhibit A: Notice of Proposed Class Action Settlement

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ABEL ESCOBEDO and CHRISTOPHER
CARVER, on behalf of themselves, all
others similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

MATHESON TRI-GAS, INC., an unknown
business entity; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: 37-2020-00044507-CU-OE-CTL

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL

Judge: Hon. Ronald F. Frazier
Dept.: C-65
Action Filed: December 4, 2020
Trial Date: Not set

TO: All non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through July 28, 2022.

If You Qualify For Inclusion in The Settlement Class And You Wish To Participate In The Settlement And Receive A Settlement Payment, You Are Not Required To Take Any Action.

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to submit a request for exclusion or notice of objection on or before <<90 days after notice mailed>>. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the San Diego County Superior Court, entered on <<preliminary approval>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On December 4, 2020, Abel Escobedo ("Escobedo") filed a class action complaint in the San Diego County Superior Court entitled *Abel Escobedo v. Matheson Tri-Gas, Inc.*, Case No. 37-2020-00044507-CU-OE-CTL, on behalf of himself and a proposed class consisting of allegedly similarly

situated individuals currently or formerly employed by *Matheson Tri-Gas, Inc.* (“Matheson” or “Defendant”), in which he asserted claims for: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Accurate, Itemized Wage Statements; (4) Failure to Permit Meal Periods; (5) Failure to Permit Rest Periods; (6) Waiting time penalties; (7) Civil Penalties Under the Private Attorney General Act of 2004; and (8) Unlawful Business Practices. On May 10, 2021, Christopher Carver (“Carver,” and together with Escobedo, “Plaintiffs”) filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020711-CU-OE-CTL in the Superior Court of California, County of San Diego, alleging the following claims: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the Time of Termination of Employment; (7) Irregular Pay Periods; (8) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; and (9) Violation of Unfair Competition Law. That same day, Carver filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020726-CU-OE-CTL in the Superior Court of California, County of San Diego, alleging identical violations of the California Labor Code and seeking civil penalties under the PAGA. These complaints have now been consolidated into a single action. Collectively, the complaints and associated letters to the LWDA constitute the “Litigation.”

Matheson contends the claims in this Litigation are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the Litigation.

Plaintiffs have vigorously prosecuted this case, and Matheson has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Plaintiffs’ class action and representative claims and Matheson’s defenses to those claims. Plaintiffs’ attorneys (“Class Counsel”) reviewed extensive documents and information produced by Matheson and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Plaintiffs and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. Gross Fund Value Amount: Defendant will pay \$750,000.00 to settle the Litigation. The \$750,000.00 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. Class Counsel’s Attorney’s Fees: Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount, subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. Litigation Costs: Class Counsel anticipates requesting an award of no more than \$20,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. Class Representative Service Award: Plaintiffs anticipate requesting a service award of no more than \$10,000.00 each, subject to court approval, for their role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. Private Attorneys General Act (PAGA) Allocation: The Parties have designated \$25,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$18,750.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$6,250.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. Settlement Administration Expenses: The Parties have selected, and the court has approved Phoenix Class Action Settlement Administration Solutions (“Phoenix”) to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to Phoenix to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Settlement Fund, and other activities required to administer the settlement. The Parties estimate that the payment to Phoenix will be approximately \$10,000, which shall be paid from the Gross Fund Value Amount.

G. Net Fund Value Amount: The Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel’s Attorney’s Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. Class Defined: “Class” means “All non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through July 28, 2022.”

I. Settlement Class Defined: “Settlement Class” – means all those persons who are members of the Class and who have not properly and timely excluded themselves (“opted out”) from the Litigation.

J. Settlement Period Defined: “Settlement Period” – means December 4, 2016 through July 28, 2022.

K. Allocation of Net Fund Value Amount Among Settlement Class Members: Each Settlement Class Member shall be entitled to a portion of the Net Settlement Fund which will be allocated proportionally based on the amount of weeks worked by each Settlement Class Member during the Settlement Period in proportion to the total number of weeks worked by all Participating Class Members during the Settlement Period.

L. Tax Treatment of Payments to Settlement Class Members: All Individual Settlement Payments made to Participating Class Members under this Agreement shall be allocated one-third wages, one-third penalties, and one-third interest. The Claims Administrator shall deduct from each Individual Settlement Payment all employee portions of payroll taxes from the amount allocated to wages. Those Individual Settlement Payments shall be treated by the parties as wages, subject to withholding and reporting on a Form W-2. Participating Class Members shall report such Individual Settlement Payments as wages received. No part of the Individual Settlement Payments shall be classified as a penalty or allocated to a penalty for purposes of Section 62(f) of the Internal Revenue

Code of 1986, but rather shall be classified as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Plaintiffs and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Matheson as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is << >>, which is based on Defendant's records showing you worked <> workweeks during the Settlement Period. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must mail a written objection entitled "Class Member Objection" by <<90 days after notice mailing>> to:

<<Name, Address and Telephone Number of Settlement Administrator>>

Any Class Member Objection shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any Class Member Objection to approval of the settlement must be mailed to the Settlement Administrator no later than << 90 days after notice mailed>>. **DO NOT TELEPHONE THE COURT.**

Objectors who want to appear at the final fairness/approval hearing must state the intention to do so at the time of submitting the written objection(s). The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on October 20, 2023 at 8:30 a.m. in Department C-65 of the San Diego County Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., "opt-out") by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four

digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before <<90 days after notice mailed>>, 2023, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the Court's final approval of the class settlement and entry of final judgment, each Class Member shall be deemed have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims that were asserted and that could have been asserted based on the facts contained in the Complaint filed in this Action and which were included leading up to and during mediation, including without limitation to, any and all alleged claims for unpaid wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest break premiums, itemized wage statement penalties, unreimbursed business expenses, failure to provide requisite writings, waiting time penalties under the California Labor Code and Business & Professions Code (including Section 17200 et seq.); claims for penalties brought under the Labor Code Private Attorneys General Act of 2004 (Labor Code Section 2698 et seq.); claims for restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement Class Members during the Settlement Period.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department C-65 of the San Diego County Superior Court, 330 West Broadway, San Diego, CA 92101, on October 20, 2023 at 8:30 a.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Awards to be paid to the Class Representatives. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 16 court days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely submitted an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Stipulated Settlement Agreement and Release of Claims, which is on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, or by contacting Class Counsel below:

CLASS COUNSEL:

Arthur R. Botham, Jr.
Law Offices of Arthur R. Botham, Jr., A Law
Corporation
2169 First Avenue
San Diego, California 92101
Phone: (619) 358-9738
Fax: (619) 393-0103

Zachary T. Tyson
Law Office of Zachary T. Tyson ALC
2169 First Avenue
San Diego, California 92101
Phone: (619) 237-9292

David Mara
Matthew Crawford
Mara Law Firm, PC
2650 Camino Del Rio North, Suite 205
San Diego, CA 92108
Phone: (619) 234-2833
Fax: (619) 234-4048

COUNSEL FOR DEFENDANT:

Lindsay E. Hutner
Sam Hyde
Greenberg Traurig, LLP
101 Second Street, Suite 2200
San Francisco, CA 94105
Tel: (415) 655-1300/Fax: (415) 707-2010

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT