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12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 DUANE WATERS, DEBRA TURNER )  
 16 and RUDY FAJARDO, on behalf of )  
 themselves, all others similarly situated )  
 17 and the general public, )  
 18 Plaintiffs, )  
 19 vs. )  
 20 AT&T SERVICES, INC. (formerly SBC )  
 Services, Inc.) and DOES 1 through 10; )  
 21 Defendants. )

Case No: CV 09-3983 BZ

DECLARATION OF BARRETT S. LITT IN  
 SUPPORT OF MOTION FOR FINAL  
 APPROVAL OF CLASS ACTION  
 SETTLEMENT AND MOTION FOR  
 AWARD OF ATTORNEYS' FEES, COSTS,  
 CLAIMS ADMINISTRATION EXPENSES  
 AND CLASS REPRESENTATIVE  
 ENHANCEMENTS

Date: February 9, 2011  
 Time: 10:00 a.m.  
 Courtroom: G

1 I, BARRETT S. LITT, declare:

2 **BACKGROUND**

3 1. This declaration is submitted in support of Plaintiffs' Motion for an  
4 Order Approving Award of Attorneys Fees. The facts set forth herein are within my  
5 personal knowledge or knowledge gained from review of the pertinent documents. If  
6 called upon, I could and would testify competently thereto.

7 2. I am a partner in the law firm of Litt, Estuar, and Kitson, LLP. For the  
8 seven years before the formation of my current firm, I was the principal in the law  
9 firm of Litt & Associates, Inc., in which the partners in my current firm were trained.  
10 From September 1, 1991 to May 1, 1997, when my then partner left the law firm to  
11 become Deputy General Counsel for Civil Rights at the federal Department of  
12 Housing and Urban Development, I was a partner at the firm of Litt & Marquez. For  
13 the seven years prior to that, I was a partner in the firm of Litt & Stormer, Inc. The  
14 facts set forth herein are within my personal knowledge or knowledge gained from  
15 review of the pertinent documents. If called upon, I could and would testify to those  
16 facts in a court of law.

17 3. I am an attorney duly licensed to practice in the State of California and in  
18 the Central District of California. I graduated from the University of California at  
19 Berkeley in 1966 and from UCLA Law School in 1969. For the first approximately  
20 ten years of my practice, I focused primarily in the area of criminal defense at the trial  
21 and appellate levels, mostly in the federal courts. In that capacity, I handled hundreds  
22 of matters, tried many cases ranging from immigration offenses to murders, and  
23 handled numerous appeals. For the past approximately 30 years, I, as well as the firms  
24 in which I have been a principal or partner, have focused primarily on complex civil  
25 litigation in the areas of constitutional law, civil rights law, class action litigation, and  
26 complex multi-party litigation.  
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1           4.     My current and former firms listed in ¶2 all operated for the specific  
2 purpose of developing and maintaining a civil rights and public interest law practice  
3 which operates in the private sector on the basis of self-generated fee awards and other  
4 recoveries. Nearly all of the work of my past and present firms falls into this category.  
5 Litt & Stormer received the Pro Bono Firm of the Year Award from Public Counsel in  
6 1987 in recognition of its public interest and civil rights work. Litt & Marquez  
7 received an award from the NAACP Legal Defense Fund in July, 1992, as civil rights  
8 firm of the year in recognition of its civil rights work, primarily for litigation I headed  
9 regarding the LAPD's canine unit. I received an award from UCLA School of Law as  
10 its public interest alumnus of the year in 1995. I am rated "AV" by Martindale-  
11 Hubbell and am listed as a "Superlawyer" in Southern California in the field of civil  
12 rights.

13           5.     I am rated "av" by Martindale-Hubbell. I am listed in Super Lawyers  
14 Southern California in the field of civil rights.

15           6.     Class actions in which I have been the, or one of the, lead class counsel  
16 include:

