

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
Carter Cordura, Esq. (359252)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
Email: dmara@maralawfirm.com
jvecchi@maralawfirm.com

Attorneys for Plaintiff FRANCISCO RAMIREZ, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

FRANCISCO RAMIREZ on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

MESSER LLC; and DOES 1-100,

Defendants.,

Defendants.

Case No.: CV-23-002006

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

Date: April 29, 2025

Time: 8:30 a.m.

Judge: Hon. John Freeland

Dept.: 23

Complaint Filed: April 14, 2023

Trial Date: None Set

1 I, DAVID MARA, declare the following:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiff and the Class in
3 this matter. I am duly admitted to practice before all the courts of the state of California.
4 The following facts are within my personal knowledge and, if called to testify, I could and
5 would competently testify thereto.
- 6 2. I graduated from California Western School of Law.
- 7 3. I was admitted to practice law in California in May 2004.
- 8 4. I extensively handle employment cases which involve violations of the California Labor
9 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class
10 actions and cases alleging violations of the Private Attorneys General Act of 2004
11 (“PAGA”).
- 12 5. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County Superior
13 Court, Case No. GIC834348) which was the underlying case in the California Supreme
14 Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
15 1004, in which the California Supreme Court delineated the scope of employer obligations to
16 provide, and employee rights to receive, meal and rest periods under California law.
- 17 6. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer Attorneys
18 of California (“CAOC”). For example, I authored the Amicus Curiae briefs on behalf of
19 CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The California
20 Supreme Court ruling that, like meal periods, employers must relieve employees of all duty
21 and relinquish all control to satisfactorily discharge its obligation to authorize and permit rest
22 periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The California Supreme Court ruling
23 that the time spent on the employer’s premises waiting for, and undergoing, required exit
24 searches of packages, bags, or personal technology devices voluntarily brought to work is
25 compensable hours worked within the meaning of the Wage Orders.); *Oliver v. Superior*
26 *Court* (2021) California Court of Appeal Case No. H049185 (A brief asking the California
27 Court of Appeal for the Sixth Appellate District to determine whether mandatory drive time
28 of personal vehicles should be considered hours worked within the meaning of the Wage

1 Orders' suffered or permitted test.). *Davidson v. O'Reilly Auto Enterprises, LLC* (9th Cir.,
2 2020; Docket No. 18-56188) (a brief seeking Review *En Banc* of an order denying class
3 certification in a wage and hour matter).

4 7. I am also a member of CAOC's Amicus Committee that determines the cases in which the
5 organization will agree to provide amicus support.

6 8. I have also lectured as a panelist for California Employment Lawyers Association
7 regarding a host of wage and hour issues.

8 9. My firm has been granted class certification in both state and federal courts.

9 10. I have been named as class counsel in a number of wage and hour class actions in which
10 the Court granted the plaintiff's motion for class certification. For example, I have been
11 named class counsel in the following cases: *Mario Norona v. B&G Delivery System, Inc.*
12 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
13 *Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH);
14 *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-
15 00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*
16 (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San
17 Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Robert Bejar,*
18 *et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-
19 08404-JST), *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San
20 Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v.*
21 *Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No.
22 CIVDS2010153); *Sonny Williams, et al. v. Hansen and Adkins Auto Transport, Inc.; et al.*
23 (San Bernardino County Superior Court, Case No. CIVDS2020832); *Bobby Williams, et*
24 *al. v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-
25 00063361-CU-OE-CTL); *Ashton Harden vs. Mushiana Transport Inc.* (Sacramento County
26 Superior Court, Case No. 34-2021-00301950-CU-OE-GDS); *Paul Garcia, et al. v.*
27 *Haralambos Beverage Co.* (Los Angeles County Superior Court, Case No. BC660723);
28 and *Ribaldo Olvera, et al. v. American Corporate Security; American Corporate Security,*

1 *Inc.* (Los Angeles County Superior Court, Case No. 21STCV16417).

2 11. I have also been named as class counsel in numerous cases during the settlement process.

3 Here is a non-exhaustive list of cases where I have been named as class counsel in cases
4 during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior
5 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern
6 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*
7 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*
8 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*
9 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
10 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
11 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
12 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
13 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
14 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
15 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
16 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
17 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
18 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior
19 Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo
20 County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et*
21 *al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*
22 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.
23 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino
24 County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v.*
25 *Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No.
26 CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County
27 Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI*
28 *Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry*

1 *Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-
2 2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino
3 County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries,*
4 *Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua*
5 *Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior
6 Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern
7 County Superior Court, Case No. BCV-21-101357).

8 12. A class action complaint was filed by Plaintiff on April 14, 2023, in Stanislaus County
9 Superior Court (Case No. CV-23-002006). The complaint alleges the following claims: (1)
10 Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure
11 to Adopt a Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to Comply
12 with Itemized Employee Wage Statement Provisions, (5) Failure to Pay All Wages Due at
13 the Time of Termination of Employment, and (6) Violation of Unfair Competition Law
14 (Business & Professions Code § 17200, *et seq.*). Defendant filed an answer to Plaintiff's
15 class action complaint on May 17, 2023.

16 13. Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA")
17 and Defendant in accordance with the Private Attorneys General Act of 2004 ("PAGA")
18 on April 10, 2023. On July 27, 2023, Plaintiff filed a PAGA complaint in the Stanislaus
19 County Superior Court (Case No. CV-23-004196). The complaint alleges the following
20 PAGA claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime
21 Wages, (3) Failure to Pay All Wages Due at the Time of Termination of Employment, (4)
22 Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement
23 Provisions, (5) Failure to Adopt a Complaint Sick Pay Policy. Defendant filed an answer
24 to Plaintiff's PAGA complaint on November 14, 2023.

25 14. On September 20, 2024, Plaintiff provided an amended notice to the LWDA and
26 Defendant. On October 14, 2024, the Parties filed a stipulation for leave to allow Plaintiff
27 to file a First Amended PAGA Complaint adding in a cause of action pursuant to California
28 Labor Code § 213, which was granted by the Court on the same day. Plaintiff filed his First

Amended PAGA Complaint on October 14, 2024.

15. On October 14, 2024, the Parties stipulated to consolidate Plaintiff's class and PAGA actions with the class action as the lead case. The Court granted this stipulation on the same day.

16. After filing, the Parties engaged in informal discovery. These discovery efforts led to Defendant producing hundreds of pages of policy documents such as employee handbooks and Collective Bargaining Agreements that covered Class Members' employment. Defendant further produced a sampling of time and pay records for Class Members. Defendant also produced Plaintiff's personnel file and time and pay records. Plaintiff also requested, and Defendant produced, data surrounding the number of current and former employees, as well as the number of workweeks worked by Class Members during the relevant time period, to establish a potential exposure model in preparation for mediation. From this discovery, Plaintiff and his Counsel were able to analyze Defendant's liability in this action and prepare a realistic damage model.

17. The Parties attended an all-day mediation presided over by wage and hour mediator Steve Serratore on May 17, 2024. This mediation was successful. The Parties then met and conferred over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties' Agreement is attached hereto as **Exhibit 1**.

18. Class Counsel applies for an award of attorneys' fees in the sum of \$150,000 (33 1/3% of the GSA), and litigation costs of \$18,765.04 (originally estimated not to exceed \$20,000).

19. Class Counsel has worked 240 hours to date on this case and have calculated the lodestar fee on those hours at \$168,950 at rates reflecting those currently earned in the marketplace.

