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Attorneys for Plaintiffs EDDIE ESCAMILLA,
GUSTAVO ESCAMILLA, and ARTURO
ESCAMILLA, on behalf of themselves, all others
similarly situated and on behalf of the general public.

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

EDDIE ESCAMILLA, GUSTAVO
ESCAMILLA, and ARTURO ESCAMILLA,
on behalf of themselves, all others similarly
situated, and on behalf of the general public,

Plaintiffs,

v.

KEYSTONE FREIGHT CORP.; NATIONAL
RETAIL TRANSPORTATION, INC.; and
DOES 2 through 100,

Defendants.

Case No. CIVDS1931366

**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: September 13, 2022
Time: 10:00 a.m.
Judge: Hon. David S. Cohn
Dept.: S26

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. Defendants are in the business of transporting freight for their customers. In order to transport
11 its customers' freight, Defendants both contracts directly with entities or individuals to
12 provide these freight delivery services ("Direct Contractors"), as well as utilizes other
13 individuals who work for a Contract Carrier to either drive a truck and delivered freight for
14 Defendants or assisted a Driver on his or her route in the delivery of freight ("Secondaries").
15 Plaintiffs Eddie Escamilla and Gustavo Escamilla contracted directly with Defendants as
16 Direct Contractors, and Plaintiff Arturo Escamilla worked as a Secondary.

17 11. Plaintiffs filed this class action against Defendant on October 18, 2019. Claiming that they
18 and others were misclassified by Defendant as independent contractors, they alleged causes
19 of action on behalf of themselves and other Direct Contractors and Secondaries for: (1) Failure
20 to Pay Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods;
21 (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Provide Accurate Wage
22 Statements; (6) Failure to Pay Wages Due at Termination; (7) Failure to Reimburse Business
23 Expenses; and (8) Violation of Unfair Competition Law. On November 27, 2019, Plaintiffs
24 filed a First Amended Complaint, removing Arturo Escamilla as a Plaintiff, and removing
25 causes of action for Failure to Pay Overtime, Failure to Provide Accurate Wage Statements
26 and Failure to Pay Wages Due at Termination.

27 12. In response, Defendant answered the complaint and filed a cross-complaint against J&G Bros,
28 LLC and Eddie Escamilla Trucking, Inc., the entities Plaintiffs Gustavo and Eddie Escamilla

1 operated when contracting with Defendant, in an attempt to hold Plaintiffs liable for the
2 violations alleged within the complaint. Plaintiffs demurred to Defendant's cross-complaint,
3 which the Court sustained without leave to amend on December 18, 2020.

4 13. As part of the settlement process, the Parties agreed to file a Second Amended Complaint in
5 this matter in order to re-allege claims for Failure to Provide Accurate Wage Statements and
6 Failure to Pay Wages Due at Termination, allege claims under the Private Attorneys General
7 Act of 2004 ("PAGA"), and re-add Arturo Escamilla as a Plaintiff. In compliance with Labor
8 Code § 2699.3(a)(1), Plaintiffs submitted written notice via online filing to the LWDA, setting
9 forth the facts and theories of the violations alleged against Defendant, claiming that he and
10 others were misclassified by Defendant as independent contractors on February 16, 2022. The
11 Second Amended Complaint was submitted with Plaintiffs' preliminary approval motion and
12 was deemed filed by the Court at the time preliminary approval was granted, April 13, 2022.

13 14. Defendants deny the allegations of the action in its entirety, deny any liability or wrongdoing
14 of any kind associated with the claims alleged in this action, and further deny that, for any
15 purpose other than settling this action, this matter is appropriate for class treatment.
16 Defendants further contend that they have complied with all applicable California laws, the
17 California Labor Code, the applicable California Wage Order(s), and the Unfair Competition
18 Law. Defendants finally contend that, if this matter were to be litigated further, they would
19 have strong defenses to oppose class certification and succeed on the merits of Plaintiffs'
20 causes of action.

21 15. Through discovery, Plaintiffs sought numerous documents and substantial amounts of data
22 that were needed to evaluate the case. These documents included the contracts entered into
23 between Defendants and Direct Contractors, records detailing all of the routes driven by Class
24 Members for Defendants during the Claims Period, policies and practices in place during the
25 class period, detailing requirements and expectations for Class Members when delivering
26 freight for Defendants' customers, as well as data surrounding the number of current and
27 former employees.

28 16. To obtain these documents and data, the Parties engaged in extensive discovery. Plaintiffs

1 propounded three sets of special interrogatories and requests for production of documents on
2 Defendants, and Defendants propounded two sets of special interrogatories, form
3 interrogatories, requests for admission, and requests for production of documents on
4 Plaintiffs. This discovery, in conjunction with the Parties' meet and confer efforts, resulted in
5 the production of nearly 4,000 documents and thousands of lines of data. Using the records
6 detailing the routes driven by Class Members and the data surrounding the number of current
7 and former Class Members, Plaintiffs' expert was able to provide numerous data points used
8 in establishing a potential exposure model in preparation for mediation.

9 17. The gravamen of Plaintiffs' claims is that Defendants misclassified Plaintiffs, and other Direct
10 Contractors and Secondaries, as independent contractors under both the test in *S. G. Borello*
11 *& Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, as well as the "ABC
12 test" outlined in the California Supreme Court decision in *Dynamex Operations West, Inc. v.*
13 *Superior Court* (2018) 4 Cal.5th 903, denying them the protections provided to employees
14 under California law. This proposed Settlement was only possible following significant
15 discovery and evaluation of Defendants' relevant policies, procedures, and records, which
16 permitted Plaintiffs' Counsel to engage in a comprehensive analysis of liability and potential
17 damages to prepare for the mediation and class certification.

18 18. Defendants vigorously deny Plaintiffs' contentions, claiming that Plaintiffs and putative class
19 members are not its employees, and that it does not control any aspect of how Plaintiffs and
20 putative class members perform their jobs. Defendant claims it is lawfully contracting with
21 the Direct Contractors, who are running their own separate businesses, to facilitate the
22 delivery of the customer's freight, and that it leaves the hiring of Secondaries to accomplish
23 these deliveries under the sole discretion of the Direct Contractors.

24 19. The Parties agreed to attend mediation with respected wage and hour mediator Jeff Ross on
25 August 12, 2021. The matter did not settle at mediation. Mr. Ross remained in regular contact
26 with the Parties to facilitate negotiations, culminating in Mr. Ross issuing a mediator's
27 proposal, which the Parties accepted on January 7, 2022. Thereafter, the Parties met and
28 conferred regarding all the terms of the settlement and finalized their agreement in the Joint

1 Stipulation that the Parties now seek to finally approve.

2 20. The Parties agreed (subject to and contingent upon the Court's approval) that this action be
3 settled and compromised for the non-reversionary total sum of \$1,524,966.29 ("Maximum
4 Settlement Amount" or "MSA") which includes, subject to Court approval: (a) attorneys' fees
5 of up to \$508,322.10 (one-third of the MSA) to compensate Class Counsel for work already
6 performed and all work remaining to be performed in documenting the settlement,
7 administrating the settlement and securing Court approval; (b) litigation costs of \$17,727.06
8 (originally estimated not to exceed \$20,000); (c) Class Representative Enhancement Awards
9 to the named class representatives, Eddie Escamilla and Gustavo Escamilla, for \$10,000 each,
10 and Arturo Escamilla for \$5,000 in consideration for a general release of their claims against
11 Defendants and for initiating and prosecuting this Class Action, serving as Class
12 Representatives, work performed, and risks undertaken for the payment of Defendants'
13 attorneys' fees and costs in the event he had been unsuccessful in either matter; (d) claims
14 administration fees and expenses to Phoenix in the amount of \$7,250.00 (originally estimated
15 not to exceed \$15,000); and (e) \$75,000 allocated to Plaintiffs' claims under PAGA.

16 21. Under no circumstances will any portion of the \$1,524,966.29 settlement revert to Defendant.

17 22. Plaintiffs contend that Defendants can terminate Class Members with or without cause, which
18 is "the strongest evidence of the right to control..." *Ayala v. Antelope Valley Newspapers,*
19 *Inc.* (2014) 59 Cal.4th 522, 531. Defendants do not enter contractual agreements for any set
20 duration, instead entering into an agreement that acknowledges that Defendants can terminate
21 their "employment at any time, with or without cause and with or without prior notice."
22 Defendants, in their sole discretion, obtains the customers and enters into agreements to
23 deliver their freight, negotiates and sets the rates the customers are to pay, and assigns and
24 dispatches the Class Members directly to transport the freight. Additionally, Defendants exert
25 a tremendous amount of control over Class Members in other aspects as well, as they must
26 preplan their routes, are required to avoid high crime areas, are not allowed to go off route,
27 make stops that are not authorized by Defendants, or leave a loaded trailer unattended, and
28 they must remain in constant contact with dispatch.

1 23. Defendants contend that Plaintiffs and putative class members are not its employees, and that
2 they do not control Class Members' hiring, firing, schedules, and/or pay. Defendants argue
3 that that Class Members have independence on how to perform their jobs. Defendants contend
4 that they do not control what Class Members do or how they perform their jobs. Defendants
5 argue that they cannot simply unilaterally decide to "terminate" Class Members at will.
6 Defendants claim they can merely terminate the agreement entered into with Direct
7 Contractors through the very terms of the agreement itself, severely limiting their ability to
8 "terminate" Direct Contractors at will. Furthermore, Defendants state they have absolutely
9 zero control over the hiring or firing of Secondaries, as those tasks are clearly delegated to the
10 Direct Contractors as a part of the agreements. Defendants also points out that the various
11 "controls" exerted on Class Members and "requirements" for how Class Members are to
12 deliver freight are set forth by the customers, not Defendants, and as such, these things cannot
13 be considered as actions undertaken by the Defendants.

14 24. While Plaintiffs believe in the strength of their arguments, they also recognize the risk that
15 the Court may determine Plaintiffs and the putative class were not employees of Defendants.
16 If the Court ruled in favor of Defendants on this issue, all of Plaintiffs' claims below would
17 be extinguished, as they are all dependent upon the Court agreeing that Defendants are
18 Plaintiffs' and Class Members employer under California law.

19 25. Defendants require Direct Contractors to shoulder the costs of insuring their trucks, fueling
20 their trucks, amongst various other costs. Here, as Plaintiffs allege the Direct Contractors are
21 misclassified as independent contractors when, under California law, they should be classified
22 as employees. Just as Defendants could not charge their own employee drivers the cost of fuel
23 and insurance in the furtherance of Defendants' business, they cannot do so to the Direct
24 Contractors, as they, too, are Defendants' employees under California law.

25 26. Defendants argue that because Direct Contractors are not employees and properly classified
26 as independent contractors, they do not need to reimburse them for business expenses.
27 Defendants argue that California Labor Code § 2802 only obligates an employer to indemnify
28 its employee for expenses that the employee incurred while performing his or her job duties.

1 As Defendants claim it is lawfully contracting with the Direct Contractors to facilitate the
2 delivery of the customer's freight, these expenses are properly borne by the Direct Contractors
3 pursuant to the terms of the agreements.

4 27. Plaintiffs further contend that Defendants, as a result of their misclassification scheme,
5 completely fail to provide Class Members with meal and rest periods. Under California Labor
6 Code section 512, no employer shall employ any person for a work period of more than five
7 hours without providing a meal period of not less than thirty minutes. *See also Brinker Rest.*
8 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037. Further, the IWC Wage Orders
9 mandate that every employer authorize and permit all employees to take rest periods at the
10 minimum rate of a net ten consecutive minutes for each four hour work period, or major
11 fraction thereof.

12 28. Defendants have no evidence they provided Class Members with meal or rest periods. They
13 have no meal or rest period policies they communicate to Class Members. They also have no
14 records of meal or rest periods. Thus, it will be fairly simple to show Defendants failed to
15 provide meal and rest periods to Class Members, who will be owed a 226.7 premium on every
16 qualifying shift.

17 29. Defendants again argue that because Class Members are not employees and properly
18 classified as independent contractors, they are under no obligation to provide Class Members
19 with meal or rest periods, as California law only requires an "employer" to provide them to
20 its "employees." Defendants claims they are lawfully engaging with and utilizing Class
21 Members to facilitate the delivery of the through the use of the agreements it enters into with
22 the Direct Contractors, which clearly state that all of that any Class Member performing work
23 under the terms of the agreements are independent contractors, not employees.