- 17           ❖ *Craft v. County of San Bernardino*, No. EDCV05-0359 SGL (C.D. Cal.) (jail  
18 strip search class action settled for \$25.5 Million; class certified and partial  
19 summary judgment for plaintiffs granted; final approval hearing set for March  
20 31, 2008);
- 21           ❖ *Williams v. Block*, No. CV-97-03826-CW (C.D. Cal.) and related cases (a  
22 series of cases county jail overdetention and strip search class actions, settled  
23 for \$27 Million and a complete revamp of jail procedures);
- 24           ❖ *Multi-Ethnic Immigrant Workers Organizing Network v. City of Los Angeles*,  
25 246 F.R.D. 621 (C.D. Cal. 2007) (certified class action for police break-up of  
26 May Day 2007 march recently settled for \$12.85 million);
- 27  
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- 1 ❖ *Bynum v. District of Columbia*, No. 02-956 (RCL) (D.D.C.) (class action  
2 against the District of Columbia for overdetections and blanket strip searches  
3 of persons ordered released from custody; final approval of \$12,000,000  
4 settlement occurred January 2006);
- 5 ❖ *Lopez v. Youngblood*, 609 F. Supp. 2d 1125 ((E.D. Cal. 2009) (settlement in  
6 principle in October 2010 for putative class fund of approximately \$7 Million  
7 for inmates strip searched after becoming entitled to release, and strip  
8 searched in groups, subject to preliminary and final court approval);
- 9 ❖ *Ofoma v. Biggers*, No. 715400 (Complex Litigation Panel) (Orange County  
10 Superior Court) (family discrimination class action settled in 1996 for  
11 damages for the individual plaintiffs and the class of residents, a consent  
12 decree and an award of attorneys' fees);
- 13 ❖ *Avelar, et al. v. Hilton Hotels Corporation*, No. BC 342499 (Los Angeles  
14 Superior Court) (class action filed on behalf of employees and former  
15 employees of the Hilton Los Angeles North/Glendale & Executive Meeting  
16 Center; settlement of \$950,000);
- 17 ❖ *Gail Marie Harrington-Wisely, et al. v. State of California, et al.*, No. BC  
18 227373 (Los Angeles Superior Court) (class action involving searches of  
19 visitors to California prisons without reasonable suspicion; stipulated  
20 injunction entered);
- 21 ❖ *People of the State of California v. Highland Federal Savings and Loan*, No.  
22 CA 718 828 (Los Angeles Superior Court) (class action filed on behalf of the  
23 People of the State of California and a class of tenants residing in several  
24 slum buildings located in Los Angeles for financing practices encouraging  
25 and perpetuating slum conditions, settled for \$3.165 million after decision in  
26 *People v. Highland*, 14 Cal.App.4<sup>th</sup> 1692, 19 Cal. Rptr. 555 (1993)  
27 established potential liability for lenders);  
28

- 1 ❖ *Hernandez v. Lee*, No. BC 084011 (Los Angeles Superior Court) (class action  
2 on behalf of tenants of numerous buildings for slum conditions settled in 1998  
3 for \$1,090,000);
- 4 ❖ *Mould v. Investments Concept, Inc.*, No. CA 001 201 (Los Angeles Superior  
5 Court) (race discrimination class action on behalf of a class of applicants and  
6 potential housing applicants, settled in 1992 for a total of \$850,000 for the  
7 class and a comprehensive consent decree regarding the defendants'  
8 discriminatory policies and practices); and
- 9 ❖ *California Federation of Daycare Association v. Mission Insurance Co.*, No.:  
10 CA 000 945 (Los Angeles Superior Court) (class action on behalf of several  
11 thousand family daycare providers whose daycare insurance policies were  
12 canceled mid-term or were not renewed by Mission Insurance Company,  
13 settled in 1980's for reinstatement of policies and attorneys' fees; brought at  
14 request of Public Counsel);
- 15 ❖ *Solis v. County of Los Angeles*, No. CV06-1135 SVW (CTx) (C.D. Cal.)  
16 (pending class action for strip searches of new arrestees bound over after first  
17 court appearance without individualized suspicion and group strip searches;  
18 motion for summary judgment pending);
- 19 ❖ *Davis v. Baca*, No. CV 04-8251 AHM (C.D. Cal.) (currently pending class  
20 action for failing to stop the spread of MRSA in Los Angeles County Jail;  
21 case filed and in early mediation talks);
- 22 ❖ *Johnson v. District of Columbia*, No. 02-2364 (RMC) (D.D.C.) (pending  
23 class action against the District of Columbia and United States Marshals for  
24 blanket strip searches of arrestees without reasonable suspicion and not  
25 involved in drug or violent activity);
- 26 ❖ *Powell v. Barrett*, No. 1:04-cv-1100 (N.D. Ga.)(RWS) (pending class action  
27 against the Sheriff of Fulton County, Fulton County, and the City of Atlanta,  
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1 Georgia, for overdetections and blanket post-release strip searches of  
 2 arrestees and persons ordered released from custody; interlocutory appeal  
 3 presently pending before the 11<sup>th</sup> Circuit en banc);

4 ❖ *Jones v. Murphy*, No. CCB 05 CV 1287 (D. Maryland) (pending class action  
 5 challenging overdetections and illegal strip searches in Central Booking in  
 6 Baltimore, Maryland);

7 ❖ *Nozzi v. Housing Authority of the City of Los Angeles*, CV 07-00380 GW  
 8 (C.D. Calif.) (class action against the Housing Authority for violations of due  
 9 process and federal regulations by failing to provide proper notice of Section  
 10 8 rent increase affecting approximately 22,000 tenants; summary judgment  
 11 granted defendants; appeal pending);

12 ❖ *Salazar v. Schwarzenegger*, No. CV 07-1854 SJO (VBKx) (C.D. Cal.)  
 13 (pending class action to certify statewide Plaintiffs' and Defendants' classes  
 14 to enjoin, and provide restitution or damages for, seizing and impounding  
 15 vehicles pursuant to *California Vehicle Code Section 14602*; summary  
 16 judgment granted defendants; appeal pending).