20. All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case and are reflected in the result achieved.

21. All services were performed by Class Counsel at the Mara Law Firm, PC, on a contingent basis.

22. Class Counsel's hourly rates are between \$400 and \$850 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by

Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts.

23. I devoted 119 hours to this case. The following is a summary of my tasks and activities performed in the litigation of this matter: case intake with Plaintiff; research into new case; research into new Defendant; pre-filing investigation and legal research; reviewing and revising initial complaint in class action and related documents; reviewing and revising class complaint; reviewing and revising PAGA notice; reviewing and revising PAGA complaint; researching and investigating legal issues throughout case; interoffice discussions throughout case; investigating Defendant's pay-structures and policies for its employees; analyzing records produced by Defendant relating to its policies, pay-structures, and time keeping; performing an analysis on the sampling of Class Member time and wage records; researching issues relevant to mediation brief; reviewing and revising mediation brief and mediation damage and exposure model; preparing for and attending mediation; reviewing and revising the settlement agreement and the Notice to the Class; reviewing and revising preliminary approval motion and supporting papers; drafting declaration in support of preliminary approval; reviewing weekly status reports from the Settlement Administrator regarding Class participation; working with Settlement Administrator; and drafting declaration in support of final approval.

24. My hourly rate is \$850. Based on my hourly rate and the hours expended, 119, my fee is \$101,150, which is reasonable and necessary to the successful litigation of this matter.

25. Jill Vecchi is a partner at Mara Law Firm, PC. She primarily handles wage and hour class actions and PAGA actions. Ms. Vecchi graduated from Santa Clara University School of Law and was admitted to practice law in California in December 2014 and received her undergraduate degree from University of California, Riverside in 2010. Ms. Vecchi has been litigating wage and hour class actions for nine (9) years and has handled over one hundred (100) class action and PAGA lawsuits.

26. Ms. Vecchi has been named as class counsel in the following certified cases as a result of the court granting a motion for class certification: *Mario Norona v. B&G Delivery System*,

1 *Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS);
2 *Jerald Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case
3 No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.*
4 (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); *Denson Sales, et al.*
5 *v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-08404-
6 JST); *Sonny Williams v. Hansen and Adkins Auto Transport, Inc.; et al.* (San Bernardino
7 County Superior Court, Case No. CIVDS2020832); *Bobby Williams v. Mohsen Transport,*
8 *Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-OE-CTL); and
9 *Ashton Harden vs. Mushiana Transport Inc.* (Sacramento County Superior Court, Case No.
10 34-2021-00301950-CU-OE-GDS).

11 27. Ms. Vecchi has also been named as class counsel in numerous cases during the settlement
12 process. Here is a non-exhaustive list of cases where Ms. Vecchi has been named as class
13 counsel in cases during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo
14 County Superior Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services,*
15 *Inc.* (Kern County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance*
16 *Beverage Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Alton Davis*
17 *v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-
18 00004724-CU-OE-CTL); *Timothy Spikes, et al. v. Bear Trucking, Inc., et al.* (San
19 Bernardino County Superior Court, Case No. CIVDS1715151); *Terrance Bailey v. Blue*
20 *Apron, LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey*
21 *Weast v. California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case
22 No. CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San
23 Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega*
24 *Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case
25 No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside
26 County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba*
27 *NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO);
28 *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No.

30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

28. Ms. Vecchi devoted 97 hours to this case. The following is a summary of her tasks and activities performed in the litigation of this matter: draft PAGA notice; draft class and PAGA complaints; interoffice discussions throughout case; discussions with Defendant's Counsel throughout case; draft case management conference statements; draft discovery to propound on Defendant; draft stipulations; analyze documents and information produced by Defendant, including records produced by Defendant relating to its policies, pay-structures, and time keeping; conduct research for mediation; draft mediation brief; prepare for and attend mediation; draft and revise settlement agreement; draft and revise preliminary approval motion; working with Settlement Administrator during notice process; review weekly status reports from the Settlement Administrator regarding Class participation; review and revise Settlement Administrator's declaration; and review and revise motion for final approval of the settlement.

29. Ms. Vecchi's hourly rate is \$600. Based on her hourly rate and the hours expended, 97, her fee is \$58,200 which is reasonable and necessary to the successful litigation of this matter.

30. Carter Cordura is an associate at Mara Law Firm, PC. He works largely on wage and hour class actions and PAGA actions. Mr. Cordura graduated from University of San Diego School of Law and was admitted to practice law in California in December 2024 and received his undergraduate degree from California State University San Bernardino and graduated in 2020. Mr. Cordura has been assisting in litigating wage and hour class actions as a law clerk and attorney for approximately three (3) years.

31. Mr. Cordura has worked on the following wage and hour class and PAGA actions: *Boyd v. Cogent Infotech Corporation* (San Bernardino County Superior Court, Case No.

1 CIVSB2409307); *Mendoza v. Elite Fuels Transportation* (San Bernardino County
2 Superior Court, Case No. CIVSB2427100); *Foster v. Foster Farms LLC, et al.* (Fresno
3 County Superior Court, Case No. 21JCCP05166); *Garcia v. Haralambos Beverage*
4 *Co.* (Los Angeles County Superior Court, Case No. BC660723); *Langarcia v. Morris Levin*
5 *& Son* (Kern County Superior Court, Case No. BCV-23-102218 DRZ); *Smith v. North*
6 *American Video Corporation* (Orange County Superior Court, Case No. 30-2022-
7 01277262-CU-OE-CXC); *Valencia v. Royal Oak Ag Services, Inc.* (Kern County Superior
8 Court, Case No. BCV-24-104012); *Martinez v. Tim Hofer, Inc., et al.* (Kern County
9 Superior Court, Case No. BCV-24-101779); *Samuels v. WIS International, Inc., et*
10 *al.* (Sacramento County Superior Court, Case No. 23CV012186); and *Garcia v. Valley*
11 *Diners LLC* (Merced County Superior Court, Case No. 24CV-05273).

12 32. Mr. Cordura devoted 24 hours to this case. The following is a summary of his tasks and
13 activities performed in the litigation of this matter: conduct research; interoffice
14 discussions about case; review case file; and draft and revise motion for final approval of
15 the settlement and supporting documents.

16 33. Mr. Cordura's hourly rate is \$400. Based on his hourly rate and the hours expended, 24,
17 his fee is \$9,600 which is reasonable and necessary to the successful litigation of this
18 matter.

19 34. Class Counsel seeks reimbursement of the litigation costs and expenses of \$18,765.04.

20 35. A true and correct copy of the Westlaw Court's Express's Legal Billing Report, Volume
21 14, Number 3, California Region for December 2012 is attached as **Exhibit 2**.

22 36. A true and correct copy of the Declaration of Richard M. Pearl in *Hohnbaum v. Brinker*
23 *Restaurant Corp.* SDSC GIC834348 is attached as **Exhibit 3**.

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

26 38. A copy of Mara Law Firm, PC's Summary of Time and Costs is attached hereto as **Exhibit**
27 **5**.

28 39. The final approval motion and supporting documents were uploaded to the LWDA.

1 Attached hereto as **Exhibit 6** is a confirmation received as a result of this upload.

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

4
5 Dated: April 3, 2025

MARA LAW FIRM, PC

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7 David Mara, Esq.
8 Attorney for Plaintiff
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Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiff Francisco Ramirez (hereinafter “Plaintiff”) on behalf of himself and the Class and Defendant Messer LLC (“Defendant” or “Messer”) (collectively Plaintiff and Defendant are referred to in this Agreement as the “Parties”). This agreement is intended to settle the cases entitled *Francisco Ramirez v. Messer LLC*, Stanislaus County Superior Court Case Nos. CV-23-002006 (“the Class Action”) and CV-23-004196 (“the PAGA Action”) (collectively the “Complaints”, “Actions” or “Lawsuits”).