24 30. Defendants also point out that the Federal Motor Carrier Safety Administration's (FMCSA)
25 December 21, 2018, determination wherein the FMCSA found that California's meal and rest
26 break laws are preempted as applied to drivers of property-carrying commercial motor
27 vehicles who are subject to the FMCSA's own break regulations would similarly extinguish
28 all of Plaintiffs' meal and rest period claims. On January 15, 2021, the Ninth Circuit upheld

1 the FMCSA's determination that federal law preempted California's meal and rest break rules.
2 *See Int'l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.* (2021) 986 F.3d
3 841. As such, Defendants argue that FMCSA's December 21, 2018, determination provides
4 affirmative preemption defenses to Plaintiffs' claims for meal and rest break violations.

5 31. Plaintiffs argue that the FMCSA's determination does not apply retroactively. Federal agency
6 decisions and orders, like the FMCSA Order, are "subject to the presumption of prospectivity
7 that attends true exercises of legislative authority." *Gutierrez-Brizuela v. Lynch*, 834 F.3d
8 1142, 1144 (10th Cir. 2016) (citing *De Niz Robles v. Lynch*, 803 F.3d 1165 (10th Cir. 2015)).
9 Hence, as the United Supreme Court found over thirty years ago, administrative rules and
10 orders are not retroactively applied unless "the power to promulgate retroactive rules...is
11 conveyed by Congress in express terms." *Bowen v. Georgetown University Hospital*, 488 U.S.
12 204, 208 (1988). Evaluating whether the preemption decision is retroactive requires
13 determining whether the decision explicitly states that it applies retroactively, and if it does
14 not, determining whether the decision would have a retroactive effect on the rights of private
15 individuals. *See In re ADC Telecoms., Inc. Sec. Litig.*, 409 F.3d 974, 976 (8th Cir. 2005). If
16 the statute or regulation does not explicitly state that it applies retroactively, and its application
17 would have retroactive effect, the court may not apply it retroactively. *Id.* As neither the
18 decision nor its authorizing statute contain any explicit language on retroactivity, and because
19 retroactive application of the decision would extinguish the rights of private individuals
20 (namely, extinguishing Plaintiffs' claims for meal and rest periods entirely), the preemption
21 decision cannot be applied retroactively.

22 32. Direct Contractors are paid by the mile and by the delivery, they are not paid for time when
23 "the wheels are not moving," but they are not stopped for a delivery, such as fueling up, sitting
24 in traffic, for breakdowns, etc. A piece-rate pay formula that does not "compensate for all
25 time worked does not comply with the California Labor Code, even if, averaged out, it would
26 pay at least minimum wage for all hours worked." *Cardenas v. McLane Foodservices, Inc.*
27 (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; See also, *Gonzalez v. Downtown LA Motors, LP*
28 (2013) 215 Cal.App.4th 36, 49; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 320;

1 *Reinhardt v. Gemini Motor Transport* (E.D. Cal.2012) 869 F.Supp.2d 1158, 1168.

2 33. Secondaries are paid a daily flat rate. In California, wage structures that do not compensate
3 by the hour, like a salary or a commission, are only said to compensate for *non-overtime*
4 hours. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 565 (“[T]he
5 flat sum compensates the worker for only non- overtime hours worked.”). Put differently, flat
6 daily rates earned are only compensation for eight daily hours and forty weekly hours. For
7 any work over 8 daily or 40 weekly, employees are receiving no compensation under the flat
8 rate pay structure. To find otherwise, meaning piece-rate and flat rate pay structures also pay
9 for hours in excess of eight daily or forty weekly, would mean employees paid via these
10 compensation methods would be paid *less* money per hour for overtime work, which is an
11 interpretation that does not favor the protection of the employee’s interest or discourage
12 employers from imposing overtime work and cannot stand. *Id.* at 562 (“...[W]e are obligated
13 to prefer an interpretation that discourages employers from imposing overtime work that
14 favors the protection of the employee’s interests.”). Because these pay structures – like all
15 non-hourly pay systems – can only pay for non-overtime hours, Secondaries are not paid for
16 any hours worked in excess of eight in a single day.

17 34. Defendants contend that as Class Members are properly classified as independent contractors
18 under California law, none of the authorities relied upon by Plaintiffs renders Defendants
19 liable for any unpaid wages whatsoever. Defendants claim the only monetary compensation
20 it is required to provide to the Class Members at all at any point in time is solely based on the
21 provisions of the agreements it enters into with the Direct Contractors, which compensates
22 them for all the hours and various tasks necessary in furtherance of the freight deliveries.
23 Furthermore, while Defendants acknowledge that the agreements call for it to provide the
24 Direct Contractors with certain forms of compensation pursuant to the terms of the
25 agreements, Defendants are under no duty to provide compensation to the Secondaries.

26 35. Although Plaintiffs are confident in the strengths of their claims and believes this case is
27 suitable for certification on the claimed basis that there are company-wide policies and
28 practices that Plaintiffs contend violate California law and uniformly affect the Class

Members, Defendants' counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims.¹ In light of Defendants' defenses, supporting evidence, and position that the action is not suitable for class treatment, the settlement amount of \$1,524,966.29—**with an average settlement share estimated at \$3,794.33, with a high payment of \$18,513.67**—Plaintiffs and their counsel believe this is a reasonable and fair settlement.

36. Class Counsel applies for an award of attorneys' fees in the sum of \$508,322.10 (which is one-third of the MSA), and litigation costs of \$17,727.06 (originally estimated not to exceed \$20,000).

37. As of the date of filing this Motion for Final Approval, Plaintiffs' counsel has worked a total of 585 hours on this case and calculated the base lodestar at \$400,750 at rates reflecting those currently earned in the marketplace, which would require a modest 1.27 multiplier. All of the work and tasks performed by Plaintiffs' counsel were reasonable and necessary to the prosecution of this case.

38. I devoted 316 hours to this case. The following is a summary of my tasks and the activities I performed in this litigation: initial intake and discussions with potential plaintiff, investigation into Defendants, including whether other cases have been filed against them, research into law in preparation for filing complaint, interoffice discussions about causes of action to plead, draft complaint, review and revise complaint, discussions with Plaintiffs and other class members throughout case, interoffice discussions about case and initial litigation strategy, review Defendants' answer, review Defendants' cross-complaints, extensive legal research on contractual indemnity in the employer/employee context, review and revise demurrers to

¹ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of certification).

1 cross-complaints and motions for sanctions, review and revise supplemental briefing in support
2 of demurrers and motions for sanctions, prepare for and attend hearings on demurrers and
3 motions for sanctions, discussions and emails with defense counsel throughout case, review
4 Defendants' discovery responses, review and revise Plaintiffs' discovery responses, review
5 and analyze documents produced by Defendant, create exhibits for use in the case, interoffice
6 discussions about documents produced throughout case, review case file for mediation, draft
7 mediation brief and exposure analysis, interoffice discussions about mediation and mediation
8 brief, prepare for mediation, attend mediation, review and revise memorandum of
9 understanding, review and revise long form settlement agreement, review and revise Second
10 Amended Complaint, review and revise notice to the LWDA, review and revise preliminary
11 approval motion and supporting papers, draft and revise declaration in support of preliminary
12 approval motion, review weekly reports from settlement administrator, review and revise final
13 approval motion and supporting papers, and draft and revise declaration in support of final
14 approval motion.

15 39. My hourly rate is \$800. Based on my hourly rate and the hours expended (316), my fee is
16 \$252,800, which is reasonable and necessary to the successful litigation of this matter.

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

1 BC630949); *Terry v. Hoovestol, Inc.* (Case No. RG16823879); *Belton v. Satellite Affordable*
2 *Housing Associates* (Case No. RG17885127).

3 41. Mr. Crawford devoted 269 hours to this case. The following is a summary of his tasks and
4 activities performed in the litigation of this matter: discussions with Plaintiff throughout case,
5 draft PAGA letter to the LWDA, discussions and emails with Defense Counsel throughout
6 case, interoffice discussions about case and initial litigation strategy, review and analyze
7 documents produced in case, interoffice discussions about documents produced throughout
8 case, extensive legal research on contractual indemnity in the employee/employer context,
9 review Defendants' cross complaints, draft demurrers to cross complaints and motions for
10 sanction, draft supplemental briefing in support of demurrers and motions for sanctions,
11 prepare for and attend hearings on demurrers and motions for sanctions, draft and propound
12 discovery on Defendants, review Defendant's discovery responses, extensive meet and confer
13 efforts with Defendants over their discovery responses, review discovery propounded on
14 Plaintiffs, discuss discovery propounded by Defendant with Plaintiffs, draft Plaintiffs'
15 responses to Defendants' discovery, review case file for mediation, assist in drafting mediation
16 brief, interoffice discussions about mediation and mediation brief, prepare for and attend
17 mediation, obtain bids from settlement administrators, draft Second Amended Complaint,
18 draft notice to the LWDA, draft motion for preliminary approval and supporting documents,
19 prepare for and attend preliminary approval hearing, communicate with the settlement
20 administrator throughout the administration process, and draft motion for final approval and
21 supporting documents.

22 42. Mr. Crawford's hourly rate is \$550. Based on his hourly rate and the hours expended (269),
23 his fee is \$147,950 which is reasonable and necessary to the successful litigation of this
24 matter.

25 43. As discussed above, this was a highly-contested matter which required a significant amount
26 of time and labor. Class Counsel had to investigate and analyze thousands of pages of
27 documents and thousands of lines of data. The litigation also required a considerable amount
28 of time interviewing class members about their experiences, as well as fighting off cross-

1 complaints from Defendants which attempted to hold Plaintiffs liable for the very violations
2 of California law they alleged against Defendants.

3 44. In addition, into the above investigation and analysis, Class Counsel had to marshal the
4 evidence in a manner in which it could be adjudicated on a class-wide basis, an endeavor
5 which cannot be underscored. So often, lawyers unskilled in the class action aspect of wage
6 and hour cases do not pay attention to or put the work into how the evidence must be presented
7 for class-wide adjudication. Strong class-wide cases perish in the hands of inexperienced
8 counsel because the case has not been worked up to succeed at certification. Class Counsel
9 here has considerable experience in class litigation and, from the beginning of the case, is
10 marshalling the evidence with a sharp focus on class-wide proof needed for the matter to get
11 certified. This case was no different. Throughout the matter, as evidence was being gathered
12 through documents and witness interviews, Plaintiff were reducing the data to a “living class
13 certification motion.” This filtering of voluminous evidence into class-wide proof while
14 keeping an eye on the merits of the litigation resulted in a considerable amount of attorney
15 time and skill.

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

22 46. Class Counsel seeks reimbursement of the litigation costs and expenses of \$17,727.06
23 (originally estimated not to exceed \$20,000). These costs were all reasonable and necessary to
24 the prosecution of this case and the results achieved and are fair, and reasonable.

25 47. In my experience, the typical enhancement award in wage and hour class action settlements
26 ranges from \$5,000 to \$75,000. Very commonly there is more than one class representative
27 who receives an award in the above range.

28 48. The proposed settlement is the product of serious, informed, non-collusive negotiations, has

1 no obvious defects, does not improperly grant preferential treatment to the class representative
2 or segments of the class and falls within the range of fair and reasonable settlements. I believe
3 that this non-reversionary settlement is in the best interests of the class as fair, reasonable, and
4 adequate. Therefore, I recommend approval of the settlement.

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

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

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

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

12 53. A true and correct copy of the Joint Stipulation and Settlement Agreement is attached hereto
13 as **Exhibit 5**.

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

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

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

20 Dated: August 15, 2022



David Mara, Esq.

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Exhibit 1

SUMMARY OF TIME AND COSTS

Eddie Escamilla, Gustavo Escamilla, and Arturo Escamilla v. Keystone Freight Corp.; National Retail Transportation, Inc.