17 7. Individual or multi-plaintiff civil rights cases in which I have been the, or  
 18 one of the, lead class counsel, going back to the late 1980's, include:

19 ❖ *McClure v. City of Long Beach*, No. CV-92-2776-E (C.D. Cal.) (fair housing  
 20 and equal protection case against City of Long Beach and its agents for  
 21 preventing six group homes for Alzheimer's victims from opening; jury  
 22 verdict of \$22.5 Million (reduced on remittitur to \$13,826,832) plus  
 23 approximately \$10,000,000 in attorneys' fees and costs, settled in 2005);

24 ❖ *Goldstein v. City of Long Beach, et al.*, Case No. 04-CV-9692 AHM (Ex)  
 25 (C.D. Cal.) (wrongful conviction case against Long Beach Police Department  
 26 based on violation of *Brady v. Maryland* for man imprisoned for 24 years;  
 27 \$7.95 Million settlement in August 2010);  
 28

- 1 ❖ *U.S. v. Hovsepian*, 359 F.3d 1144, 1147 (9th Cir. 2004) (en banc) (successful  
2 action to naturalize individuals previously convicted of conspiracy to bomb  
3 Turkish consulate in Philadelphia), *aff'd* after remand, 422 F.3d 883 (9/6/05);
- 4 ❖ *Walker v. City of Lakewood*, 263 F.3d 1005 (9th Cir. 2001) (reversing district  
5 court decision dismissing fair housing organization's claim against city for  
6 retaliation for supporting tenants suing landlord; case subsequently settled for  
7 structural relief, damages and attorney's fees);
- 8 ❖ *Hospital and Service Employees Union, SEIU Local 399, AFL-CIO v. City of*  
9 *Los Angeles* (Los Angeles Superior Court) (settlement in 1993 of \$2.35  
10 million against the Los Angeles Police Department for injuries to 148  
11 demonstrators at Century City organized by the Justice for Janitors campaign  
12 of SEIU);
- 13 ❖ *Rainey v. County of Ventura*, No. 96 4492 LGB (C.D. Cal.) (action against  
14 County of Ventura for race discrimination on behalf of 12 police officers,  
15 settled for damages, structural relief and attorneys' fees);
- 16 ❖ *Lawson v. City of Los Angeles*, No.: BC 031 232 (Los Angeles Superior  
17 Court) (lawsuit filed in 1991 on behalf of individuals who had been subject to  
18 what we alleged were unlawful use of force practices by the Los Angeles  
19 Police Department's Canine Unit, settled in 1995 for \$3.6 million and  
20 comprehensive structural relief);
- 21 ❖ *Tipton-Whittingham v. City of Los Angeles*, No. CV-94-3240 (TH) (C.D. Cal.)  
22 (sex discrimination and harassment suit against the Los Angeles Police  
23 Department, involving over 25 individual officers, as a result of which the  
24 Department has completely revamped its anti-discrimination policies and  
25 procedures; damages claims settled for \$4.85 million in 2004 in addition to a  
26 separate fee award of nearly \$2 million in 2000 for injunctive relief, resulting  
27 in decision in *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4<sup>th</sup> 604  
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1 (2004), in which the California Supreme Court upheld catalyst fees under  
2 California law);