I. DEFINITIONS

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

1. **Administration Costs**: The costs incurred by the Settlement Administrator, Simpluris, to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Amended PAGA Notice and PAGA Complaint**: As part of the Settlement, Class Counsel will update the letter to the LWDA to assert claims under California Labor Code § 213, as raised in mediation. Class Counsel will also amend their PAGA complaint to effectuate a full-release of claims discussed during mediation.
4. **Attorneys Fee Award**: The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed \$150,000 (33 1/3% of the Gross Settlement Amount). The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Class**: All persons employed by Defendant in California as a non-exempt driver from April 14, 2019 through August 15, 2024.
6. **Class Counsel**: David Mara and Jill Vecchi of Mara Law Firm, PC.

7. **Class Data:** The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendant's time clock data and other business records.
8. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
9. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Period:** April 14, 2019 through August 15, 2024.
11. **Class Representative or Plaintiff:** Francisco Ramirez.
12. **Class Representative Enhancement Payments:** The amount the Court awards to Plaintiff, which will not exceed \$5,000. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiff executing a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
14. **Counsel for Defendant:** Nathan W. Austin and Evan D. Beecher of Jackson Lewis P.C.
15. **Court:** Superior Court of California for the County of Stanislaus.
16. **Defendant:** Messer LLC.

17. **Disbursement of the Settlement:** Within fourteen (14) days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
18. **Effective Final Settlement Date:** The effective date of this settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the Court enters judgment granting final approval of the settlement.
19. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities.
20. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
21. **Funding of Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date.
22. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$450,000. This is the gross amount Defendant can be required to pay under this Settlement Agreement, with the exception of if the Escalator Provision is triggered. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) Employer Taxes; and (6) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
23. **Individual Class Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather,

Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.

24. **Individual PAGA Settlement Share(s)**: The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Also, even if an Aggrieved Employee requests exclusion from the Class Settlement as described in this Agreement, the Aggrieved Employee will receive an Individual PAGA Settlement Share. Therefore, Aggrieved Employees will receive an Individual PAGA Settlement Share automatically, without the return of a claim form and regardless of whether they request to be excluded from the Class Settlement.
25. **LWDA**: California Labor and Workforce Development Agency (“LWDA”). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiff with regard to the claim in the PAGA Action through the procedural mechanisms provided for by statute.
26. **LWDA Payment**: Refers to the Seventy-five percent (75%) of the PAGA Payment of \$20,000 (*i.e.*, \$15,000) that is to be paid to the LWDA as described in this Settlement.
27. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, the PAGA Payment, Employer Taxes, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the tax liability for the share for the portion of the settlement shares allocated as wages.
28. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
29. **PAGA Aggrieved Employees**: All individuals employed by Defendant in California from April 10, 2022 through August 15, 2024.
30. **PAGA Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks the total number of weeks during which the Aggrieved Employee performed work

during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's time clock data and other business records.

31. **PAGA Payment**: Refers to the \$20,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$15,000, shall be paid to the LWDA. The remaining 25% or \$5,000, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
32. **PAGA Period**: April 10, 2022 through August 15, 2024.
33. **PAGA Settlement**: Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
34. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
35. **Parties**: Plaintiff Francisco Ramirez, as an individual and as a Class Representative, and Defendant Messer LLC.
36. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Settlement.
37. **Released Class Claims**: The Released Class Claims include all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Actions, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 213, 218, 218.5, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, and 1197, California Industrial Welfare Commission Wage Orders, California Code of Regulations, Title. 8, section 11040, 11090, and 3395 *et seq.*, Business and Professions Code sections 17200 *et seq.*, California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, meal periods and meal period premiums, rest breaks and rest break premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, declaratory relief, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Actions (collectively "Released Class Claims"), during the Class Period. Expressly excluded from the release are claims for retaliation, discrimination,

unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims.

38. **Released PAGA Claims:** PAGA Aggrieved Employees are deemed to release all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code including, but not limited to sections 201, 202, 203, 204, 210, 213, 218, 221, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 246, 246.5, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1, as alleged in the PAGA Action complaint, and the California Industrial Welfare Commission Wage Orders based on the facts alleged in the Actions (collectively “Released PAGA Claims”). The Settlement shall release, and bar, all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members during the PAGA Period. PAGA Members cannot and do not have the right to opt out of the release of their PAGA claims against the Released Parties.
39. **Released Parties:** Collectively: (i) Defendant; (ii) each of Defendant’s respective past and present parents, subsidiaries, partners, affiliates, brands, including, without limitation, Messer North America Inc., and any corporation, limited liability company, or partnership which could be jointly liable with Defendant for the claims alleged; (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing which could be jointly liable with Defendant for the claims alleged; and (iv) any individual or entity which could be jointly liable with Defendant for the claims alleged.
40. **Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notices.
41. **Settlement Administration:** The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.

42. **Settlement Administrator**: The third party administrator agreed upon by Parties to administer this Settlement is Simpluris.

II. **RECITALS**

43. A class action complaint was filed by Plaintiff Francisco Ramirez on April 14, 2023, in Stanislaus County Superior Court (Case No. CV-23-002006). The complaint alleges the following claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Adopt a Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Pay All Wages Due at the Time of Termination of Employment, and (6) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*).
44. Defendant filed an answer to Plaintiff's class action complaint on May 17, 2023.
45. Plaintiff Francisco Ramirez submitted his Notice of Labor Code Violations to the LWDA on April 10, 2023.
46. On July 27, 2023, Plaintiff Francisco Ramirez filed a PAGA complaint in the Stanislaus County Superior Court (Case No. CV-23-004196). The complaint alleges the following PAGA claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Pay All Wages Due at the Time of Termination of Employment, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Adopt a Complaint Sick Pay Policy.
47. Defendant filed an answer to Plaintiff's PAGA complaint on November 14, 2023.
48. Prior to the mediation, Defendant produced hundreds of pages of policy documents such as employee handbooks and Collective Bargaining Agreements that covered Class Members' employment. Defendant further produced a sampling of time and pay records for Class Members. In addition, Defendant provided class-wide data and information permitting Plaintiff and his lawyers to fully evaluate class-wide exposure.
49. On May 17, 2024, the parties participated in a full-day mediation with wage and hour mediator, Steve Serratore, which resulted in the settlement that is reflected in this Agreement.
50. As part of this settlement, Class Counsel agrees to update the letter to the LWDA to assert claims under California Labor Code § 213, as raised in mediation. Class Counsel will also amend their PAGA complaint to effectuate a full-release of claims discussed during mediation.

- 51. Number of Class Members and Aggrieved Employees.** It was estimated for purposes of mediation that there are approximately 132 Class Members who worked approximately 15,494 workweeks that are part of this settlement. It was estimated for purposes of mediation that there are approximately 97 Aggrieved Employees who worked approximately 6,413 pay periods that are part of this settlement.
- 52. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- 53. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- 54. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Actions are not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Actions. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- 55. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or

defenses asserted, or lack thereof, in the Actions. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Participating Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

- 56. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement Agreement is \$450,000. The Gross Settlement Amount includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) Employer Taxes; and (6) the PAGA Payment, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

56.1 Escalator Provision: At mediation, it was Plaintiff's understanding that Class Members have worked a total of approximately 15,494 workweeks from April 14, 2019, through the date of mediation. Should the number of workweeks worked during the Class Period exceed more than 10% of this amount, Defendant, at its option, can either choose to: (1) cut off the end date for the class release as of the date on which the number of workweeks reaches 17,044; or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by the Class Members above the 10% amount (*i.e.* if there was a 11% increase in the number of workweeks during the Class Period, Defendant would agree to increase the Maximum Settlement Amount by 1%).