San Bernardino County Superior Court Case No. CIVDS1931366

Hours: 585
Lodestar Fees: \$ 400,750.00
Costs: \$ 17,727.06

As of 8/19/2022

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara	2004 (18)	316	\$800	\$252,800.00
Matthew Crawford	2016 (6)	269	\$500	\$147,950.00
MARA LAW FIRM, PC TOTAL:		585		\$400,750.00

*****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	\$17,727.06
TOTAL COSTS	\$17,727.06

Eddie Escamilla, et al. v. Keystone Freight Corp., et al.
San Bernardino County Superior Court Case No. CIVDS1931366

Costs Summary

Attorney Service:	\$	2,693.39
Court Fees:	\$	8,033.67
Mediation:	\$	7,000.00
TOTAL COSTS	\$	<u>17,727.06</u>

Exhibit 2

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY REGION, BY FIRM

Table of Contents (Alphabetical by Firm Name)

<u>FIRM</u>	<u>PAGE</u>
Adin Gump Strauss Heuer & Field LLP	3
DLA Piper LLP	3
Gibson Dunn & Crutcher, LLP	3
Kornfeld, Nyberg, Bendes & Kuttner, P.C.	4
Loeb & Loeb	4
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Paul Hastings LLP	5
Seyfarth Shaw LLP	5
Slidley Austin LLP	6
Torjs LLP	7

California Report

FIRM		GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Akin Gump Strauss Anner & 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	1.30	\$ 1,014.00
	Partner	2000	2000	CA	\$ 780.00	12.70	\$ 9,225.00
	Am Lawrence	1998	1998	CA	\$ 840.00	3.10	\$ 2,652.00
	Partner	2002	2002	CA	\$ 840.00	170.00	\$ 142,800.00
	Heather Dunn	2004	2004	CA	\$ 510.00	67.00	\$ 34,170.00
	Jeffrey D. Aaronson	2008	2008	CA	\$ 470.00	1.80	\$ 846.00
	Ben Gipson	2011	2011	CA	\$ 400.00	4.10	\$ 1,640.00
	OT Counsel	2000	2000	CA	\$ 400.00	390.30	\$ 156,120.00
	Associate	2004	2004	CA	\$ 400.00	4.10	\$ 1,640.00
	Bethand Pan	2000	2000	CA	\$ 400.00	390.30	\$ 156,120.00
		TOTAL					
Gibson Dunn & Crutcher LLP	Associate	2010	2010	CA	\$ 445.00	18.20	\$ 8,544.00
	Virginia Pitt	2011	2011	CA	\$ 395.00	12.60	\$ 4,977.00
	Matthew Bouslog	2011	2011	CA	\$ 395.00	31.80	\$ 12,561.00
		TOTAL					

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 & Kuhrer, P.C.,
Partner Eric A. Nyberg
Paraprofessional Nancy L. Nyberg

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1987	1987	CA	\$ 425.00	16.90	\$ 7,182.50
		CA	90.00	0.30	24.00
				17.20	\$ 7,206.50
TOTAL					

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

Loeb & Loeb

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

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

Pachtulski Stang Ziehl Young Jones & Weintraub

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

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

California Report

FIRM

Pedraza & Stang Ziehl Young Jones & Weintraub

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

Paul Hastings LLP

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

Seyfarth Shaw LLP

Counsel	1996	1996	CA	\$ 580.00	2.40	\$ 1,832.00
Partner	1985	1985	CA	\$ 620.00	1.50	\$ 930.00
Counsel	1997	1997	CA	\$ 540.00	56.60	\$ 30,564.00
TOTAL					60.50	\$ 33,416.00

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

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

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

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

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

N.J. Ranking: 30
Firm Size: 851

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

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

N.J. Ranking: 50
Firm Size: 733

California Report

FIRM Sidley Austin LLP

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

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

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

NLI Ranking: 10
Firm Size: 1,592

Tenys LLP

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

U.S.B.C Delaware
Nettel Networks Inc. (09-10138)

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

NLI Ranking: n/a
Firm Size: 236

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY BILLING RATE

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	John Cameron	1983	1983	CA	\$ 995.00	5.50	\$ 5,472.50
Partner	Shelia Block	1974	1974	CA	\$ 995.00	0.40	388.00
Partner	Richard M. Pachulski	1979	1979	CA	\$ 975.00	0.80	780.00
Partner	Ira D. Kharasch	1982	1982	CA	\$ 875.00	12.80	11,200.00
Partner	J. A. Latham Jr.	1978	1978	CA	\$ 840.00	15.80	13,272.00
Partner	David P. Stronids	1983	1983	CA	\$ 825.00	9.10	6,682.50
Partner	Michael Rotszala	1977	1977	CA	\$ 810.00	0.50	405.00
Partner	Nate McKittick	1989	1989	CA	\$ 780.00	0.60	474.00
Partner	Richard Yankeiwich	1979	1979	CA	\$ 780.00	39.40	30,732.00
Partner	Ana Lawton	1989	1989	CA	\$ 785.00	50.30	68,176.50
Of Counsel	Jennifer S. Baldocchi	1983	1983	CA	\$ 765.00	152.40	115,062.00
Of Counsel	James K.T. Hunter	1976	1976	CA	\$ 745.00	0.10	74.50
Partner	John D. Fiero	1976	1976	CA	\$ 745.00	4.00	2,980.00
Partner	Edward P. Christian	1989	1989	CA	\$ 745.00	50.80	37,846.00
Partner	Samuel R. Malzel	1985	1985	CA	\$ 725.00	2.80	1,895.00
Partner	Bruce Grohschal	1983	1983	CA	\$ 725.00	40.90	29,632.50
Partner	Heather Dunn	2000	2000	CA	\$ 705.00	11.10	8,047.50
Partner	Lance N. Jurth	1987	1987	CA	\$ 685.00	1.30	976.50
Associate	Jessica Bullock	2003	2003	CA	\$ 685.00	1.50	1,320.50
Counsel	Ellen Sueda	1983	1983	CA	\$ 675.00	2.40	1,632.00
Of Counsel	Henry Hochman	1985	1985	CA	\$ 675.00	15.50	10,462.50
Partner	Max C. Fischer	1988	1988	CA	\$ 675.00	18.10	12,217.50
Partner	Jeffrey D. Karsonson	1986	1986	CA	\$ 650.00	12.70	8,255.00
Partner	Christopher W. Campbell	1989	1989	CA	\$ 650.00	45.20	30,030.00
Of Counsel	Ben Gibson	2002	2002	CA	\$ 640.00	3.10	1,984.00
Associate	Bertrand Pan	2004	2004	CA	\$ 630.00	170.00	107,100.00
Partner	Colleen M. Regan	1985	1985	CA	\$ 620.00	1.50	930.00
Of Counsel	Jeffrey Kamel	1984	1984	CA	\$ 615.00	0.50	307.50
Partner	Malhar S. Pargy	1984	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	0.50	287.50
Of Counsel	Gabriele Rohrer	1997	1997	CA	\$ 595.00	5.20	3,094.00

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Of Counsel	Pachulski Stang Ziehl Young Jones & Weintraub	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
William Ramseyer	Paul Hastings LLP	2007	2008	CA	\$ 575.00	191.70	\$ 104,477.50
Robert E. Zivner	Tony's LLP	2007	2007	CA	\$ 555.00	110.00	\$ 62,160.00
Adam Siverts	Loeb & Loeb	2007	2007	CA	\$ 550.00	122.30	\$ 67,265.00
Ryan M. Aulich	Seyfarth Shaw LLP	1997	1997	CA	\$ 40.00	56.60	\$ 30,854.00
Holger Basch	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2010	CA	\$ 525.00	31.00	\$ 16,275.00
John W. Lucas	DLA Piper LLP	2008	2008	CA	\$ 510.00	87.00	\$ 34,170.00
Diana M. Malzer	Tony's LLP	2008	2008	CA	\$ 500.00	0.50	\$ 250.00
Madhew Akoy	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2008	CA	\$ 495.00	8.40	\$ 4,158.00
Teddy M. Kumar	Paul Hastings LLP	2009	2009	CA	\$ 485.00	87.10	\$ 42,243.00
Liam M. Paez	DLA Piper LLP	2011	2011	CA	\$ 470.00	1.80	\$ 846.00
Natasha Hsieh	Sidley Austin LLP	2010	2010	CA	\$ 450.00	117.50	\$ 53,055.00
Michael T. Gustafson	Gibson Dunn & Crutcher, LLP	2010	2010	CA	\$ 445.00	19.20	\$ 8,544.00
Virginia FRI	Loeb & Loeb	1993	1993	CA	\$ 435.00	18.20	\$ 7,517.00
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	\$ 37,345.00
Ji Hae Kim	Paul Hastings LLP	2010	2010	CA	\$ 385.00	160.20	\$ 61,677.00
Mario C. Ortega	Sidley Austin LLP	2011	2011	CA	\$ 355.00	41.00	\$ 14,555.00
Francis S. Lum	Tony's LLP	2000	2000	CA	\$ 305.00	0.80	\$ 264.00
Clare Mauro	Tony's LLP	2000	2000	CA	\$ 305.00	43.90	\$ 13,389.50
Bradley Tordick	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 285.00	1.10	\$ 324.50
Leslie A. Forrester	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 275.00	23.00	\$ 6,325.00
Paraprofessional Felicia Harrison	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	2.50	\$ 662.50
Paraprofessional Patricia Cuniff	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	7.70	\$ 2,040.50
Paraprofessional Louise Tuzchak	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	1.00	\$ 265.00
Paraprofessional Cheryl A. 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

1 DEBRA L. HURST (SBN 106118)
2 KYLE VAN DYKE (SBN 171186)
3 JULIE CORBO RIDLEY (SBN 234274)
4 **HURST & HURST**
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Additional Counsel Listed After Signature Page
Attorneys for Plaintiffs and the certified Class

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

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: GIC834348

CLASS ACTION

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

Date: December 12, 2014

Time: 1:30 p.m.

Dept.: C-69

Judge: Hon. Katherine A. Bacal

Complaint Filed: August 16, 2004

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

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

11 **Professional Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **Court Awards**

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **2014**

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

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

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

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

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

1 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

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

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

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

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

2012 Rates

25 (1) *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D.Cal. 2013) No.
26 M 07 1827 SI, MDL, No. 1827, an antitrust class action, in which the court found
27 the following hourly rates reasonable:
28

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>
44	\$925
27	725
24	725
7	525
5	475

15 **Keker & Van Nest, LLP**

16 **2010 Rates:**

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

20 **Kemnitzer, Barron & Krieg**

21 **2014 Rates:**

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

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

27 **2012 Rates:**

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

1 **Kiesel, Boucher, Larson LLP *, ****

2 Associates 625-325

3 **Kingsley & Kingsley****

4 <u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	14	\$655
5	8	475-515
6	7	475
	6	485
7	5	375
8	3	350
9	2	300

10 **Kirkland & Ellis**

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

15 **Knapp, Petersen & Clarke**

16 <u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$753
17	9	554
18	6	383

19 **Knobbe Martin Olson & Bear LLP**

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

22 **Latham & Watkins**

23 <u>2013 Rates:</u>		
	Average Partner	\$990
24	Highest Partner	1,100
	Lowest Partner	670
25	Average Partner	895
26	Average Associate	605
27	Highest Associate	725
28	Lowest Associate	465

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

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

Litt, Estuar, & Kitson, LLP**

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

Manatt, Phelps & Phillips

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

McKenna Long & Aldridge LLP

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

McKenna Long & Aldridge LLP

5	420
Litigation Support Mgr.	350
Paralegals	225

Minami Tamaki LLP

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

Morrison Foerster LLP

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

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

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

O'Melveny & Myers

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

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

Patton Boggs

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

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

Pillsbury Winthrop Shaw Pittman LLP

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

Quinn Emanuel Urquhart & Sullivan

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

Quinn Emanuel Urquhart & Sullivan

Highest Associate	675
Lowest Associate	320

Reed Smith LLP

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

Robbins Geller Rudman & Dowd LLP *, **

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

Rosen, Bien, Galvan & Grunfeld LLP

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

Rosen, Bien, Galvan & Grunfeld LLP

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

2012 Rates:

Years of Experience Rate

Partners

50	\$860
32	760
28	640
15	610

Of Counsel

29	570
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Associates

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

Paralegals 215-280

Litigation Support/ 150

Paralegal clerk

Law Clerk/Students 240

Word Processing 80

2011 Rates:

Years of Experience Rate

Partners

49	\$840
31	740
27	625
14	590

Of Counsel

28	540
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Associates

18	525
11	465
10	450

Rosen, Bien, Galvan & Grunfeld LLP

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

2010 Rates:

Years of Experience Rate

Partners

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

Associates

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

Rudy, Exelrod, Zieff & Lowe LLP

2010 Rates:

Years of Experience Rate

Partners

42	\$725
32	725

Rudy, Exelrod, Zieff & Lowe LLP

15	625
Associates	
21	495
13	485
8	450

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

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

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

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

Sheppard, Mullin, Richter & Hampton

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

Sidley Austin

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

Skadden, Arps, Slate, Meagher & Flom

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

1 **Skadden, Arps, Slate, Meagher & Flom**

Average Associate	620
Highest Associate	845
Lowest Associate	340

4 **Spiro Moore LLP****

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

8 **Law Offices of Michael D. Thamer**

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

10 **Townsend and Townsend and Crew**

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

14 **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	

19 **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

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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

Page 4

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

PUBLIC SERVICE

Member, Attorneys' Fee Task Force, California State Bar

Chairperson, Board of Directors, California Rural Legal Assistance Foundation

REPRESENTATIVE REPORTED CASES

Alcoser v. Thomas

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

Boren v. California Department of Employment

(1976) 59 Cal.App.3d 250

Cabrera v. Martin

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

Camacho v. Bridgeport Financial, Inc.