- 3 ❖ *Tavelman v. City of Huntington Park* (individual employment discrimination  
4 case against the City on behalf of a Jewish police officer who had been  
5 subjected to a campaign of religious harassment, which was settled in mid  
6 '90's for \$350,000);
- 7 ❖ *Hampton v. NRG* (racial harassment in employment claim; jury verdict of \$1  
8 million for two former employees, plus award of attorneys' fees and costs;  
9 settled in mid-'90's while on appeal);
- 10 ❖ *Ware v. Brotman Medical Center* (Los Angeles Superior Court) (1993 \$2.5  
11 million jury verdict against hospital for removal of hospital privileges of  
12 black doctor; settled for \$1.75 million);
- 13 ❖ *Mathis v. PG&E* (1991 \$2 million verdict against PG&E for barring contract  
14 employee from Diablo Canyon Nuclear Power Plant; reversed by the Ninth  
15 Circuit);
- 16 ❖ *Zuniga v. Los Angeles Housing Authority*, 41 Cal.App.4<sup>th</sup> 2 (1995) (holding  
17 that the Housing Authority could be held responsible for injuries to tenants  
18 after the Housing Authority was put on notice that tenants were being  
19 victimized on the premises and took no reasonable measures to prevent the  
20 injury; case settled for \$1,040,000);
- 21 ❖ *Macias v. State of California* (Los Angeles Superior Court) (action against the  
22 State of California and others for blinding of young man as a result of  
23 exposure to malathion spray, a portion of which was decided in *Macias v.*  
24 *State of California*, 10 Cal.4<sup>th</sup> 844 (1994);
- 25 ❖ *PIN v. HACLA*, No CV-96-2810 RAP (RNBx) (action against the Housing  
26 Authority of the City of Los Angeles on behalf of several hundred present or  
27 former tenants for discrimination by failing to provide adequate security for  
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1 isolated minorities in housing developments, settled in 1998 for \$1.3 Million  
2 plus a comprehensive structural relief settlement agreement);

3 ❖ *Melgar v. Klee* (Los Angeles Superior Court) (1988 \$1.5 million jury verdict  
4 against Los Angeles Police Department for police shooting; settled for \$1.45  
5 million);

6 ❖ *Heidy v. United States Customs Serv.*, 681 F.Supp. 1445 (C.D. Cal. 1988)  
7 (injunction against U.S. Customs Service for policies and practices of seizing  
8 materials from persons traveling from Nicaragua in violation of the First  
9 Amendment); and

10 ❖ *Hernandez v. Avol* (Los Angeles Superior Court 1985) (action on behalf of  
11 approximately 350 slum housing residents, settled in 1988 for a  
12 comprehensive injunction and \$2.5 million damages, plus a separate award of  
13 attorneys' fees).

14 8. As my case list demonstrates, I have been involved with, and successful  
15 in, a wide range of civil rights cases, with a strong emphasis on class actions. Because  
16 I have only played an advisory role on wage and hour class actions handled by my  
17 firm, they are not listed on my case list. However, my firm handles wage and hour  
18 class actions, I am familiar with such cases, and I have provided declarations  
19 regarding attorney's fees previously.

20 9. I have both spoken and written on the subject of civil rights training. A  
21 few years ago, I published an article entitled "Class Certification in Police/ Law  
22 Enforcement Cases" in *Civil Rights Litigation and Attorney's Fee Annual Handbook*,  
23 Vol. 18, Ch. 3 (West Publishing 2002). I recently published an article in the *Los*  
24 *Angeles Lawyer* regarding the use of minimum statutory damages under the Unruh  
25 Act, particularly actions brought under Civil Code §52.1, to enhance the prospects for  
26 certifying class actions. See *Rights for Wrongs*, Los Angeles Lawyer December 2005.  
27 I also recently published a lengthy article on substantive legal issues suitable for class  
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1 action treatment, which included discussion of a variety of strip search issues, as well  
2 as over-detention and medical care issues, which was distributed to Plaintiffs' police  
3 abuse lawyers nationwide.

#### 4 **ATTORNEY'S FEE EXPERTISE**

5 10. I am considered an expert in, among other things, attorneys' fees in civil  
6 rights cases. I have filed declarations on numerous occasions expressing expert  
7 opinions on the appropriate standards for awards of attorneys' fees in civil rights  
8 cases, which have been accepted by the courts. In the State Bar proceeding *In re*  
9 *Yagman*, I was qualified as an expert in attorneys' fees under 42 U.S.C. Section 1988  
10 and testified on whether or not Mr. Yagman's fee arrangement in a police shooting  
11 case was or was not unconscionable, as the State Bar contended in that case. I was  
12 also qualified recently as a fee expert for Plaintiffs in a civil rights case that was  
13 settled, with the fees to be decided by a retired judge at an arbitration; in that case, I  
14 qualified and testified as an expert in attorneys' fees under state civil rights statutes.  
15 (Because the settlement was confidential, I can only describe the court's comments  
16 about me, but not the parties, issues or judge: Mr. Litt is "a prominent Los Angeles  
17 civil rights litigator experienced in fee issues arising from public interest litigation,"  
18 whose "testimony ... was credible and reliable; he has had a wide exposure to fees at a  
19 number of major firms in Los Angeles doing complex civil litigation. The arbitrator  
20 accepts his opinion that the fees of claimant counsel here are at the low end of that  
21 market.") In another recent case in which I wrote a fee declaration on behalf of  
22 Plaintiffs, *Atkins v. Miller*, CV No. 01-10574 DPP (C.D. Cal.), Judge Pregerson relied  
23 in part on a declaration from me regarding fees for complex civil rights litigation in  
24 the Los Angeles area in awarding hourly rates up to \$675 per hour. I have on  
25 occasion represented other attorneys in their fee litigation seeking statutory attorneys'  
26 fees.  
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1           11. The next annual edition of West’s *Civil Rights Litigation and Attorney’s*  
2 *Fee Annual Handbook* will contain an article I recently authored, entitled, “Obtaining  
3 Class Attorney’s Fees”, in which many of the points I make in this declaration are  
4 discussed.