- 57. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- 58. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not

become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in these Actions or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

- 59. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Francisco Ramirez shall be appointed as representative for the Class.
- 60. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- 61. Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

61.1 Calculation.

61.1.1 Individual Class Settlement Share Calculation. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

61.1.2 Workweek Calculation. Defendant will calculate the number of workweeks worked by all Class Members during the Class Period based on time clock data, and the amount to be paid to Class Members per workweek based on time clock data. The workweeks will be calculated by Defendant for each Class Member during the Class Period based on time clock data. Defendant's workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. Defendant will provide time clock data to the Settlement Administrator for resolution of any workweek disputes by a particular Class Member. All workweek disputes will be resolved and decided by the

Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

61.1.3 Workweek Value. The amount to be paid per workweek to eligible Class Members will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of workweeks for all Class Members; any person who opts out of the Settlement is not a Class Member.

61.2 Tax Withholdings. Each Class Member's Individual Settlement Share will be apportioned as follows: one tenth (1/10) will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; nine tenths (9/10) will be allocated to alleged unpaid penalties and interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

62. Individual PAGA Settlement Share. Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Settlement Share from the Net PAGA Settlement Amount to each Aggrieved Employee.

62.1 Calculation.

62.1.1 Individual PAGA Settlement Share Calculation. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he or she worked during the PAGA Period.

62.1.2 Workweek Calculation. Defendant will calculate the number of workweeks worked by the PAGA Members during the PAGA Period based on time clock data. The workweeks will be calculated by Defendant for each PAGA Member based on the time clock data during the Class

Period. Partial workweeks will not be counted; however, if a PAGA Member worked only one day as a PAGA Member, such PAGA Member will be credited with having worked one workweek for purposes of the Settlement. Defendant's workweek data will be presumed to be correct, unless a particular PAGA Member proves otherwise to the Settlement Administrator by credible written evidence. Defendant will provide time clock data to the Settlement Administrator for resolution of any workweek disputes by a particular PAGA Member. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

62.1.3 Workweek Value. The amount to be paid per workweek to PAGA Members will be calculated by the Settlement Administrator by dividing the Net PAGA Settlement Amount by the aggregate number of weeks worked by PAGA Members.

62.2 Tax Withholdings. Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

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

63.1 To the Named Plaintiff: In addition to their Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Francisco Ramirez, will receive up to \$5,000 in consideration for providing Defendant a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment.

63.2 To Class Counsel. At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 33

1/3% of the GSA (\$150,000) and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

- 63.3 To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members and Defendants portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. The Settlement Administrator will calculate the amount of payroll withholding taxes and will forward the amount to the appropriate taxing authorities.
- 63.4 To the Settlement Administrator.** The Settlement Administrator – Simpluris – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 63.5 To the LWDA and Aggrieved Employees.** The Settlement Administrator will pay 75% of the PAGA Payment (\$15,000) to the LWDA. The remaining 25% of the PAGA Payment (\$5,000) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees
- 63.6 To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

64. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Simpluris shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and re-mailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re-mailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds associated with any uncashed checks to The United Way, which is a non-profit organization that supports projects that benefit employees and applicants throughout the State of California.

65. Procedure for Approving Settlement.

65.1 Cooperation.

65.1.1 All Parties and their counsel shall support the Settlement and take such steps as are reasonably necessary to effectuate the Settlement.

65.1.2 The class notice to be sent to the Class Members, preliminary approval order and final approval order are to be mutually agreed upon by the Parties and presented for approval to the Court.

65.2 Amended Complaint and Amended PAGA Notice.

65.2.2 Class Counsel agrees to update the letter to the LWDA to assert Labor Code 213 claims, as raised in mediation. Class Counsel will also amend their PAGA complaint to effectuate a full-release of claims discussed during mediation.

66. Motion for Preliminary Approval and Conditional Certification.

- 66.1** Plaintiff will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.
- 66.2** At the same time that Plaintiff files his Motion for Preliminary Approval, Plaintiff shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.
- 66.3** At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- 66.4** **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

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

- 67.1** **Delivery of Class and PAGA Data.** Within thirty (30) days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is

unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendant's time clock data and other business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.

67.2 Preparation of Class Notices. Based on the information in the Class and PAGA Data and the formulae set forth in Paragraphs 61.1 and 62.1, above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

67.3 Issuing Checks. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must

update the recipients' mailing addresses using the National Change of Address Database.

- 67.4 Mailing of Class Notices.** Within fifteen (15) days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.
- 67.5 Returned Notices.** If a Class Notice is returned because of an incorrect address, within three (3) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.
- 67.6** If the Administrator or any Party is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or U.S. mail, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later. Individuals asserting that they should be included as a Class Member shall have until the Response Deadline to make such a request.
- 67.7 Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of

Notices re-mailed, and the number of requests for exclusion or objections received.

67.8 Settlement Administrator's Declaration. No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

68. Objections to Settlement. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

68.1 Format. Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

68.2 Notice of Intent to Appear. Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

69. Request for Exclusion from the Settlement ("Opt-Out"). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. 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.

69.1 Effect of “Opt-Out.” Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.

69.2 Confirmation of Authenticity. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

69.3 Report. No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

69.4 Defendant’s Option to Terminate. The number of opt-outs by Class Members is not to exceed five percent (5%), or Defendant may terminate the Settlement; however, Defendant shall not be required to terminate the Settlement. Defendant agrees to notify Class Counsel of any such decision no later than fourteen (14) calendar days following the opt-out deadline and agrees to pay all claims administration costs incurred through such date.

70. Class Member and Aggrieved Employee Disputes. If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim within seven (7) business days. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

71. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

72. Motion for Final Approval.

72.1 No later than sixteen (16) court days before the Final Approval Hearing, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.

72.2 Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties

agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

72.3 Proposed Order and Judgment. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

73. Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

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

75. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

81.1 Funding the Settlement: Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount not later than thirty (30) days from the Effective Final Settlement Date.

81.2 Disbursement: Within fourteen (14) days after the Defendant provides the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.

81.3 Qualified Settlement Fund or QSF: The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

76. Settlement Administrator's Final Report. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.

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

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

83.2 If any checks remain uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining uncashed shall be sent to The United Way, which is a non-profit organization that supports projects that benefits employees and applicants throughout the State of California, thereby leaving no “unpaid residue” subject to the requirements of Code of Civil Procedure section 384, subdivision (b). The Parties agree that designating The United Way as the *cy pres* beneficiary will further the purposes of the underlying class proceedings in this action will promote justice for all Californians.

78. Release of Class Claims. As of the Effective Final Settlement Date, Participating Class Members shall release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.

79. Release of PAGA Claims. As of the Effective Final Settlement Date, the Released Parties shall be entitled to a release from the LWDA and Plaintiff (as representative of the State of California, the LWDA, and the general public) as to all Released PAGA Claims. The Released Parties will also be entitled to assert claim or issue preclusion or other effects of this Settlement if any PAGA Aggrieved Employees bring a subsequent claim on behalf of the LWDA concerning the Released PAGA Claims. PAGA Aggrieved Employees may not opt out of the PAGA Settlement.