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

Campos v. E.D.D.

(1982) 132 Cal.App.3d 961

Center for Biological Diversity v. County of San Bernardino

(2010) 185 Cal.App.4th 866

Committee to Defend Reproductive Rights v. A Free Pregnancy Center

(1991) 229 Cal.App.3d 633

David C. v. Leavitt

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

Delaney v. Baker

(1999) 10 Cal.4th 23

Employment Development Dept. v. Superior Court (Boren)

(1981) 30 Cal.3d 256

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

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

Center for Biological Diversity

(2010)

Center for Biological Diversity

RICHARD M. PEARL

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Representative Reported Cases (cont.)

Flannery v Prentice

(2001) 26 Cal. 4th 572

Graham v. DaimlerChrysler Corp.

(2004) 34 Cal. 4th 553

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

(2005) 132 Cal.App.4th 359

Ketchum v. Moses

(2001) 24 Cal.4th 1122

Kievian 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

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Furnished upon request.

September 2014

Furnished upon request

10/1/2011

EXHIBIT B

LAFFEY MATRIX

History

Easy Link

Expert Opinion

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

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

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

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

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

EXHIBIT C

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

The National Law Journal

January 13, 2014 Monday

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**THE NATIONAL
LAW JOURNAL**

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

Length: 1860 words

Byline: KAREN SLOAN

Body

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

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

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

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

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

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

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

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

Richard Pearl

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

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

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

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

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

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

THE ROLE OF GEOGRAPHY

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

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

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

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

BILLING SURVEY METHODOLOGY

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

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

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

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

Richard Pearl

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

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

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

Billing Rates at the Country's Priciest Law Firms

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

Billing Rates at the Country's Priciest Law Firms

FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER ASSOCIATE		HOURLY HOURLY		AVERAGE	HIGH	LOW
			RATES	RATES	RATES	RATES			
* 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 Farr & Gallagher	New York	540	\$950	\$1,090	\$790	\$580	\$790	\$350	
Cadwalader, Wickersham & Taft	New York	435	\$930	\$1,050	\$800	\$605	\$750	\$395	
Weil, Gotshal & Manges	New York	1,201	\$930	\$1,075	\$625	\$600	\$790	\$300	
Quinn Emanuel Urquhart & Sullivan	New York	697	\$915	\$1,075	\$810	\$410	\$675	\$320	
Wilmer Cutler Pickering Hale and Dorr	Washington	961	\$905	\$1,250	\$735	\$290	\$695	\$75	
Dechert	New York	803	\$900	\$1,095	\$670	\$530	\$735	\$395	
Andrews Kurth	Houston	348	\$890	\$1,090	\$745	\$528	\$785	\$265	
Hughes Hubbard & Reed	New York	344	\$890	\$995	\$725	\$555	\$675	\$365	
Irell & Manella	Los Angeles	164	\$890	\$975	\$800	\$535	\$750	\$395	
Proskauer Rose	New York	746	\$880	\$950	\$725	\$465	\$675	\$295	
White & Case	New York	1,900	\$875	\$1,050	\$700	\$525	\$1,050	\$220	

Richard Pearl

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

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

Richard Pearl

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

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

THE FOUR-FIGURE CLUB

These 10 firms posted the highest partner billing rates.

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

THE FOUR-FIGURE CLUB

Contact Karen Sloan at ksloan@alm.com

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

Classification

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

Language: ENGLISH

Publication-Type: Newspaper

Industry: NAICS541110 OFFICES OF LAWYERS (93%); SIC8111 LEGAL SERVICES (93%); NAICS517410 SATELLITE TELECOMMUNICATIONS (83%); NAICS334220 RADIO & TELEVISION BROADCASTING & WIRELESS COMMUNICATIONS EQUIPMENT MANUFACTURING (83%)

Subject: POLLS & SURVEYS (90%); LEGAL SERVICES (90%); MAJOR US LAW FIRMS (90%); LAW FIRM BILLABLE RATES (90%); LAWYERS (89%); LAW PRACTICE (89%); LAW FIRM BILLABLE HOURS (78%); ECONOMIC CONDITIONS (76%); CORPORATE COUNSEL (73%); US CHAPTER 11 BANKRUPTCY (73%); LAW COURTS & TRIBUNALS (68%);

Geographic: UNITED STATES (92%)

Load-Date: January 13, 2014

Richard Pearl

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The Firms

April 16, 2012 5:20 PM

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

Posted by Sara Randazzo

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

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

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

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

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

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

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

The report's key data points include:

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

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

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

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

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

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

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

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

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

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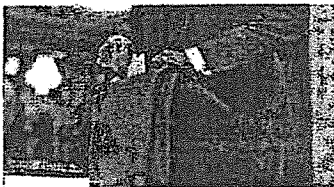
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By JENNIFER SMITH

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



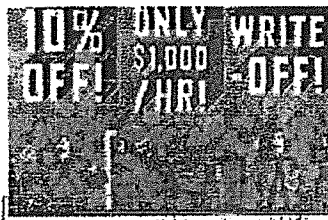
Top partners at leading U.S. law firms are charging more than ever — routinely \$1,150 or more an hour — but after discounts and write-offs the nosebleed rates aren't all they appear to be. Jennifer Smith reports. Photo: Getty Images.

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

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

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

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



James Kobaczewski

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The increases continue the upward trend of 2012, when legal fees in general rose 4.8% and associate billing rates rose by 7.4%, according to a coming report by TyMetrix Legal Analytics, a unit of Wolters Kluwer, [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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More than a dozen leaders at major law firms declined to discuss rate increases on the record, though some said privately that the increase in associate rates could be caused in part by step increases as junior lawyers gain in seniority.

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

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

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

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

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

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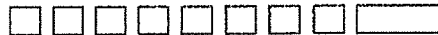
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Exhibit 5

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ESCAMILLA, on behalf of themselves, all others
similarly situated and on behalf of the general public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

Plaintiffs EDDIE ESCAMILLA and
GUSTAVO ESCAMILLA, on behalf of
themselves, all others similarly situated, and
on behalf of the general public.

Plaintiffs,

vs.

KEYSTONE FREIGHT CORP.;
NATIONAL RETAIL
TRANSPORTATION, INC.; and DOES 2
through 100,

Defendants.

Case No.: CIVDS1931366

[Assigned to Hon. David Cohn, Dept. S-26]

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

Complaint Filed: October 18, 2019
Trial Date: Not Set Yet

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs EDDIE
2 ESCAMILLA, GUSTAVO ESCAMILLA, and ARTURO ESCAMILLA (“Plaintiffs”), on behalf of
3 themselves and all others similarly situated to them and as defined below, and NATIONAL RETAIL
4 TRANSPORTATION, INC. and KEYSTONE FREIGHT CORP. (collectively referred to as
5 “Defendant”), as set forth below:

6 **I. The Conditional Nature of This Stipulation**

7 Defendant and Class Representatives enter into this Joint Stipulation of Class Action and
8 PAGA Settlement and Release (“Stipulation,” “Settlement,” or “Settlement Agreement”), including
9 all associated exhibits or attachments, in compromise of disputed claims for the sole purpose of
10 resolving the matter entitled *Eddie Escamilla et. al v. Keystone Freight Corp. et. al*, San Bernardino
11 County Superior Court Case No. CIVDS1931366 (“Action” or “Litigation”). The Settlement is
12 subject to approval by the court. In the event that the Court does not execute and file the Final
13 Approval Order and Judgment, or in the event that the associated Judgment does not become final for
14 any reason, this Stipulation will be deemed null and void, it will be of no force or effect whatsoever,
15 it will not be referred to or used for any purpose whatsoever, and the negotiation, terms and entry of
16 it shall remain subject to the provisions of California Evidence Code §§ 1119 and 1152.

17 Defendant denies all of the claims and allegations asserted in the Litigation (as defined
18 herein). Defendant has agreed to resolve this Litigation via this Stipulation, but to the extent this
19 Stipulation is deemed void or does not take effect, Defendant does not waive, but rather expressly
20 reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural
21 and factual grounds, including without limitation the ability to challenge suitability for class treatment
22 or representative adjudication on any grounds or to assert any and all defenses or privileges. The
23 Class Representatives and their counsel agree that Defendant retains and reserves these rights. In
24 particular, the Class Representatives and their counsel waive and agree not to argue or to present any
25 argument that Defendant would be estopped from contesting class certification because it has entered
26 into this Stipulation.

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1 compromise and settlement of disputed claims. No action taken by the Parties whether previously or
2 in connection with the negotiations or proceedings connected with the Settlement or this Agreement
3 shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or
4 defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault,
5 liability, or wrongdoing of any kind whatsoever.

6 Neither the Settlement, nor any act performed or document executed pursuant to or in
7 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or
8 evidence of, the validity of any claim made by the Plaintiffs or Class Members, or of any wrongdoing
9 or liability of the Released Parties (as defined below); or (b) is or may be deemed to be, or may be
10 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the
11 Litigation or in any proceeding in any court, administrative agency or other tribunal; or construed as
12 an admission by Plaintiffs regarding the validity of any allegation or claim asserted in this Action or
13 that Plaintiffs have waived any allegation or claim asserted in the Action.

14 In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the
15 extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense
16 to, and may be used as the basis for an injunction against, any action, suit or other proceeding that
17 may be instituted, prosecuted or attempted in breach of this Settlement Agreement or the releases
18 contained herein.

19 In light of the above, Defendant has determined that it is desirable and beneficial to it that the
20 Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

21 **V. Claims of the Class Representatives and Benefits of Settlement**

22 The Class Representatives believe that the claims asserted in the Litigation have merit. The
23 Class Representatives and Class Counsel recognize and acknowledge, however, the expense and time
24 associated with continued litigation against Defendant through class certification, trial, and/or
25 appeals. The Class Representatives and Class Counsel have also taken into account the uncertain
26 outcome and risks of any litigation, and in particular putative class actions such as this Litigation, as
27 well as the difficulties and delays inherent in such litigation. The Class Representatives and Class
28

Counsel are also mindful of the inherent problems of proof in establishing and overcoming potential defenses to the claims asserted in the Litigation. In light of these considerations, the Class Representatives and Class Counsel believe that the Settlement set forth in the Stipulation confers substantial benefits and is in the best interests of the Class.

VI. Terms of Stipulation and Agreement of Settlement

1. Definitions

As used in all parts of this Stipulation (including the exhibits which are incorporated as part of the Stipulation), the following terms have the meanings specified below:

1.1 “Settlement Class” or “Class Members” means any and all persons that performed work for Defendant in California pursuant to owner-operator agreements (“Direct Contractors”) and/or pursuant to being hired by Direct Contractors to perform the work under the owner-operator agreements without being a party to the agreements (“Secondaries”) during the time period of October 18, 2015, through April 11, 2022.

1.2 “Class Counsel” means David Mara and Matthew Crawford of MARA LAW FIRM, PC, 2650 Camino Del Rio North, San Diego, CA 92108.

1.3 “Class Period” means the time period from October 18, 2015 to April 11, 2022.

1.4 “Class Workweeks” means the following: six times the number of Workweeks Participating Class Members who were Direct Contractors worked for Defendant during the Class Period plus the number of Workweeks Participating Class Members who were Secondaries worked for Defendant during the Class Period.

1.5 “Court” means the Superior Court of the State of California, for the County of San Bernardino.

1.6 “Effective Date” means the later of: (a) if no objections to the Settlement are submitted, the date on which the Court issues the Final Approval Order and Judgment; (b) if any objections to the Settlement are submitted, the date which is forty-five (45) calendar days after notice of entry of the Final Approval Order and Judgment if no notice is filed within that time seeking appeal of the Final Approval Order and Judgment and if no motion for extension to appeal is filed; or (c) if

1 a notice of appeal is filed, the date upon which all appellate and/or other proceedings resulting from
2 the notice of appeal have been terminated in such a manner as to permit the Final Approval Order
3 and Judgment to take effect in substantially the form described herein

4 1.7 “Employer Taxes” means Defendant’s share of payroll taxes (e.g. UI, ETT, Social
5 Security, and Medicare taxes) with respect to the wages portion of Individual Settlement Amounts,
6 which will be paid by Defendant separately and in addition to the Maximum Settlement Amount.

7 1.8 “Skip Tracing” means the utilization of Accurint or Experian, after the Reasonable
8 Address Verification, to review the accuracy of and, if possible, to update a mailing address for a
9 Class Member in the event that his or her Class Notice is returned to the Settlement Administrator as
10 undeliverable without a forwarding address.