5           12. My qualifications have been noted by various courts or opposing experts.  
6 Following are a few examples:

- 7           a. Kenneth Moscaret, a well known defense fee auditor, recently stated  
8 in a declaration where he addressed my qualifications that I had “an  
9 outstanding background and reputation in civil rights/constitutional  
10 litigation in Los Angeles”, that I was “one of the top litigators in [my]  
11 field” and that he believed that my “skill, experience, and reputation  
12 in his field are deserving of a premium rate” (although he thought a  
13 premium rate was lower than I do).
- 14           b. Magistrate Judge Carla Woehrle, in awarding attorneys’ fees in  
15 *Williams v. Block, supra*, commented that I am “considered one of the  
16 outstanding civil rights litigators in California, with special expertise  
17 in class actions, [and] the other attorneys involved in this litigation on  
18 behalf of the class are highly regarded, experienced and capable civil  
19 rights attorneys....”
- 20           c. United States District Judge Stephen Larson, in awarding attorneys’  
21 fees in *Craft v. County of San Bernardino, supra*, commented that  
22 “Plaintiffs’ counsel are experienced civil rights litigators who are at  
23 the top of their field of expertise – civil rights litigation with special  
24 expertise in civil rights class actions.”
- 25           d. United States District Judge Consuela B. Marshall, in awarding  
26 attorney’s fees in *Gamino v. County of Ventura*, CASE NO. CV-02-  
27 9785 CBM (Ex), stated, “Mr. Litt is widely known as one of the  
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1 foremost civil rights attorneys in California, having a particular  
2 expertise in civil rights class actions and other complex multi-party  
3 civil rights cases, especially law enforcement class actions.”

4 **THE INSTANT WATERS V. AT&T CASE.**

5 13. Plaintiffs’ counsel has provided me the following information regarding  
6 the *Waters et. al. v. AT&T et al* case:

7 a. Plaintiffs Duane Waters and Debra Turner, formerly employed as  
8 Senior Analysts (also known as Sr. IT Analysts) with AT&T Services, filed this  
9 class action complaint on August 27, 2009 in the United States District Court  
10 for the Northern District of California alleging violations of both California law  
11 and the Fair Labor Standards Act (“FLSA”). On September 16, 2009, Plaintiffs  
12 filed a First Amended Complaint which added Rudy Fajardo, a former Senior  
13 Database Administrator, as a named plaintiff. Defendant filed its Answer to the  
14 First Amended Complaint on October 28, 2009 in which it denied Plaintiffs’  
15 claims and asserted numerous affirmative defenses.

16 b. Plaintiffs worked as computer support/repair technicians, known as  
17 Senior Analysts and Senior Database Administrators, for Defendants. The gist  
18 of Plaintiffs’ Complaint was that they and other similarly situated employees  
19 were misclassified as exempt from California and federal overtime law, when in  
20 fact they were non-exempt.

21 c. Plaintiffs sought overtime compensation, waiting-time penalties,  
22 premiums for missed meal periods and rest breaks, interest, and attorneys’ fees  
23 and expenses. AT&T maintained that it properly classified Senior Analysts and  
24 Senior Database Administrators as exempt, denied liability, and denied further  
25 that plaintiffs or the class sustained any loss or is entitled to any recovery.  
26 AT&T contended that class certification was likely to be denied because of,  
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1 among other things, the disparate nature of the job duties of the putative class  
2 members.

3 d. Plaintiffs' counsel sent out a comprehensive survey to each  
4 putative class member in order to further their investigation into the liability  
5 and damages. Class counsel spoke to and had email exchanges with dozens of  
6 class members to further clarify information pertaining to the case. Class  
7 counsel retained an economist to analyze the data that was contained in the  
8 surveys in order to ascertain the potential damages involved to the class.