80. Plaintiff's Release of Claims. As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to exceed \$5,000, Plaintiff shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR

SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any release of any claims not permitted to be released by law. This release also excludes Plaintiff's claims for wrongful termination, harassment, retaliation, and discrimination and any damages associated therewith which shall not be released.

81. Miscellaneous Terms

88.1 No Admission of Liability. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

88.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any

judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

88.3 No Effect on Employee Benefits. The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff’s or Participating Class Members’ and/or Aggrieved Employees’ previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

88.4 Integrated Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

88.5 Authorization to Enter Into Settlement Agreement. Class Counsel and Defendant’s Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement.

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

- 88.6 Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 88.7 Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Actions in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 88.8 Press.** The Parties and their Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount, or terms of the settlement. If Counsel engages in any advertising or distributes any marketing materials relating to the settlement of this case, including but not limited to any postings on any websites maintained by Class Counsel, the advertising will not identify the case name or case number, any Defendant's name, or any names of putative class members.
- 88.9 Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 88.10 Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 88.11 No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any

person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

88.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

88.13 Fair, Adequate, and Reasonable Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Actions and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

88.14 No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.

88.15 Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

88.16 Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

- 88.17 Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 88.18 Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Actions and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 88.19 Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 88.20 Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 88.21 Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 88.22 Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff Francisco Ramirez:

David Mara, Esq.
dmara@maralawfirm.com
Jill Vecchi, Esq.
jvecchi@maralawfirm.com
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

To Defendant Messer LLC:

Nathan W. Austin, Esq.
nathan.austin@jacksonlewis.com
Evan D. Beecher, Esq.
evan.beecher@jacksonlewis.com
JACKSON LEWIS P.C.
400 Capital Mall, Suite 1600
Sacramento, California 95814
Telephone: (916) 341-0404

88.23 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 9/20/2024

FRANCISCO RAMIREZ

Signed by:

D4DAC1ABB6B46D...

Dated: 9/26/2024

MESSER LLC



By: Richard Lingg
Title: Senior Counsel

Dated: 9/17/2024

MARA LAW FIRM, PC

DocuSigned by:



~~David Mara~~, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff and the Proposed
Class/Aggrieved Employees

Dated: 9/26/2024

JACKSON LEWIS P.C.



Nathan W. Austin, Esq.

Evan D. Beecher, Esq.

Attorneys for Defendant Messer LLC

Exhibit A

CALIFORNIA SUPERIOR COURT, COUNTY OF STANISLAUS
Francisco Ramirez, on behalf of himself, all others similarly situated, and on behalf of the general public,
Plaintiff, v. Messer LLC, Defendant
Case No. CV-23-002006 and Case No. CV-23-004196 (“Complaints” or “Action”)

NOTICE OF CLASS ACTION SETTLEMENT

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

TO: All persons employed by Messer LLC in California as a non-exempt driver from April 14, 2019 through August 15, 2024.

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

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

All persons employed by Messer LLC in California as a non-exempt driver from April 14, 2019 through August 15, 2024.

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

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

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice? Page 1
2. What Is This Case About? Page 2
3. Am I A Class Member? Am I An Aggrieved Employee? Page 2
4. How Does This Class Action Settlement Work? Page 3
5. Who Are the Attorneys Representing the Parties? Page 3
6. What Are My Options? Page 4
7. How Do I Opt Out or Exclude Myself From This Settlement? Page 4
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10. How Much Can I Expect to Receive From This Settlement? Page 5
11. How Will the Attorneys for the Class and the Class Representatives Be Paid? Page 7

1. Why Have I Received This Notice?

Messer LLC’s (hereinafter referred to as “Defendant” or “Messer”) records indicate that you may be a Class Member. The settlement will resolve all Class Members’ Released Claims, as described in Section No. 9 below, from April 14, 2019 through August 15, 2024 (the “Class Period”).

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

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2024 at [time a.m./p.m.], before Judge John R. Mayne, located at 801 10th Street, Modesto, California 95354, Department 21.

2. What Is This Case About?

A class action complaint was filed by Plaintiff Francisco Ramirez on April 14, 2023, in Stanislaus County Superior Court (Case No. CV-23-002006). The complaint alleges the following claims against Defendant: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Adopt a Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Pay All Wages Due at the Time of Termination of Employment, and (6) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*).

On July 27, 2023, Plaintiff Francisco Ramirez filed a PAGA complaint in the Stanislaus County Superior Court (Case No. CV-23-004196). The complaint alleges the following PAGA claims against Defendant: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Pay All Wages Due at the Time of Termination of Employment, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Adopt a Complaint Sick Pay Policy.

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

Defendant expressly denies that it did anything wrong or that it violated the law and further deny any liability whatsoever to Plaintiff or to the Class.

3. Am I A Class Member? Am I An Aggrieved Employee?

You are a Class Member if you were employed by Defendant in California as a non-exempt driver from April 14, 2019 through August 15, 2024.

If you were employed by Defendant in California from April 10, 2022 through August 15, 2024, you are also an “Aggrieved Employee” under the settlement.

4. How Does This Class Action Settlement Work?

Plaintiff Francisco Ramirez brings this action behalf of himself and all other similarly situated individuals who worked for Defendant as non-exempt drivers in California at any time during the Class Period. Plaintiff and these other individuals comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, as defined in the Settlement Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. The pleadings and other records in this litigation may be examined online on the Stanislaus County Superior Court's website at <https://stanportal.stanct.org/>

After arriving at the website, click the "Search" tab at the top of the page and select "Case Information." Then enter the case number and click "Search." You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class ("Class Counsel")	Attorneys for Messer LLC
MARA LAW FIRM, PC David Mara dmara@maralawfirm.com Jill Vecchi jvecchi@maralawfirm.com 2650 Camino Del Rio North, Suite 302 San Diego, California 92108 Telephone: (619) 234-2833	JACKSON LEWIS P.C. Nathan W. Austin Evan D. Beecher 400 Capital Mall, Suite 1600 Sacramento, California 95814 Telephone: (916) 341-0404

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

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

6. What Are My Options?

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

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

- DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class 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 an Aggrieved Employee, you will receive a portion of the PAGA, even if you opt-out of the settlement.

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

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

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

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not request exclusion from the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.

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

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) your full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, he/she will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

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

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

The Released Class Claims include all claims under state, federal and local law that were or could

¹ “Released Parties” means, collectively, (i) Defendant; (ii) each of Defendant’s respective past and present parents, subsidiaries, partners, affiliates, brands, including, without limitation, Messer North America Inc., and any corporation, limited liability company, or partnership which could be jointly liable with Defendant for the claims alleged; (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing which could be jointly liable with Defendant for the claims alleged; and (iv) any individual or entity which could be jointly liable with Defendant for the claims alleged.

have been asserted based on the facts and allegations made in the Actions, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 213, 218, 218.5, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, and 1197, California Industrial Welfare Commission Wage Orders, California Code of Regulations, Title. 8, section 11040, 11090, and 3395 *et seq.*, Business and Professions Code sections 17200 *et seq.*, California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, meal periods and meal period premiums, rest breaks and rest break premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, declaratory relief, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Actions (collectively “Released Class Claims”), during the Class Period. Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims.