11 1.9 “Maximum Settlement Amount” is the amount of One Million Five Hundred and
12 Thousand Dollars and Zero Cents (\$1,500,000.00), which is the maximum amount to be paid by
13 Defendant pursuant to the Settlement Agreement, which will include: Attorneys’ Fees and Costs,
14 Settlement Administration Costs, Service Payments, PAGA Penalties, and the Net Settlement
15 Amount.

16 1.10 “Individual Class Settlement Amount” means an individual Participating Class
17 Member’s share of the Net Settlement Amount, which will be allocated as 25% wages and 75%
18 interest and penalties.

19 1.11 “Individual Class Settlement Payment” means the net payment of a Participating Class
20 Member’s Individual Settlement Amount, after reduction for the applicable taxes.

21 1.12 “Individual Class Workweeks” means the following: for Direct Contractors, this term
22 means six times the number of workweeks that the Direct Contractor worked for Defendant during
23 the Class Period; for Class Members that were Secondaries, this term means the number of
24 Workweeks Secondaries worked for Defendant during the Class Period.

25 1.13 “Individual PAGA Settlement Payment” means the net payment of a PAGA
26 Employee’s share of the \$18,750 (25% of the \$75,000 to be paid in settlement of the PAGA claims
27 in the Litigation), which will be allocated as 100% penalties.

1 1.14 “Individual PAGA Workweeks” means the following: for Direct Contractors, this
2 term means six times the number of Workweeks PAGA Employees that were Direct Contractors
3 worked for Defendant during the PAGA Period; for PAGA Employees that were Secondaries, this
4 term means the number of Workweeks Secondaries worked for Defendant during the PAGA Period.

5 1.15 “Last Known Address” means the most recently recorded mailing address for a Class
6 Member, as such information is contained in employment, payroll, or personnel records maintained
7 by Defendant.

8 1.16 “Net Settlement Amount” means the Maximum Settlement Amount, less the amount
9 that will be available for payment to all Participating Class Members (subject to the occurrence of the
10 Effective Date), and is calculated by subtracting all of the following from the Maximum Settlement
11 Amount: (1) attorneys’ fees in the amount of up to \$500,000.00 and reimbursement of litigation costs
12 and expenses in the amount of up to \$20,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2)
13 service awards to Plaintiffs Eddie Escamilla and Gustavo Escamilla of \$10,000 each and Plaintiff
14 Arturo Escamilla of \$5,000; (3) fees and expenses of administration of the Settlement to the
15 Settlement Administrator in an amount not to exceed \$15,000 (“Settlement Administration Costs”);
16 and (4) the \$75,000 in PAGA Penalties. The Net Settlement Amount is currently estimated to be
17 approximately \$865,000, and this figure may change depending on the actual amounts awarded by
18 the Court for the Settlement Administration Costs, Attorneys’ Fees and Costs, and Service Payments,
19 and approved by the Court for PAGA Penalties.

20 1.17 “Notice of Class Action Settlement” or “Class Notice(s)” means a notice titled “Notice
21 of Class Action Settlement” to be approved by the Court, substantially in the form attached hereto as
22 “**Exhibit 1**.” The Notice of Class Action Settlement will constitute the class notice pursuant to
23 California Rule of Court, Rule 3.769(f).

24 1.18 “Opt Out” means a Class Member’s act of excluding him or herself from the
25 Settlement, by way of submitting a timely and valid Request for Exclusion to the Settlement
26 Administrator, in conformity with the requirements set forth herein and in the Class Notice. PAGA
27 Employees will release their Released PAGA Claims and receive an Individual PAGA Settlement
28

1 Payment regardless of whether they request exclusion from the Settlement.

2 1.19 “Final Approval Order and Judgment” means the judgment and order to be entered
3 by the Court, substantially in the form that the parties mutually agree to and lodge with the Court,
4 which will be a judgment for purposes of California Rule of Court, Rule 3.771(a) (“Judgment”) and
5 constitute approval pursuant to California Rule of Court, Rule 3.769(a). The Final Approval Order
6 and Judgment will be posted on the Settlement Administrator’s website for a period of sixty (60)
7 calendar days in compliance with California Rule of Court, Rule 3.771(b).

8 1.20 “PAGA Employees” means all Class Members who worked for Defendant at any time
9 from October 18, 2018 through April 11, 2022.

10 1.21 “PAGA Penalties” means the penalties pursuant to California Labor Code §§ 2698, *et*
11 *seq.*, the Private Attorneys General Act of 2004 (“PAGA”) in the amount of \$75,000.00 to be paid in
12 settlement of the PAGA claims in the Litigation. PAGA Penalties are to be approved by the Court
13 pursuant to California Labor Code § 2699 and are to be distributed as follows: seventy-five percent
14 (75%) to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) that will be distributed
15 to PAGA Employees.

16 1.22 “PAGA Period” means the time period from October 18, 2018 to April 11, 2022.

17 1.23 “PAGA Workweeks” means the following: six times the number of Workweeks
18 PAGA Employees that were Direct Contractors worked for Defendant during the PAGA Period plus
19 the number of Workweeks Secondaries worked for Defendant during the PAGA Period.

20 1.24 “Participating Class Members” or “Settlement Class” means all Class Members who
21 do not Opt Out pursuant to Paragraph 3.3.4 and, thus, become bound by the Judgment.

22 1.25 “Person” means a natural person, corporation, company, partnership, firm,
23 association, or society.

24 1.26 “Preliminary Approval Date” means the date on which the Court grants preliminary
25 approval of the Settlement.

26 1.27 “Preliminary Approval Order” means an order to be executed and filed by the Court,
27 substantially in the form that the parties mutually agree to and lodge with the Court, which will

1 constitute an order certifying a provisional class for settlement purposes only pursuant to California
2 Rule of Court, Rule 3.769(d) and an order setting a Final Approval Hearing pursuant to California
3 Rule of Court, Rule 3.769(e).

4 1.28 “Reasonable Address Verification” means the utilization of the National Change of
5 Address Database maintained by the United States Postal Service to review the accuracy of and, if
6 possible, update a mailing address.

7 1.29 “Released Class Claims” means all claims, demands, rights, liabilities and causes of
8 action of every nature and description whatsoever including without limitation statutory,
9 constitutional, contractual or common law claims, against the Released Parties (as defined below),
10 and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class
11 Members’ employment by Defendant in California, that arise under any state or local law or state
12 administrative order that was or could have been pled based on the facts alleged in the Operative
13 Complaint, including claims of failure to pay minimum wages, failure to pay overtime wages, failure
14 to provide compliant meal periods and/or associated premiums, failure to provide wage statements,
15 failure to provide compliant rest periods and/or associated premiums, failure to pay wages timely at
16 termination, failure to reimburse for business expenses, unfair competition, and violations of
17 California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197,
18 1197.1, 1198, 2800, 2802 the applicable Wage Order of the Industrial Wage Commission, and
19 California Business & Professions Code §§ 17200 to 17208, including without limitation all related
20 claims for restitution and other equitable relief arising from California Business and Professions Code
21 §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys’ fees or litigation costs, and any
22 other related claims and/or penalties. The release does not extend to any claims not alleged in the
23 operative Class Action Complaint and specifically excludes claims for workers’ compensation,
24 personal injuries, unemployment insurance, state disability compensation, claims under the
25 Employment Retirement Income Security Act of 1974, previously vested benefits under any employer
26 sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including
27 but not limited to those arising under the Age Discrimination In Employment Act, the California Fair

1 Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil
2 Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal
3 Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the
4 Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations
5 of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or
6 harassment. This release does not include any of the claims encompassed within the Released PAGA
7 Claims (as defined below).

8 1.30 “Released PAGA Claims” means all claims, demands, rights, liabilities and causes of
9 action of every nature and description whatsoever including without limitation statutory,
10 constitutional, contractual or common law claims, against the Released Parties (as defined below),
11 and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as
12 a result of PAGA employees’ employment by Defendant in California, that arise under any state or
13 local law or state administrative order that was or could have been pled based on the facts alleged in
14 the Operative Complaint and the forthcoming notice to the LWDA, including claims of failure to pay
15 minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or
16 associated premiums, failure to provide wage statements, failure to provide compliant rest periods
17 and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for
18 business expenses, and violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7,
19 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Order of the
20 Industrial Wage Commission. The release does not extend to any claims not alleged in the operative
21 Class Action Complaint and the forthcoming notice to the LWDA.

22 1.31 “Released Parties” means Defendants National Retail Transportation, Inc. and
23 Keystone Freight Corp. and each of their parent companies, subsidiaries, affiliates, current and former
24 management companies, shareholders, members, agents (including any investment bankers,
25 accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and
26 employees) predecessors, successors, and assigns.

27 1.32 “Response Deadline” means the date that is sixty (60) calendar days after the date on
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1 which the Settlement Administrator initially mails the Class Notice to the Class Members, which will
2 be the deadline for a Class Member to Opt Out, dispute the number of Workweeks credited to him or
3 her, and/or object to the Settlement, and which will be indicated on the Class Notice that is mailed to
4 the Class Members.

5 1.33 “Request for Exclusion” means a written request to be excluded from the Settlement,
6 which must be made in writing submitted to the Settlement Administrator by mail, postmarked on or
7 before the Response Deadline, and which must contain the case name (*Eddie Escamilla et. al v.*
8 *Keystone Freight Corp. et. al*, San Bernardino County Superior Court Case No. CIVDS1931366), as
9 well as the Class Member’s full name, address, telephone number, last four (4) digits of his or her
10 Social Security number, and signature, and a clear statement indicating that he or she seeks to exclude
11 him or herself from the Settlement.

12 1.34 “Settlement Administrator” means the third-party settlement administration firm,
13 Phoenix Class Action Administration Solutions.

14 1.35 “Final Approval Hearing” means a hearing set by the Court for the purpose of
15 determining the fairness, adequacy and reasonableness of the Settlement pursuant to class action
16 procedures and requirements and entering Judgment, and required under California Rule of Court,
17 Rule 3.769(a).

18 1.36 “Unknown Claims” means any Released Claims which the Class Representatives do
19 not know or suspect to exist in their favor at the time of the entry of the Judgment, and which if known
20 might have affected the settlement with and release of Defendant.

21 1.37 “Updated Address” means a mailing address that was updated via a Reasonable
22 Address Verification, via an updated mailing address provided by the United States Postal Service or
23 a Class Member, via Skip Tracing, or via a Locator Service.

24 1.38 “Workweeks” means the numbers of workweeks worked by the Class Members for
25 Defendant during the Class Period.

1 **2. Settlement Amount, Timing of Payments, Tax Reporting Obligations, and**
2 **Other Obligations of Defendant and the Settlement Administrator**

3 2.1 Defendant will fund the total Maximum Settlement Amount, along with the Employer
4 Taxes (which will be paid by Defendant separately and in addition to the Maximum Settlement
5 Amount). The Maximum Settlement Amount will be paid as follows: Defendant shall deposit the
6 required maximum payout of \$1,500,000.00 with the Settlement Administrator in one installment no
7 later than forty-five (45) days after the Effective Date. If the Court's approval of this settlement is
8 overturned on appeal, all settlement funds deposited by Defendant with the Settlement Administrator
9 to date shall be refunded to Defendant within fourteen (14) days of the Court's order declining to
10 approve the settlement, and Defendant shall be excused from making any further settlement payment
11 installments.

12 2.2 The Settlement Administrator will administer the Settlement and perform any function
13 related to settlement administration at the agreed-upon instruction of both Class Counsel and
14 Defendant, including, and not limited to, establishing and maintaining a settlement website and toll-
15 free telephone line for Class Members to call with inquiries regarding the Settlement, distributing the
16 Class Notice, performing skip traces with respect to Class Notices that are returned as undeliverable
17 and without a forwarding address on or before the Response Deadline, receiving and processing
18 Requests for Exclusion and objections to the Settlement, adjudicating Class Members' disputes
19 regarding Workweeks, providing Class Counsel and counsel for Defendant with weekly updates on
20 the status of the settlement administration process (including the names and percentages of Class
21 Members who Opt Out or object), calculating and handling inquiries regarding the calculation of the
22 Individual Settlement Amounts, preparing a declaration to submit to the Court that details the
23 settlement notice administration process and identifies each Class Member who Opts Out, and
24 distributing the Maximum Settlement Amount. The actions of the Settlement Administrator will be
25 governed by the terms of this Stipulation. The Parties, through their counsel, may provide written
26 information needed by the Settlement Administrator pursuant to the Stipulation.

2.3 The Parties agree to cooperate in good faith and to coordinate with each other and the Settlement Administrator to carry out the terms of the Settlement, including, without limitation, by providing reasonably available information regarding Class Members.