9 e. The parties agreed to submit this matter to mediation before Mark  
10 Rudy of Rudy, Axelrod, Zieff and Lowe, an experienced mediator who has  
11 successfully resolved numerous wage-and-hour class action cases. The  
12 mediation took place on May 12, 2010, in Los Angeles. At the conclusion of  
13 the mediation, the parties were at an impasse. Thereafter, Mr. Rudy proposed a  
14 mediator's compromise to resolve this case and gave each side one week to  
15 consider the proposal. On May 19, 2010, Mr. Rudy informed both sides that his  
16 proposal had been accepted.

17 f. The Settlement provides that AT&T will pay up to \$17,000,000 to  
18 settle the claims of Plaintiffs and the class for damages and to pay Plaintiffs'  
19 class representative payment (which the parties have agreed will be \$25,000),  
20 class counsel's attorneys' fees (which the parties have agreed will be 30% of  
21 the \$17,000,000) and their expenses and costs; the settlement administrator's  
22 fees related to the Settlement (the parties have selected CPT Group to be the  
23 settlement administrator); the LWDA's share of the settlement of penalties  
24 (which the parties agreed should be \$35,000); and the employer's share of taxes  
25 on the settlement shares.  
26

27 14. I consider the outcome in this case to be an excellent result in a risky case  
28 for the following reasons (based on information provided by class counsel):

1           a.     Plaintiffs' counsel took this case on a purely contingent fee basis  
2 and, had they been unsuccessful, they would have received no compensation.

3           b.     At the time Plaintiffs' took this case, AT&T contended that the  
4 computer technicians, who held job titles such as Senior Database  
5 Administrator and Senior IT Analyst, were highly skilled professionals who  
6 exercised a great degree of discretion on matters of significance and were  
7 therefore exempt from overtime requirements under the administrative  
8 exemption. Defendant also asserted that the putative class members, did not all  
9 perform the same job duties or handle the same types of issues or problems.  
10 Accordingly Plaintiffs would have had to overcome the argument of Defendant  
11 that Plaintiff did not meet the typicality and commonality requirements of class  
12 certification. Plaintiffs' counsel only had access to very limited documents  
13 before filing suit and therefore had to rely on anecdotal evidence from their  
14 clients (which experience shows often turns out to be inaccurate or only  
15 partially accurate). The risk that the assumptions made going into the case  
16 might prove wrong was significant.

17           c.     Defendant denied and continues to deny any liability or  
18 wrongdoing of any kind and further contends that Defendant has complied with  
19 the California Labor Code, the California Business and Professions Code, the  
20 applicable Industrial Welfare Commission Wage Orders, and similar federal  
21 laws, including but not limited to the federal Fair Labor Standards Act.  
22 Defendant contended that case law supports its position that the employees at  
23 issue are exempt and also that the case would not be certified for a class action  
24 due to the predominance of individualized issues. Defendant contended that the  
25 class members were properly designated as exempt. In particular, this case  
26 involved application of the administrative exemption, which is still a  
27 developing area of the law. For example, a U.S. District Court in California  
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1 recently found that the administrative exemption applied to employees with  
2 arguably similar job duties as the Plaintiffs in this case. *See Heffelfinger v.*  
3 *Electronic Data Systems Corp.*, 580 F. Supp. 2d 933 (C.D. Cal. 2008).  
4 Defendant contended that the *Heffelfinger* case supported its position that the  
5 Class Members were exempt employees. Plaintiffs contend that *Heffelfinger* is  
6 readily distinguishable from this case and instead contend that this case is more  
7 analogous to *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120 (9th Cir. 2001) and  
8 *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363 (2007), in  
9 which the employees were determined to be non-exempt. Nonetheless, the  
10 uncertainty in the law regarding whether the Class Members were non-exempt  
11 is an example of the risks Plaintiffs faced were the parties to engage in lengthy  
12 litigation.

13 d. Plaintiffs' counsel also took the risk that the case may not have  
14 been certified as a class action lawsuit. In any class action, this is a risk.  
15 Generally speaking, there is always substantial risk regarding whether a  
16 damages class will be certified because the plaintiffs must prove that common  
17 issues predominate and that the class action is manageable. This risk is  
18 increased in cases such as this one, not involving easily ascertainable and  
19 calculable economic damages where employees did not keep track of their  
20 overtime because they were informed by the company that they were exempt  
21 employees.

22 e. The stakes in class action litigation are high, and defendants often  
23 have a greater financial stake in fighting the case than in individual liability  
24 cases. The legal issues are usually complex and subject to substantial dispute.  
25 Similarly, establishing the facts often requires significant discovery and  
26 analysis. Discovery disputes are commonplace and class action litigation often  
27 involves a substantial number of contested motions. Even where a case is  
28

1 litigated very efficiently, it is rare that a class action is resolved without a least a  
2 couple of thousand hours being put into it, and often more. In the rare situation  
3 where a case is resolved without intensive litigation, it means that class counsel  
4 have been successful in obtaining an early resolution, which greatly benefits the  
5 class by obtaining expeditious relief for the class.