Additionally, the LWDA will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include:

PAGA Aggrieved Employees are deemed to release all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code including, but not limited to sections 201, 202, 203, 204, 210, 213, 218, 221, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 246, 246.5, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1, as alleged in the PAGA Action complaint, and the California Industrial Welfare Commission Wage Orders based on the facts alleged in the Actions (collectively “Released PAGA Claims”). The Settlement shall release, and bar, all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members during the PAGA Period. PAGA Members cannot and do not have the right to opt out of the release of their PAGA claims against the Released Parties.

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 \$450,000 (“Gross Settlement Amount” or “GSA”).

A. Deductions from the Settlement

The “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhance Payment to the named Plaintiff in an amount up to \$5,000, for prosecution of the Action, risks undertaken for the payment of attorneys’

fees and costs, and a broader release of claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$**INSERT**; (3) a payment of \$20,000 allocated to the PAGA claims; (4) Employer Taxes; and (5) payment to Class Counsel in an amount not to exceed \$150,000 (33 1/3% of the Gross 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.

B. How Class Member Settlement Payments are Calculated

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed amongst all Class Members who have not opted out. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked during the Class Period (April 14, 2019 through August 15, 2024).

C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment. Pursuant to PAGA, the LWDA will receive a payment of \$15,000 (75% of the \$20,000 total PAGA Payment). The remaining \$5,000 is the "Net PAGA Settlement Amount" and will be proportionately distributed amongst all Aggrieved Employees. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he or she worked during the PAGA Period (April 10, 2022 through August 15, 2024).

D. Your Estimated 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: \$, less taxes. This is based on the Class Data which shows you worked workweeks during the period of April 14, 2019 through August 15, 2024.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$. This is based on the PAGA Data which shows you worked pay periods during the period of April 10, 2022 through August 15, 2024.

If you believe the number of workweeks attributed to you is incorrect, you must call the Settlement Administrator at **[PHONE NUMBER]** no later than **[RESPONSE DEADLINE]** or mail documentation to the to the Settlement Administrator at **[ADDRESS]** that is postmarked no later than **[RESPONSE DEADLINE]**. You should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates you contend you worked for Messer during the Class or PAGA Period.

E. Tax Treatment of Your Settlement Payments

Ten percent (10%) of each Individual Class Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Class Settlement Share.

Ninety percent (90%) of the Individual Class Settlement Share is intended to settle each Class Member's claims for interest and penalties/other payments. The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

F. What Happens If You Don't Cash Your Check?

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If your check was lost or misplaced or you have changed your address, please contact the Settlement Administrator at [PHONE NUMBER]. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to The United Way.

11. How Will the Attorneys for the Class and the Class Representatives Be Paid?

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed 33 1/3% of the Gross Settlement Amount (\$150,000) for attorney fees and \$20,000 for litigation costs.

Defendant has paid all of their own attorneys' fees and costs.

Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$5,000, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a broader release of claims.

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 Messer Class Action Settlement.

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

Exhibit 2

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY REGION, BY FIRM

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California Report

FIRM		GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Akin Gump Strauss Hauer & Feld LLP	Partner	1993	1993	CA	\$ 825.00	8.10	\$ 6,682.50
	David P. Simonds	1993	1993	CA	\$ 725.00	2.60	\$ 1,885.00
	Senior Counsel Edward P. Christian	1993	1993	CA	\$ 725.00	10.70	\$ 8,567.50
		TOTAL					
DLA Piper LLP	Partner	1999	1999	CA	\$ 790.00	0.60	\$ 474.00
	Nate McQuirk	1979	1979	CA	\$ 780.00	39.40	\$ 30,732.00
	Partner	1999	1999	CA	\$ 780.00	90.30	\$ 68,176.50
	Richard Yankovich	1999	1999	CA	\$ 780.00	1.30	\$ 1,014.00
	Partner	2000	2000	CA	\$ 780.00	12.70	\$ 8,286.00
	Am Lawrence	1998	1998	CA	\$ 840.00	3.10	\$ 2,704.00
	Partner	1998	1998	CA	\$ 840.00	170.00	\$ 140,700.00
	Heather Dunn	2002	2002	CA	\$ 510.00	67.00	\$ 34,170.00
	Jeffrey D. Aaronson	2004	2004	CA	\$ 470.00	1.80	\$ 846.00
	Ben Gipson	2008	2008	CA	\$ 400.00	4.10	\$ 1,640.00
	OT Counsel	2004	2004	CA	\$ 400.00	390.30	\$ 156,120.00
	Associate	2008	2008	CA	\$ 400.00	4.10	\$ 1,640.00
	Bethand Pan	2011	2011	CA	\$ 400.00	4.10	\$ 1,640.00
		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	\$ 13,921.00
		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	15.90	\$ 7,182.50
		CA	90.00	0.30	24.00
				17.20	\$ 7,206.50
TOTAL					

U.S.B.C California Northern
Hawrey LLP(41-34376-DJ)

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

NLJ Ranking: n/a
Firm Size: 3

FIRM

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

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1987	1987	CA	\$ 695.00	1.50	\$ 1,320.50
1999	2000	CA	550.00	46.20	30,030.00
2007	2007	CA	550.00	122.30	67,255.00
1993	1993	CA	435.00	18.20	7,917.00
			280.00	0.20	52.00
TOTAL					\$ 105,584.50

U.S.B.C California Central
American Medical Technologies(8-12-12339-MW)

From the fee application covering
July 1, 2012 to September 30, 2012

NLJ Ranking: 144
Firm Size: 301

FIRM

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

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1976	1976	CA	\$ 745.00	0.10	\$ 74.50
1985	1985	CA	725.00	40.90	29,552.50
1984	1984	CA	615.00	0.50	307.50
1997	1997	CA	615.00	1.80	1,107.00
1980	1980	CA	615.00	47.80	29,397.00
1976	1976	CA	595.00	3.80	2,261.00
1995	1995	CA	595.00	0.50	297.50
2004	2006	CA	495.00	8.40	4,158.00
			295.00	1.10	324.50
			275.00	23.00	6,325.00
TOTAL					\$ 73,904.50

U.S.B.C California Central
American Medical Technologies(8-12-12339-MW)