2.4 Defendant, through the Settlement Administrator, will distribute payments as follows:

(a) Class Representative Enhancement Payment: Subject to Court approval, the Plaintiffs Eddie Escamilla and Gustavo Escamilla shall each receive a service award of \$10,000, and Plaintiff Arturo Escamilla shall receive a service award of \$5,000. Defendant agrees not to oppose the amount of the Named Plaintiffs' and Class Representatives' service award. Since it is the intent of the Parties that the service award to the Named Plaintiffs and Class Representatives is for their service to the Class Members, and not wages, the Claims Administrator will not withhold any taxes from the service award. The Claims Administrator will report the service award on a Form 1099, which it will provide to the Named Plaintiffs and Class Representatives and to the pertinent taxing authorities.

(b) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their Application for Award of Attorneys' Fees and Costs to the Court before the Final Approval Hearing. Class Counsel will seek attorneys' fees and costs in the amount of \$500,000.00, and actual costs up to \$20,000, subject to court approval. Class Counsel shall serve Defendant with copies of all documents in support of their Application for Award of Attorneys' Fees and Costs. Defendant agrees not to oppose the Application for Award of Attorneys' Fees and Costs. The Claims Administrator will report the attorneys' fees and costs award on a Form 1099, which it will provide to Class Counsel and to the pertinent taxing authorities.

(c) Claims Administration Costs: Subject to Court approval, the Claims Administrator shall be paid an amount which is expected to not exceed \$15,000.00 for all fees and costs relating to the administration of this settlement, all tax document preparation, custodial fees and accounting fees, all costs and fees associated with preparing, issuing, and mailing any and all Class Notices, all costs and fees associated with computing, reviewing, and paying distributions from the Maximum Settlement Amount, all costs and fees associated with preparing any tax returns and any other filings

required by any governmental taxing authority or agency, all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering disbursements from the Maximum Settlement Amount, and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Stipulation.

2.5 No later than sixty (60) calendar days after Effective Date or fifteen (15) calendar days after the payment of funds to the Settlement Administrator – whichever is sooner, Defendant, through the Settlement Administrator, and according to the terms, conditions and procedures set forth in Paragraph 2.6 of this Stipulation, shall pay to each Participating Class Member and PAGA Employee their Individual Class Settlement Amount and Individual PAGA Settlement Payment, respectively. Each of the payments to Participating Class Members will be inclusive of interest and penalties, including wage statement penalties, and will be allocated as follows: 25% to satisfaction of claims for unpaid wages; 75% to the satisfaction of claims for interest and penalties. All settlement payments for wages shall be subject to required withholdings and deductions as W-2 wage payments. With regard to payments in settlement of claims for penalties and interest, these payments shall be issued through a 1099 form and not subject to withholdings or deductions. The payments to PAGA Employees are allocated as 100% penalties and shall also be issued through a 1099 form and not subject to withholdings or deductions.

2.6 The Claims Administrator shall compute the Individual Class Settlement Amount and Individual PAGA Settlement Payment for the Participating Class Members as follows:

(a) The payment of the Individual PAGA Settlement Payments will be calculated as follows: \$18,750 will be allocated to PAGA Employees as follows: each PAGA Employees' portion will be determined by dividing each PAGA Employees Individual PAGA Workweeks, by the total amount of PAGA Workweeks, and then multiplying the result by \$18,750.

(b) The payment of the Individual Class Settlement Payments will be calculated as follows: For each Participating Class Member, the Participating Class Members Individual Class Workweeks will be divided by the total number of Participating Class Member Workweeks. The resulting number will then be multiplied by the Net Settlement Amount.

1 (c) The Parties agree that the above-described formulas and distribution methods
2 are reasonable and fair in light of the Parties' investigation of the claims of the Class, and the relative
3 degree of uncertainty, risk of outcome of further litigation, and difficulties and delays inherent in such
4 litigation of these claims.

5 2.7 Defendant, through the Claims Administrator, will report each payment made on the
6 Maximum Settlement Amount to government authorities including the Internal Revenue Service as
7 required by law, and it shall make all required deductions and/or withholdings. Defendant, through
8 the Claims Administrator, shall report payments for penalties and interest to the Internal Revenue
9 Service (and other relevant governmental agencies) as non-wage income in the year of payment on
10 a Form 1099, or similar form issued to the Participating Class Members and PAGA Employees in
11 question.

12 2.8 To the extent that there are excess funds from uncashed checks for Class Members
13 and PAGA Employees who cannot be located, the parties agree that such funds shall be submitted to
14 the State Controller Unclaimed Property Fund in the name of the Class Member and/or PAGA
15 Employee for whom the funds are designated, 180 days after the checks have been mailed to the Class
16 Members and PAGA Employees.

17 **3. Procedure for Approval and Implementation of Settlement**

18 **3.1 Preliminary Approval**

19 3.1.1 The Class Representatives, through their counsel of record, will file an
20 unopposed motion for preliminary approval of Settlement, seeking an order approving the Settlement
21 pursuant to the California Rule of Court, Rule 3.769(e), and this Stipulation will be filed with the
22 Court contemporaneously and/or as part of the motion. By way of the motion, the Class
23 Representatives will request that the Court enter a Preliminary Approval Order, approving the
24 distribution of the Class Notice and scheduling the Final Approval Hearing (pursuant to California
25 Rule of Court, Rule 3.769(e)) for the purposes of determining whether to grant final approval of the
26 Settlement and enter Judgment in conformity with California Rule of Court, Rule 3.769(h). The
27 motion for preliminary approval of Settlement will be filed with the Court no later than thirty (30)

1 calendar days after receipt of the fully executed Stipulation by Class Counsel.

2 3.1.2 The Settlement will be void if the Court categorically refuses to enter the
3 Preliminary Approval Order in its entirety or in a substantially similar form; however, the Parties are
4 to take all reasonable steps to cure any non-material issues so as to avoid the Settlement being void.

5 **3.2 Notice to Class Members**

6 3.2.1 No later than twenty (20) calendar days after the Preliminary Approval Date,
7 the Settlement Administrator will mail the Court-approved Class Notice to all Class Members. The
8 Class Notice will be mailed via first class mail through the United States Postal Service. The envelope
9 containing the Class Notice will bear the following phrase in bold type, ¼ inch below the return
10 address or ¼ inch above the addressee's address: RETURN SERVICE REQUESTED. The envelope
11 will also bear the following phrase in the bottom left hand corner: IMPORTANT – NATIONAL
12 RETAIL TRANSPORTATION, INC. CLASS ACTION SETTLEMENT INFORMATION.
13 PLEASE OPEN IMMEDIATELY. The Class Notice and its envelope or covering will be marked to
14 denote the return address of the Settlement Administrator as set forth in the Class Notice.

15 3.2.2 Defendant will prepare a list, in an electronically usable format for the
16 Settlement Administrator, containing for each Class Member, to the extent Defendant has such
17 information, the following: the full name, Last Known Address, social security number, and dates of
18 employment as a non-exempt or hourly-paid employee of Defendant during the Class Period ("Class
19 List"). By granting preliminary approval of the Settlement, the Court will be deemed to have
20 authorized Defendant to provide the Settlement Administrator with the Class List. Defendant will
21 provide the Class List to the Settlement Administrator and Class Counsel within fourteen (14)
22 calendar days following the Preliminary Approval Date.

23 3.2.3 For Class Members who were employees of Defendant as of the Preliminary
24 Approval Date the Settlement Administrator will mail the Class Notice to the Last Known Address
25 provided by Defendant. No Reasonable Address Verification will be conducted for Class Members
26 who were employed by Defendant as of the Preliminary Approval Date.

27 3.2.4 For Class Members who were not employed by Defendant as of the
28

1 Preliminary Approval Date prior to mailing the Class Notice, the Settlement Administrator will
2 undertake a Reasonable Address Verification to ascertain the accuracy of the Last Known Address of
3 the Class Member. To the extent this process yields an Updated Address, that Updated Address will
4 be treated as the Last Known Address for purposes of this Stipulation and for Class Notice mailing.

5 3.2.5 If a Class Member is known to be deceased, the Class Notice for that deceased
6 Class Member will be mailed to the Last Known Address (or Updated Address, if applicable) of the
7 legal representative of the deceased Class Member's estate, to the extent known; otherwise, it will be
8 mailed to the Last Known Address (or Updated Address, if applicable) of the deceased Class Member.

9 3.2.6 Unless the Settlement Administrator receives a Class Notice returned from the
10 United States Postal Service for reasons discussed below in this paragraph, on or before the Response
11 Deadline, that Class Notice will be deemed to have been mailed and received by the Class Member
12 to whom it was sent five (5) calendar days after the mailing. In the event that subsequent to the first
13 mailing of a Class Notice and on or before the Response Deadline, the Class Notice is returned to the
14 Settlement Administrator by the United States Postal Service without a forwarding address, the
15 Settlement Administrator will undertake a Skip Tracing on the Class Member to attempt to ascertain
16 the current address of the Class Member, and if such an address is ascertained, the Settlement
17 Administrator will undertake a single re-mailing of the Class Notice to any Updated Address that is
18 located for the Class Member, within three (3) business days of receipt of the returned Class Notice,
19 and the Class Notice will be deemed mailed and received at that point. In the event that subsequent
20 to the initial mailing of a Class Notice and on or before the Response Deadline, the Class Notice is
21 returned to the Settlement Administrator by the United States Postal Service with a forwarding
22 address for the Class Member, the forwarding address will be deemed the Updated Address for the
23 Class Member, the Settlement Administrator will undertake a single re-mailing of the Class Notice
24 to the Updated Address within three (3) business days of receipt of the returned Class Notice, and the
25 Class Notice will be deemed mailed and received at that point. The Settlement Administrator will
26 include a cover letter with any re-mailing to inform the Class Member that the Class Notice was re-
27 mailed and that he or she has the later of the Response Deadline or ten (10) calendar days from the

1 date on which the Class Notice was re-mailed (which shall be the date the re-mailing of the Class
2 Notice is postmarked) to Opt Out, object to the Settlement, and/or dispute the number of Workweeks
3 credited to him or her. Compliance with the procedures described in this paragraph will constitute
4 due and sufficient notice to Class Members of this Settlement and of the Final Approval Hearing, and
5 will satisfy the requirements of due process. Nothing else will be required of or done by the Parties,
6 Class Counsel, counsel for Defendant, or the Settlement Administrator to provide notice of the
7 Settlement and the Final Approval Hearing.

8 3.2.7 No later than seven (7) calendar days after the Response Deadline, the
9 Settlement Administrator will provide Class Counsel and counsel for Defendant with a declaration
10 attesting to completion of the notice process, including any attempts to obtain Updated Addresses for,
11 and the re-sending of, any returned Class Notices, to be filed with the Court by Class Counsel.

12 3.3 Responses to the Notice of Class Action Settlement

13 3.3.1 Disputing Workweeks: If a Class Member disagrees with the number of
14 Workweeks credited to him or her as set forth in his or her Class Notice, he or she must submit a
15 written dispute along with documentation that supports his or her belief that he or she should be
16 credited with a different number of Workweeks. The dispute must be submitted to the Settlement
17 Administrator by mail, postmarked on or before the Response Deadline. The dispute must contain
18 the case name and number of the Action (*Eddie Escamilla et. al v. Keystone Freight Corp. et. al*, San
19 Bernardino County Superior Court Case No. CIVDS1931366), as well as the Class Member's name,
20 address, telephone number, last four (4) digits of his or her Social Security number, and signature.
21 The dispute must also contain a clear statement indicating that the Class Member disputes the number
22 of Workweeks credited to him or her. The Settlement Administrator will review the Workweeks
23 dispute and supporting documentation and make a determination based upon the submitted
24 documentation as to the validity of the Class Member's claim. If the Settlement Administrator needs
25 further information from Defendant concerning the Class Member's claim, the Settlement
26 Administrator will notify Defendant and Class Counsel and request the needed information.
27 Defendant's records will be presumed determinative if there is a dispute over the dates of employment

1 that the Class Member worked as a non-exempt or hourly-paid employee in California, unless the
2 Class Member has submitted valid and compelling documentation to support his or her claim to a
3 different number of Workweeks than the number shown on the Class Notice. The Settlement
4 Administrator will resolve all disputes by applying the above standard, and the decision of the
5 Settlement Administrator on any such disputes will be final.

6 3.3.2 Entry of Appearance at Class Members' Own Expense: Pursuant to California
7 Rule of Court, Rule 3.766(d)(5), any Class Member who does not Opt Out may, if the Class Member
8 so desires, enter an appearance through counsel at his or her own expense, and will be advised of this
9 by way of the Class Notice. Class Members who choose to enter such an appearance are responsible
10 for any attorneys' fees or costs incurred as a result thereof.