6 f. In this case, the relief was both fast and substantial. (I distinguish  
7 this situation from one where the class relief is minimal and of limited  
8 economic value, so called "coupon settlements," which often resolve quickly  
9 but without meaningful relief to the class. Here, there was a very substantial  
10 monetary recovery for the class, and it was obtained expeditiously based on  
11 Plaintiffs' counsel negotiating a streamlined discovery process, involving the  
12 development by Plaintiff's counsel of detailed questionnaires which were sent  
13 to ALL putative class members.) I am informed that Class Counsel reviewed  
14 hundreds of responses, including extensive written comments by Class  
15 Members, and conducted numerous interviews with respondents to the  
16 questionnaire over a period of several months.

17 g. Where early resolution does not occur, the same case could result  
18 in thousands of hours, and hundreds of thousands of dollars in costs, being  
19 invested before any resolution.

20 h. Had this case not been successfully resolved, Plaintiffs' counsel  
21 would have been responsible to litigate it to conclusion, including possibly  
22 trying the case. This would have entailed a long trial, with testimony from a  
23 sample of Class Members, numerous management representatives, other  
24 witnesses, and experts including statisticians.

25 i. Class counsel obtained very substantial relief for individual class  
26 members. Class counsel has advised me that each participating Class Member  
27 will receive approximately \$124.00 per week worked during the Class Period.  
28

1 Based on this payment rate, the *highest* payment to a participating class member  
2 is estimated to be \$32,700.00, with an average payment of approximately  
3 \$18,450.00. This is substantial by any measure. The successful nature of the  
4 action is demonstrated by the fact that class claims account for approximately  
5 82% of work weeks covered by the settlement, a very high number.

6 j. Class counsel are highly skilled and experienced litigators,  
7 including litigating class action cases, as is demonstrated by their declarations  
8 in support of the motion for attorney's fees demonstrating the depth of  
9 experience they have in this field. Such experience and skill manifests itself in  
10 many ways that are not self-evident, here most clearly by their ability to obtain  
11 an outstanding settlement for class members very quickly. I am advised that this  
12 settlement compares favorably with other wage and hour settlements in the  
13 computer field. The fact that class counsel succeeded in obtaining a very  
14 favorable settlement in such a short time substantially benefits the class.  
15 Receiving \$1 today is the equivalent of receiving \$1.10 or more in two years.

16 k. I have known the reputation of the attorneys at Schonbrun  
17 DeSimone Seplow Harris Hoffman & Harrison, LLP ("SDSHHH") for  
18 litigating civil rights cases for many years. Although I have not worked directly  
19 on cases with Mr. DeSimone, I have co-counseled with other members of his  
20 firm, including Paul Hoffman and Benjamin Schonbrun, and can say from  
21 personal experience that it is an outstanding firm. The lawyers at SDSHHH  
22 have an excellent reputation in the legal community as litigators who take on  
23 very difficult cases, often on behalf of individuals who have suffered serious  
24 legal wrongs, but whose cases do not attract private counsel because of the  
25 economics of the practice of law in Southern California. I have known Mr.  
26 DeSimone for many years and know that he has the reputation in the legal  
27 community as a passionate and dedicated advocate for those whose civil rights  
28

1 have been violated. He is known as a skilled litigator who obtains excellent  
2 results for his clients, as the results in this case bear out. While I do not know  
3 Michael Seplow or Michael Morrison, I know each have excellent reputations  
4 as employment and civil rights lawyers.

5 1. The substantial nature of the settlement is supported by the fact  
6 that there have been no objections to the settlement and that there were very  
7 few opt-outs from the settlement. Both of these are factors that courts frequently  
8 look to the reaction of the class members to determine whether the settlement is  
9 a favorable one for the class. E.g., 5 Moore's Federal Practice, §23.85[2][d]  
10 (Matthew Bender 3d ed.) (the "reactions of the members of a class to a  
11 proposed settlement is a proper consideration for the trial court");  
12 *National Rural Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D.  
13 523, 529 (C.D.Cal. 2004) ("the absence of a large number of objections to a  
14 proposed class action settlement raises a strong presumption that the terms of a  
15 proposed class settlement action are favorable to the class members.").