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

NLJ Ranking: n/a
Firm Size: 55

California Report

FIRM:
Pecholski & 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

FIRM:
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

FIRM:
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	\$ 33,426.00

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

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

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

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

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

N.J. Ranking: 30
Firm Size: 851

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

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

N.J. Ranking: 50
Firm Size: 733

California Report

FIRM Sidley Austin LLP

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

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

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

NLI Ranking: 10
Firm Size: 1,592

Tenys LLP

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

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

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

NLI Ranking: n/a
Firm Size: 236

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY BILLING RATE

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	John Cameron	1983	1983	CA	\$ 995.00	5.50	\$ 5,472.50
Partner	Shelia Block	1974	1974	CA	\$ 995.00	0.40	398.00
Partner	Richard M. Pachulski	1979	1979	CA	\$ 975.00	0.80	780.00
Partner	Ira D. Kharasch	1982	1982	CA	\$ 875.00	12.80	11,200.00
Partner	J. AL Latham Jr.	1978	1978	CA	\$ 840.00	15.80	13,272.00
Partner	David P. Stronids	1983	1983	CA	\$ 825.00	9.10	6,682.50
Partner	Michael Rotszala	1977	1977	CA	\$ 810.00	0.50	405.00
Partner	Nate McKittick	1989	1989	CA	\$ 780.00	0.60	474.00
Partner	Richard Yankeiwich	1979	1979	CA	\$ 760.00	39.40	30,732.00
Partner	Ana Lawton	1989	1989	CA	\$ 755.00	50.30	68,176.50
Of Counsel	Jennifer S. Baldocchi	1983	1983	CA	\$ 755.00	152.40	115,062.00
Of Counsel	James K.T. Hunter	1976	1976	CA	\$ 745.00	0.10	74.50
Of Counsel	James K.T. Hunter	1976	1976	CA	\$ 745.00	4.00	2,980.00
Partner	John D. Fiero	1989	1989	CA	\$ 745.00	50.80	37,846.00
Senior Counsel	Edward P. Christian	1985	1985	CA	\$ 725.00	2.60	1,885.00
Partner	Samuel R. Malzel	1985	1985	CA	\$ 725.00	40.90	29,632.50
Partner	Bruce Grohschal	1983	1984	CA	\$ 725.00	11.10	8,077.50
Partner	Heather Dunn	2000	2000	CA	\$ 705.00	1.30	916.50
Partner	Lance N. Jurth	1987	1987	CA	\$ 695.00	1.90	1,320.50
Associate	Jessica Bullock	2003	2003	CA	\$ 695.00	21.10	14,684.50
Counsel	Ellen Sueda	1983	1983	CA	\$ 675.00	2.40	1,632.00
Of Counsel	Henry Hochman	1987	1987	CA	\$ 675.00	16.50	10,462.50
Partner	Max C. Fischer	1985	1985	CA	\$ 675.00	18.10	12,217.50
Partner	Jeffrey D. Karsonson	1988	1988	CA	\$ 650.00	12.70	8,255.00
Partner	Christopher W. Campbell	1989	1989	CA	\$ 650.00	46.20	30,030.00
Of Counsel	Ben Gibson	2002	2002	CA	\$ 640.00	3.10	1,984.00
Associate	Bertrand Pan	2004	2004	CA	\$ 630.00	170.00	107,100.00
Partner	Colleen M. Regan	1985	1985	CA	\$ 620.00	1.50	930.00
Of Counsel	Jeffrey Kamel	1984	1984	CA	\$ 615.00	0.50	307.50
Partner	Malhar S. Pargy	1984	1987	CA	\$ 615.00	1.60	1,107.00
Partner	Scott McFarland	1980	1980	CA	\$ 615.00	47.80	29,337.00
Associate	Melinda A. Gordon	2009	2009	CA	\$ 615.00	31.10	19,126.50
Of Counsel	Mary Lane	1976	1976	CA	\$ 595.00	3.90	2,261.00
Partner	Nina Hong	1986	1986	CA	\$ 595.00	0.90	535.50
Of Counsel	Gabriele Rohrer	1997	1997	CA	\$ 595.00	5.20	3,094.00

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Of Counsel	Pachulski Stang Ziehl Young Jones & Weintraub	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
William Ramseyer	Paul Hastings LLP	2007	2008	CA	\$ 775.00	191.70	104,477.50
Robert E. Zivner	Tony's LLP	2007	2007	CA	\$ 555.00	110.00	62,150.00
Adam Siverts	Loeb & Loeb	2007	2007	CA	\$ 550.00	122.30	67,265.00
Ryan M. Aulich	Seyfarth Shaw LLP	1997	1997	CA	\$ 40.00	56.60	30,854.00
Holger Basch	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2010	CA	\$ 525.00	31.00	16,275.00
John W. Lucas	DLA Piper LLP	2008	2008	CA	\$ 510.00	87.00	34,170.00
Diana M. Malzer	Tony's LLP	2008	2008	CA	\$ 500.00	0.50	250.00
Madhew Akoy	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2008	CA	\$ 495.00	8.40	4,158.00
Teddy M. Kumar	Paul Hastings LLP	2009	2009	CA	\$ 485.00	87.10	42,243.00
Liam M. Paez	DLA Piper LLP	2011	2011	CA	\$ 470.00	1.80	846.00
Natasha Hsieh	Sidley Austin LLP	2010	2010	CA	\$ 450.00	117.50	53,055.00
Michael T. Gustafson	Gibson Dunn & Crutcher, LLP	2010	2010	CA	\$ 445.00	19.20	8,544.00
Virginia FRI	Loeb & Loeb	1993	1993	CA	\$ 435.00	18.20	7,917.00
Jeanne C. Wanlass	Kornfield, Nyberg, Bendes & Kuhner, P.C.	1987	1987	CA	\$ 425.00	16.90	7,182.50
Eric A. Nyberg	DLA Piper LLP	2000	2000	CA	\$ 400.00	4.10	1,640.00
Tina Bhattachali	Gibson Dunn & Crutcher, LLP	2011	2011	CA	\$ 395.00	12.60	4,977.00
Matthew Bourisog	Paul Hastings LLP	2010	2010	CA	\$ 385.00	97.00	37,545.00
Ji Hae Kim	Paul Hastings LLP	2010	2010	CA	\$ 385.00	160.20	61,677.00
Marlo C. Ortega	Sidley Austin LLP	2011	2011	CA	\$ 355.00	41.00	14,555.00
Francis S. Lum	Tony's LLP	2000	2000	CA	\$ 305.00	0.80	264.00
Clare Mauro	Tony's LLP	2000	2000	CA	\$ 305.00	43.90	13,389.50
Bradley Tordick	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 285.00	1.10	324.50
Leslie A. Forrester	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 275.00	23.00	6,325.00
Paraprofessional Felicia Harrison	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	2.50	662.50
Paraprofessional Patricia Cuniff	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	7.70	2,040.50
Paraprofessional Louise Tuzchak	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	1.00	265.00
Paraprofessional Cheryl A. Krotz	Loeb & Loeb	2000	2000	CA	\$ 260.00	0.20	52.00
Paraprofessional S. Steadman	Tony's LLP	2000	2000	CA	\$ 260.00	28.20	7,332.00
Paraprofessional Dianna Rajah	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	5.40	595.00
Case Manager Sharita Filman	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	0.40	74.00
Case Manager Dina K. Whaley	Kornfield, Nyberg, Bendes & Kuhner, P.C.	2000	2000	CA	\$ 80.00	0.30	24.00
Paraprofessional Nancy L. Nyberg							

Exhibit 3

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

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

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

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

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

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

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: GIC834348

CLASS ACTION

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

Date: December 12, 2014

Time: 1:30 p.m.

Dept.: C-69

Judge: Hon. Katherine A. Bacal

Complaint Filed: August 16, 2004

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

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

11 **Professional Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **Court Awards**

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **2014**

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

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

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

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

Whatley Kallas

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

Consumer Watchdog

35	\$925
19	650
4	425

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

Partners: \$775-350

Associates: \$525-325

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

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

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

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

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

11 **2013 Rates**

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

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

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

hourly rates reasonable:

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

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

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

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

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

2012 Rates

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

Zelle Hofman

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

Steyer, Lowenthal et al.