11 3.3.3 Objections to Settlement: Class Members who do not Opt Out may object to
12 the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later
13 than the Response Deadline. A written objection to the Settlement must be signed by the Class
14 Member and dated, and additionally state the Class Member's name, last four (4) digits of his or her
15 Social Security number, dates of employment as a non-exempt or hourly-paid employee of Defendant
16 in California, the case name and number of the Action (*Eddie Escamilla et. al v. Keystone Freight*
17 *Corp. et. al*, San Bernardino County Superior Court Case No. CIVDS1931366), all legal and factual
18 bases for objection to the Settlement, whether the Class Member intends to appear at the Final
19 Approval Hearing, and whether the Class Member is represented by legal counsel (and if so,
20 identifying the legal counsel and providing said legal counsel's mailing address). Alternatively, Class
21 Members may choose to voice their objections at the Final Approval Hearing. A Class Member who
22 objects to the Settlement will still be considered a Participating Class Member who is subject to the
23 Settlement.

24 3.3.4 Opting Out of Settlement: Class Members may elect to Opt Out of the
25 Settlement and, thus, exclude themselves from the Settlement. Class Members who wish to exercise
26 this option must submit a timely and valid Request for Exclusion to the Settlement Administrator.
27 The written request for exclusion must: (a) state the Class Member's name, address, telephone

1 number, and the last four digits of the Class Member's social security number or employee
2 identification number; (b) state the Class Member's intention to exclude themselves from or opt-out
3 of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class
4 Member or his or her lawful representative; and (e) be postmarked no later than the Response
5 Deadline, in accordance with Paragraph 3.2.6. If a valid Request for Exclusion is not received by the
6 Settlement Administrator from a Class Member on or before the Response Deadline, then that Class
7 Member will be deemed to have forever waived his or her right to Opt Out. The Class Notice will
8 advise Class Members of their option to Opt Out and will contain instructions on how to do so. Class
9 Members who do not Opt Out by submitting valid and timely Requests for Exclusion will be deemed
10 to be Participating Class Members, will be bound by the Settlement and the Judgment entered based
11 thereon. Class Members who Opt Out by submitting valid and timely Requests for Exclusion will not
12 be bound by the Settlement, will not be entitled to any benefits thereunder, or to make any objection
13 to the Settlement. PAGA Employees will release their Released PAGA Claims and receive an
14 Individual PAGA Settlement Payment regardless of whether they request exclusion from the
15 Settlement.

16 3.3.5 If a Class Member submits both a Request for Exclusion and an objection to
17 the Settlement, the Request for Exclusion will be accepted and the objection will be disregarded.

18 3.3.6 The Parties agree that the Response Deadline will not be extended, and no
19 untimely submissions will be honored, under any circumstances, unless mutually agreeable by the
20 Parties and/or except to the extent permitted under Paragraph 3.2.6.

21 **3.4 Final Approval Hearing.**

22 3.4.1 After the Response Deadline, a Final Approval Hearing will be held before the
23 Court in order to: (1) determine whether the Court should grant final approval of the Settlement; (2)
24 consider objections to the Settlement; and (3) consider Class Representatives' application for an
25 award of Attorneys' Fees and Costs to Class Counsel and the Service Payment to the Class
26 Representatives. At the Final Approval Hearing, the Parties will request that the Court grant final
27 approval of the Settlement and enter the Final Approval Order and Judgment. The Parties will take

1 all reasonable efforts to secure entry of the Final Approval Order and Judgment. If the Court rejects
2 the Stipulation, fails to enter the Final Approval Order and Judgment, this Stipulation will be void,
3 and Defendant will have no obligation to make any payments under the Settlement, other than the
4 Settlement Administration Costs; however, the Parties and their counsel agree to make all reasonable
5 efforts to fix any issues that the Court cites for its non-approval as set forth in Paragraph 3.1.2.

6 **3.5 Releases**

7 3.5.1 Release by Participating Class Members. Upon the Effective Date, each of the
8 Participating Class Members (including the Class Representatives) will be deemed to have, and by
9 operation of the Judgment will have fully, finally, and forever released, relinquished and discharged
10 Defendant and the Released Parties from any and all Released Class Claims.

11 3.5.2 Release by PAGA Employees. Upon the Effective Date, each of the PAGA
12 Employees will be deemed to have, and by operation of the Judgment will have fully, finally, and
13 forever released, relinquished and discharged Defendant and the Released Parties from any and all
14 Released PAGA Claims.

15 3.5.3 Class Representatives' General Release of Claims

16 i. In addition to those releases set forth in Paragraph 3.5.1 hereof, with
17 respect to any and all Released Class Claims, upon the Effective Date, the Class Representatives will
18 expressly and will be deemed to have, and by operation of the Judgment will have, waived the
19 provisions, rights and benefits of California Civil Code § 1542 with respect to the Released Claims,
20 which provides as follows:

21 **A general release does not extend to claims that the creditor or**
22 **releasing party does not know or suspect to exist in his or her**
23 **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.

24 ii. In consideration for the Service Payments and as an inducement for
25 Defendant to enter into this Stipulation, with respect to the Class Representatives only, the Released
26 Claims will additionally include any and all claims including Unknown Claims against Defendant
27

1 that accrued during the Class Period, but does not include claims for: age discrimination under the
2 Age Discrimination In Employment Act, unemployment insurance, workers' compensation benefits,
3 state disability compensation, previously vested benefits under any Employer-sponsored benefits plan
4 or claims under the Employment Retirement Income Security Act of 1974.

5 iii. Any Class Representatives may hereafter discover facts in addition to
6 or different from those which he or she now knows or believes to be true with respect to the subject
7 matter of the Released Claims, but any such Class Representatives, upon the Effective Date, will be
8 deemed to have, and by operation of the Judgment will have fully, finally, and forever settled and
9 released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or
10 non-contingent, whether or not concealed or hidden, which then exist, or previously have existed
11 upon any theory of law or equity now existing or coming into existence in the future, including, but
12 not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any
13 duty, law or rule, without regard to the subsequent discovery or existence of such different or
14 additional facts. The Class Representatives acknowledge that the foregoing waiver was separately
15 bargained for and a key element of the Settlement of which this release is a part. Notwithstanding any
16 other provision of this Stipulation, the Parties recognize that because the only Unknown Claims
17 released by this Stipulation are those Unknown Claims that meet the definition of Released Claims,
18 the release effectuated by this Stipulation will not extend to Unknown Claims other than those
19 described in Paragraph 1.44 above.

20 **3.6 Termination of Settlement; Reasonable Steps to Cure.**

21 3.6.1 In the event that the Settlement is not be approved in its entirety by the Court,
22 or in the event that the Effective Date does not occur, Defendant will have the option to void the
23 Settlement, and in such case, no payments will be made by Defendant to anyone, other than the cost
24 of administration, in accordance with the terms of this Stipulation, and this Stipulation will be deemed
25 null and void with no effect on the Litigation whatsoever. Notwithstanding this provision, the Parties
26 agree to take all reasonable steps to cure any issues cited by the Court as reason for non-approval of
27 any matter(s) filed with the Court for preliminary and final approval.

1 3.6.2 In the event that more than five percent (5%) of the Class Members Opt Out
2 by submitting timely and valid Requests for Exclusion to the Settlement Administrator by the
3 Response Deadline, Defendant will have the right to terminate and void this Settlement; however,
4 Defendant must notify Class Counsel, of its intention to nullify the Settlement in writing by certified
5 mail to David Mara and Matthew Crawford of Mara Law Firm, PC, 2650 Camino Del Rio North,
6 Suite 205, San Diego, CA 92108, within three (3) weeks after the expiration of the Response
7 Deadline.

8 3.6.3 The Maximum Settlement Amount was calculated with, and is premised on,
9 the understanding that there are approximately 230 Class Members and 19,200 workweeks during the
10 time period of October 18, 2015, through January 6, 2022, the date the mediator's proposal was
11 issued. To the extent that either of the forgoing estimates, as represented by Defendant, increases by
12 more than 6%, Defendant will have the option to increase the Maximum Settlement Amount
13 proportionately by the amount exceeding 6%. For example, if the number of workweeks increases by
14 7% then Defendant shall increase the Maximum Settlement Amount by 1%. Likewise, if the number
15 of class members increases by 7% then Defendant shall increase the settlement pot by 1%. If
16 Defendant declines to do so, Plaintiffs will have the option to terminate the settlement in its entirety
17 and the Parties will be returned to their respective positions as if no settlement had been contemplated

18 **3.7 Miscellaneous Provisions.**

19 3.7.1 No Person will have any claim against Class Counsel, the Settlement
20 Administrator, or any of the Released Parties based on the payments made or other actions taken
21 substantially in accordance with the Settlement or further orders of the Court.

22 3.7.2 In the event that the Settlement is not substantially approved by the Court, after
23 all reasonable steps to cure have been exhausted, or the Settlement is terminated, cancelled, declared
24 void, or fails to become effective in accordance with its terms, or if the Judgment does not become
25 final, or to the extent cancellation is otherwise provided for in this Stipulation, the Parties will resume
26 the Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions
27 of the Stipulation will have no further force and effect with respect to the Parties and will not be used

1 in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by
2 the Court in accordance with the terms of the Stipulation will be treated as vacated. Notwithstanding
3 any other provision of this Stipulation, if the Court should fail to award attorneys' fees to Class
4 Counsel in the full amount provided for in this Stipulation, no order of the Court or modification of
5 any order of the Court concerning the amount of any attorneys' fees to be paid by Defendant to Class
6 Counsel pursuant to this Settlement will constitute grounds for cancellation or termination of the
7 Stipulation or grounds for limiting any other provision of the Judgment. It is agreed that no order of
8 the Court, including any order concerning attorneys' fees, may alter or otherwise increase the
9 Maximum Settlement Amount.

10 3.7.3 The Parties (a) acknowledge that it is their intent to consummate this
11 agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the
12 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the
13 Stipulation; (c) agree to seek and to attempt to obtain preliminary and final approval by Court of the
14 Settlement; and (d) agree to reasonably work together to seek and attempt to obtain preliminary and
15 final approval of the Stipulation should the Court not grant approval upon the first presentation.

16 3.7.4 The Parties and attorneys agree to keep the Settlement confidential until the
17 motion for preliminary approval of the Settlement is filed. Thereafter, the Parties will agree to make
18 no comments to the media or otherwise publicize the terms of the Settlement.

19 3.7.5 The Parties agree that they will not engage in making or publishing written
20 statements which are disparaging to the reputation of the other or their corporate parents and affiliates.

21 3.7.6 The Stipulation compromises claims which were contested and the subject of
22 a good faith dispute, and it will not be deemed an admission by any of the Parties as to the merits of
23 any claim or defense. The Parties agree that the amounts paid in settlement of the Litigation and the
24 other terms of the Settlement were negotiated at arms-length and in good faith with sufficient
25 information by the Parties and reflect a settlement that was reached voluntarily after consultation with
26 competent legal counsel.

27 3.7.7 All of the exhibits to the Stipulation and material and integral parts hereof and
28

1 are fully incorporated herein by this reference.

2 3.7.8 The Stipulation may be amended or modified only by a written instrument
3 signed by or on behalf of all Parties or their respective counsel, subject to approval by the Court.

4 3.7.9 The Stipulation constitutes the entire agreement among the Parties hereto and
5 no representations, warranties or inducements have been made to any party concerning the Stipulation
6 or its exhibits other than the representations, warranties and covenants contained and memorialized
7 in such documents. Except as otherwise provided herein, each party will bear its own costs.

8 3.7.10 The Parties understand and acknowledge that: (a) they have performed an
9 independent investigation of the allegations of fact and law made in connection with this Litigation;
10 and (b) even if they may hereafter discover facts in addition to, or different from, those that they now
11 know or believe to be true with respect to the subject matter of the Litigation as reflected in this
12 Settlement Agreement, that will not affect or in any respect limit the binding nature of this Settlement
13 Agreement. It is the Parties' intention to resolve their disputes in connection with this Litigation
14 pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, the
15 Settlement Agreement will remain in full force and effect notwithstanding the discovery of any
16 additional facts or law, or changes in law, and this Settlement will not be subject to rescission or
17 modification by reason of any changes or differences in facts or law, subsequently occurring or
18 otherwise.

19 3.7.11 Class Counsel, on behalf of the Class Members, is expressly authorized by the
20 Class Representatives to take all appropriate action required or permitted to be taken by the Class
21 pursuant to the Stipulation to affect its terms and also expressly authorized to enter into any
22 modifications or amendments to the Stipulation.

23 3.7.12 Each counsel or other Person executing the Stipulation or any of its exhibits
24 on behalf of any Parties hereby warrants that such Person has full and express authority to do so.

25 3.7.13 The Stipulation may be executed in one or more counterparts. All executed
26 counterparts and each of them will be deemed to be one and the same instrument. A complete set of
27 executed counterparts will be filed with the Court.

1 3.7.14 The Stipulation will be binding upon, and inure to the benefit of, the successors
2 and assigns of the parties hereto; however, this Stipulation is not designed to and does not create any
3 third-party beneficiaries unless otherwise specifically provided herein.

4 3.7.15 The Court will retain jurisdiction with respect to implementation and
5 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the
6 Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation, in
7 conformity with California Rules of Court, Rule 3.769 and California Civil Procedure Code section
8 664.6.

9 3.7.16 The Stipulation and the exhibits hereto will be considered to have been
10 negotiated, executed and delivered, and to have been wholly performed, in the State of California,
11 and the rights and obligations of the parties to the Stipulation will be construed and enforced in
12 accordance with, and governed by, the internal, substantive laws of the State of California without
13 regard to principles of conflicts of law.

14 3.7.17 The language of all parts of this Stipulation will in all cases be construed as a
15 whole, according to its fair meaning, and not strictly for or against either party. No party will be
16 deemed the drafter of this Stipulation. The Parties acknowledge that the terms of the Stipulation are
17 contractual and are the product of negotiations between the parties and their counsel. Each party and
18 their/its counsel cooperated in the drafting and preparation of the Stipulation. In any construction to
19 be made of the Stipulation, the Stipulation will not be construed against any party and the canon of
20 contract interpretation set forth in California Civil Code § 1654 will not be applied.

21 3.7.18 Should any deadlines set forth in the Stipulation require any action to be taken
22 on a weekend or a Court holiday, then the action may be taken on the next business day, unless
23 otherwise specified by law or rule of Court, except that should the Response Deadline (or extension(s)
24 thereof specified in the Stipulation relating to a deficiency notice or a re-mailing) fall on a Saturday
25 and regular U.S. Mail service is in operation that day, then no further extension pursuant to this
26 paragraph will apply to these specific deadlines.

27 *[signatures on the following page]*

1
2 DATED: 3/17/2022 | 7:39:27 PM PDT, 2022

DocuSigned by:
By: Eddie Escamilla
Plaintiff Eddie Escamilla

3
4 DATED: 3/18/2022 | 2:37:54 PM PDT, 2022

DocuSigned by:
By: GK
Plaintiff Gustavo Escamilla

5
6
7 DATED: 3/18/2022 | 2:55:13 PM PDT, 2022

DocuSigned by:
By: AE
Plaintiff Arturo Escamilla

8
9
10 DATED: _____, 2022

By: _____
on behalf of Defendant

11
12
13 DATED: March 18, 2022

By: 
David Mara
Matthew Crawford
Mara Law Firm, PC
Attorneys for Plaintiffs

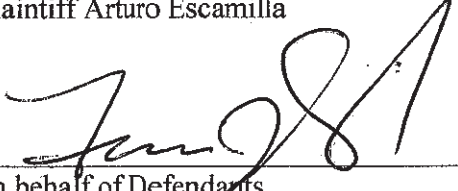
14
15
16
17
18 DATED: _____, 2022

By: _____
Joshua Carlon
Lewis Brisbois Bisgaard & Smith LLP
Attorneys for Defendant

1
2 DATED: _____, 2022 By: _____
3 Plaintiff Eddie Escamilla

4
5 DATED: _____, 2021 By: _____
6 Plaintiff Gustavo Escamilla

7
8 DATED: _____, 2022 By: _____
9 Plaintiff Arturo Escamilla

10 DATED: 3/18, 2022 By: 
11 on behalf of Defendants

12
13 DATED: _____, 2022 By: _____
14 David Mara
15 Matthew Crawford
16 Mara Law Firm, PC
17 Attorneys for Plaintiffs

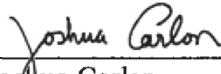
18 DATED: March 18, 2022 By: 
19 Joshua Carlon
20 Lewis Brisbois Bisgaard & Smith LLP
21 Attorneys for Defendant
22
23
24
25
26
27

Exhibit 1

NOTICE OF CLASS ACTION SETTLEMENT

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

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

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement ("Settlement") of *Eddie Escamilla, Gustavo Escamilla, and Arturo Escamilla vs. Keystone Freight Corp. and National Retail Transportation, Inc.* Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the "Class" or "Class Members"):

Any and all persons that performed work for Defendants National Retail Transportation, Inc. or Keystone Freight Corp. (collectively "Defendant") in California pursuant to owner-operator agreements ("Direct Contractors") and/or pursuant to being hired by Direct Contractors to perform the work under the owner-operator agreements without being a party to the agreements ("Secondaries") during the time period of October 18, 2015, through April 11, 2022.

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

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
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1. *Why Have I Received This Notice?*

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Class Claims, as described below, during the Class Period.

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

The Court will hold a Final Approval Hearing concerning the proposed settlement on [DATE], 2022 at [TIME a.m./p.m.], located at 247 W 3rd Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action filed by Plaintiffs Eddie Escamilla, Gustavo Escamilla, and Arturo Escamilla, alleges causes of action against Defendant on behalf of Plaintiffs and those similarly situated for (1) Failure to Pay All Wages; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Reimburse Business Expenses; (5) Failure to Furnish Accurate Wage Statements; (6) Waiting Time Penalties; (7) Violation of Unfair Competition Law; and (8) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

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

3. *Am I A Class Member? Am I A PAGA Employee?*

You are a Class Member if you performed work for Defendant in the State of California pursuant to owner-operator agreements ("Direct Contractors") and/or pursuant to being hired by Direct Contractors to perform the work under the owner-operator agreements without being a party to the agreements ("Secondaries") during the time period of October 18, 2015, through April 11, 2022.

If you worked for Defendant in the State of California as a Direct Contractor or Secondary during the time period of October 18, 2018, through April 11, 2022, you are also an "PAGA Employee" under the settlement.

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

In this Action, Plaintiffs sued on behalf of themselves and all other similarly situated individuals as defined in Section 3 above. Plaintiffs and these individuals comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Class Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

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

The Court has decided that David Mara and Matthew Crawford of Mara Law Firm, PC are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiffs	Attorneys for Defendant
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, CA 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048	LEWIS BRISBOIS BISGAARD & SMITH LLP Joshua D. Carlon 633 W 5th Street, Suite 4000 Los Angeles, California 90071 Telephone: (213) 281-5235 Facsimile: (213) 250-7900

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

6. *What Are My Options?*

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

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

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

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

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

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

Class Members may elect to Opt Out of the Settlement and, thus, exclude themselves from the Settlement. Class Members who wish to exercise this option must submit a timely and valid Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state the Class Member’s name, address, telephone number, and the last four digits of the Class Member’s social security number or employee identification number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than [the Response Deadline]. Class Members who do not Opt Out by submitting valid and timely Requests for Exclusion will be deemed to be Participating Class Members, will be bound by the Settlement and the Judgment entered based thereon.

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of October 18, 2018, through April 11, 2022, you will receive an Individual PAGA Settlement Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

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

Class Members who do not Opt Out may object to the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later than the Response Deadline. A written objection to the Settlement must be signed by the Class Member and dated, and additionally state the Class Member’s name, last four (4) digits of his or her Social Security number, dates of employment as a non-exempt or hourly-paid employee of Defendant in California, the case name and number of the Action (*Eddie Escamilla et. al v. Keystone Freight Corp. et. al*, San Bernardino County Superior Court Case No. CIVDS1931366), all legal and factual bases for objection to the Settlement, whether the Class Member intends to appear at the Final Approval Hearing, and whether the Class Member is represented by legal counsel (and if so, identifying the legal counsel and providing said legal counsel’s mailing address).

Alternatively, Class Members may choose to voice their objections at the Final Approval Hearing. A Class Member who objects to the Settlement will still be considered a Participating Class Member who is subject to the Settlement.

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

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

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class Members' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint, including claims of failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums, failure to provide wage statements, failure to provide compliant rest periods and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for business expenses, unfair competition, and violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 the applicable Wage Order of the Industrial Wage Commission, and California Business & Professions Code §§ 17200 to 17208, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties. The release does not extend to any claims not alleged in the operative Class Action Complaint and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment. This release does not include any of the claims encompassed within the Released PAGA Claims (as defined below).

If you are a PAGA Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as a result of PAGA employees' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint and the forthcoming notice to the LWDA, including claims of failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums, failure to provide wage statements, failure to provide compliant rest periods

¹ "Released Parties" means Defendants National Retail Transportation, Inc. and Keystone Freight Corp. and each of their parent companies, subsidiaries, affiliates, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

and/or associated premiums, failure to pay wages timely at termination, failure to reimburse for business expenses, and violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Order of the Industrial Wage Commission. The release does not extend to any claims not alleged in the operative Class Action Complaint and the forthcoming notice to the LWDA.

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

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$1,500,000 (“Maximum Settlement Amount” or “MSA”).

The “Net Settlement Amount” or “NSA” means the portion of the MSA, available for distribution to Class Members after the deduction of (1) the Class Representative Service Awards to Plaintiffs Eddie Escamilla and Gustavo Escamilla in an amount up to \$10,000 each, and to Plaintiff Arturo Escamilla in an amount up to \$5,000, for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$15,000; (3) a payment of \$75,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$500,000 (33 1/3% of the Maximum Settlement Amount) for attorneys’ fees and an amount not to exceed \$20,000 for litigation costs. All of these payments are subject to court approval.

The portion of the Maximum Settlement Amount which is allocated to the compromise and release of Plaintiffs’ claims in for PAGA Penalties is Seventy-Five Thousand Dollars (\$75,000). Of this \$75,000, 75%, or \$56,250, will be paid to the Labor and Workforce Development Agency (“LWDA”), and the remaining 25%, or \$18,750, will be distributed to the PAGA Employees (the “Individual PAGA Settlement Payment”).

A. How Will Settlement Payments Be Calculated?

Individual Class Settlement Shares to Class Members: For each Participating Class Member, the Participating Class Member’s Individual Class Workweeks will be divided by the total number of Participating Class Member Workweeks. The resulting number will then be multiplied by the Net Settlement Amount. For Class Members who were Direct Contractors, the Individual Class Workweeks means six times the number of workweeks that the Direct Contractor worked for Defendant during the Class Period; for Class Members that were Secondaries, this term means the number of workweeks the Secondary worked for Defendant during the Class Period.

Individual PAGA Settlement Payments to PAGA Employees: For each PAGA Employee, the PAGA Employee’s Individual PAGA Workweeks will be divided by the total number of PAGA Employees Workweeks. The resulting number will then be multiplied by \$18,750 (25% of the \$75,000 to be paid in settlement of the PAGA claims in the Litigation). For PAGA Employees who were Direct Contractors, the Individual PAGA Workweeks means six times the number of workweeks that the Direct Contractor worked for Defendant during the PAGA Period; for PAGA Employees that were Secondaries, this term means the number of workweeks the Secondary worked for Defendant during the PAGA Period.

One day worked in a given week will be credited as a week for purposes of these calculations. Therefore, the value of each Class Member’s and/or PAGA Employee’s Settlement payment ties directly to the amount of weeks that he or she worked.

B. How Will My Settlement Payment Be Taxed?

Each Class Member's Individual Class Settlement Share will be apportioned as follows: 25% wages and 75% interest and penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Defendant shall pay the employer portion of all such tax withholdings on the Individual Class Settlement Share amounts paid as wages separate from, and in addition to, the Maximum Settlement Amount. The Individual Settlement Share amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Class Settlement Share.

Each PAGA Employee's Individual PAGA Settlement Payment will be apportioned as follows: 100% penalties. The Individual PAGA Settlement Payment amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund.

C. What Is My Settlement Payment?

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class List which shows you worked [REDACTED] workweeks during the Class Period.

If you are also a PAGA Employee, you will receive a share of \$18,750 (25% of the \$75,000 to be paid in settlement of the PAGA claims in the Litigation). Based upon the calculation above, your approximate share is as follows: \$ [REDACTED]. This is based on the Class List which shows you worked [REDACTED] workweeks during the PAGA Period.

Checks issued to Settlement Class Members and Aggrieved Employees shall be valid for 180 days. After this 180 the remaining funds from any uncashed checks shall be submitted to the State Controller Unclaimed Property Fund in the name of the Class Member and/or PAGA Employee for whom the funds are designated.

11. How Do I Get More Information About The Case Or The Settlement?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Keystone and NRT Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 247 W 3rd Street, San Bernardino, CA 92415 or at the Settlement Administrator's Website: [REDACTED]. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number CIVDS1931366.

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