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

Cooper & Kirkham

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

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

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

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

1 rates reasonable:

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

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

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

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

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

2000	570
2001	550
2002	520
Law Clerks	250
Paralegals	215

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

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

2011 Rates

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

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

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

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

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

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

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

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

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

23 **2010 Rates**

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

2010 hourly rates reasonable:

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

Rate Information from Surveys

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

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

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

Altshuler Berzon LLP**

Paralegals	215
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Arnold Porter LLP

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

The Arns Law Firm LLP **

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

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

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

Bingham McCutchen

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

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

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

Blood Hurst & O'Reardon *, **

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

Blood Hurst & O'Reardon*, **

6	510
5	410
1	305
Paralegals	260

Burson & Fisher**

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

Chavez & Gertler*

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

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

Coblentz Patch & Duffy

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

Cohelan Khoury & Singer

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

Cooper & Kirkham

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

Covington Burling

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

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

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

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

Covington Burling

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

Farella Braun & Martell LLP

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

Fenwick & West

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

Furth Firm LLP**

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

Furth Firm LLP**

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

Gibson Dunn & Crutcher LLP

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

Goldstein, Borgen, Dardarian & Ho**

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

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

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

Goldstein, Borgen, Dardarian & Ho**

30	700
24	650
18	600
17	600
16	550

2010 Rates:

Years of Experience Rate

Partners

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

Of Counsel

40	725
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Associates

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

Law Clerks

Paralegals	195
	150-225

Greenberg, Traurig, LLP

2010 Rates:

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

Greines, Martin, Stein & Richland

2012 Rates:

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

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

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

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

Hausfeld LLP**

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

Irell & Manella

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

1 **Janssen Malloy LLP**

2 **2014 Rates:**

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

4 **Jones Day**

5 **2013 Rates:**

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

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

10 **2013 Rates:**

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

15 **Keker & Van Nest, LLP**

16 **2010 Rates:**

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

20 **Kemnitzer, Barron & Krieg**

21 **2014 Rates:**

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

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

27 **2012 Rates:**

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

Kiesel, Boucher, Larson LLP *, **

Associates 625-325

Kingsley & Kingsley**

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

Kirkland & Ellis

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

Knapp, Petersen & Clarke

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

Knobbe Martin Olson & Bear LLP

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

Latham & Watkins

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

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

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

Litt, Estuar, & Kitson, LLP**

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

Manatt, Phelps & Phillips

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

McKenna Long & Aldridge LLP

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

McKenna Long & Aldridge LLP

5	420
Litigation Support Mgr.	350
Paralegals	225

Minami Tamaki LLP

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

Morrison Foerster LLP

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

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

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

O'Melveny & Myers

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

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

Patton Boggs

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

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

Pillsbury Winthrop Shaw Pittman LLP

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

Quinn Emanuel Urquhart & Sullivan

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

Quinn Emanuel Urquhart & Sullivan

Highest Associate	675
Lowest Associate	320

Reed Smith LLP

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

Robbins Geller Rudman & Dowd LLP *, **

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

Rosen, Bien, Galvan & Grunfeld LLP

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

Rosen, Bien, Galvan & Grunfeld LLP

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

2012 Rates:

Years of Experience **Rate**

Partners

50	\$860
32	760
28	640
15	610

Of Counsel

29	570
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Associates

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

Paralegals	215-280
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Litigation Support/ Paralegal clerk	150
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Law Clerk/Students	240
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Word Processing	80
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2011 Rates:

Years of Experience **Rate**

Partners

49	\$840
31	740
27	625
14	590

Of Counsel

28	540
----	-----

Associates

18	525
11	465
10	450

Rosen, Bien, Galvan & Grunfeld LLP

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

2010 Rates:

Years of Experience Rate

Partners

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

Associates

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

Rudy, Exelrod, Zieff & Lowe LLP

2010 Rates:

Years of Experience Rate

Partners

42	\$725
32	725

Rudy, Exelrod, Zieff & Lowe LLP

15	625
Associates	
21	495
13	485
8	450

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

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

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

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

Sheppard, Mullin, Richter & Hampton

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

Sidley Austin

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

Skadden, Arps, Slate, Meagher & Flom

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

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

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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)

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

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

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

RICHARD M. PEARL

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

PUBLIC SERVICE

Member, Attorneys' Fee Task Force, California State Bar

Chairperson, Board of Directors, California Rural Legal Assistance Foundation

REPRESENTATIVE REPORTED CASES

Alcoser v. Thomas

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

Boren v. California Department of Employment

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Cabrera v. Martin

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Camacho v. Bridgeport Financial, Inc.

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

Campos v. E.D.D.

(1982) 132 Cal.App.3d 961

Center for Biological Diversity v. County of San Bernardino

(2010) 185 Cal.App.4th 866

Committee to Defend Reproductive Rights v. A Free Pregnancy Center

(1991) 229 Cal.App.3d 633

David C. v. Leavitt

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

Delaney v. Baker

(1999) 10 Cal.4th 23

Employment Development Dept. v. Superior Court (Boren)

(1981) 30 Cal.3d 256

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

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

Center for Biological Diversity

(2010)

Center for Biological Diversity

RICHARD M. PEARL

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Flannery v Prentice

(2001) 26 Cal. 4th 572

Graham v. DaimlerChrysler Corp.

(2004) 34 Cal. 4th 553

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

(2005) 132 Cal.App.4th 359

Ketchum v. Moses

(2001) 24 Cal.4th 1122

Kievlan v. Dahlberg Electronics

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

Lealao v. Beneficial California, Inc.

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RICHARD M. PEARL

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McSomebodies v. San Mateo City School Dist.
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Molina v. Lexmark International
(2013) 2013 Cal.App. Unpub. LEXIS 6684

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(9th Cir. 2007) 2007 U.S. App. LEXIS 19597

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

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

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

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

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(E.D. Cal 1975) 389 F.Supp. 635

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(1989) 213 Cal. App. 3d 231

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RICHARD M. PEARL

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and revs'd in part sub nom Davis v. City and County
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(9th Cir. 2007) 2007 U.S. App. LEXIS 2194

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Furnished upon request.

September 2014

Furnished upon request

10/1/2011

EXHIBIT B

LAFFEY MATRIX

History

Easy Link

Expert Opinion

See the Matrix

Contact us

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Link

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

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

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

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

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

EXHIBIT C

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

The National Law Journal

January 13, 2014 Monday

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**THE NATIONAL
LAW JOURNAL**

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

Length: 1860 words

Byline: KAREN SLOAN

Body

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

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

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

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

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

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

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

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

Richard Pearl

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

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

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

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

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

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

THE ROLE OF GEOGRAPHY

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

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

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

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

BILLING SURVEY METHODOLOGY

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

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

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

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

Richard Pearl

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

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

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

Billing Rates at the Country's Priciest Law Firms

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

Billing Rates at the Country's Priciest Law Firms

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

Richard Pearl

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

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

Richard Pearl

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

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

THE FOUR-FIGURE CLUB

These 10 firms posted the highest partner billing rates.

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

THE FOUR-FIGURE CLUB

Contact Karen Sloan at ksloan@alm.com

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

2011-2012

2011-2012

2011-2012

2011-2012

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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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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."

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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9/18/2013

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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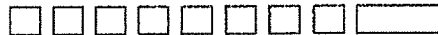
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Exhibit 5

MARA LAW FIRM, PC, SUMMARY OF TIME AND COSTS

Francisco Ramirez v. Messer LLC

Stanislaus County Superior Court, Case Number CV-23-002006

Total Attorneys' Hours: 240

Total Lodestar Fees: \$168,950

Total Litigation Expenses: \$18,765.04

ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara, Esq.	2004	119	\$850	\$101,150
Jill Vecchi, Esq.	2014	97	\$600	\$58,200
Carter Cordura, Esq.	2024	24	\$400	\$9,600
TOTAL:				\$168,950

LITIGATION EXPENSES	
MARA LAW FIRM, PC	\$18,765.04
TOTAL COSTS	\$18,765.04

Exhibit 6