16 15. I provide here just one example of how cases can end up taking far longer  
17 than initially anticipated (just as this one ended up taking less time than was perhaps  
18 initially anticipated). For the past nine years, I have been lead counsel in a class action  
19 against the California Department of Corrections and Rehabilitation for using  
20 backscatter x-rays routinely on visitors (*Wisely v. State of California*). Over 10,000  
21 hours went into litigating that case, only, on the eve of trial, to have the defense  
22 announce that it had voluntarily permanently abandoned use of such machines for  
23 reasons unrelated to the litigation, and to have the damages claims dismissed on  
24 immunity grounds. When we filed the case, the information we had was that anyone  
25 scanned who showed a potential secreted item was subjected to a physical strip search.  
26 However, this turned out not to be so, which totally changed the character of the  
27 litigation. There is a substantial possibility that no attorneys' fees will be awarded in  
28

1 that case. The point of my raising this is that there are substantial risks in litigation of  
 2 this type when it is entered. Some go well; some do not. When they do go well,  
 3 counsel should receive full compensation, for when they do not, it is counsel that  
 4 bears the cost.

5 **THE RISK OF NON-RECOVERY IN CLASS ACTIONS IS WELL**  
 6 **DOCUMENTED.**

7 16. That there is substantial risk of non-recovery in class action litigation is  
 8 not just a matter of my personal opinion. The Federal Judicial Center published a  
 9 report in 1996, entitled "Empirical Study of Class Actions in Four Federal District  
 10 Courts: Final Report to the Advisory Committee on Civil Rules" ("FJC Report").<sup>1</sup> The  
 11 study was requested by the Judicial Conference Advisory Committee on Civil Rules  
 12 when it was considering proposals to amend Rule 23 of the Federal Rules of Civil  
 13 Procedure. The study is based on 407 class action lawsuits that either settled or went  
 14 to verdict in the two year period from July 1, 1992 through June 30, 1994, in four  
 15 federal district courts: the Eastern District of Pennsylvania (Philadelphia); the  
 16 Southern District of Florida (Miami), the Northern District of Illinois (Chicago); and  
 17 the Northern District of California (San Francisco). (FJC Report, pp. 3-4, 7-8.)

18 17. For the 407 class actions, the Report reports the following regarding class  
 19 certification:

20 a. In 59 of the cases (14.5%), the class claims were certified for  
 21 settlement purposes only. *Id.* at pg. 35.

22 b. In 93 of the cases (22.85%), the class claims were certified  
 23 unconditionally. *Id.*

24 c. Therefore, a total of 152 cases (37.35%) had certified classes, and  
 25 the other 255 (62.65%) did not. *Id.*

26  
 27  
 28 <sup>1</sup> A copy of the pertinent pages of FJC Report is submitted as Ex. 2. The entire Report is 187 pages, and will be made available to the court should it wish to have a copy.

1           d. In at least 23 of the certified classes, the outcome was unfavorable  
2 to Plaintiffs. This is based on Table 39 of the FJC Report (at pg. 179), which  
3 lists the following outcomes adverse to plaintiffs in certified class cases  
4 (excluding classes certified for settlement purposes only): nine dismissals by  
5 motion, one stipulated dismissal, one non-class settlement, and twelve summary  
6 judgments. *Id.* at pg. 179, Appendix C, Tables 39.

7           18. Thus, in summary, the successful class claims from the total 407 filed  
8 class actions totaled 129 or less (152 minus 23). Using the number 129/407 to get a  
9 percentage, 31.7% or less of the filed class cases resulted in successful class outcomes  
10 for plaintiffs. This does not account for the degree of success (i.e., some cases could  
11 have resulted in minimal or partial success, and they would still be in the successful  
12 claim category).

13           19. The Empirical Study also examined "the 'cynical belief' that ' many class  
14 actions serve only to confer benefits on class counsel.'" (*Id.* at pg. 68.) To do so, the  
15 recovery of attorneys' fees by class counsel was compared to the relief obtained for  
16 the class "where some form of monetary benefit was available for distribution to class  
17 members after payment of attorneys' fees and expenses, notice costs and other  
18 administrative expenses." (*Id.*) The Report found that:

19            "In most cases, the net monetary distribution to the class exceeded  
20 attorneys' fees by substantial margins. The fee-recovery rate infrequently  
21 exceeded the traditional 33.3% contingency fee rate. Median rates  
22 ranged from 27% to 30%. Most fee awards in the study were between  
23 20% and 40% of gross monetary settlement." (*Id.* at pp. 68-69; citation  
24 and footnote omitted.)

25           20. The Report then concluded, "[W]e found that attorneys' fees were  
26 generally in the traditional range of approximately one-third of the total settlement.  
27  
28

1 While attorneys clearly derived substantial benefits from settlements, the recoveries to  
2 the class in most cases were not trivial in comparison to the fees." (*Id.* at p. 90.)

3 **PLAINTIFFS' REQUEST FOR PERCENTAGE OF THE MAXIMUM**  
4 **SETTLEMENT AMOUNT.**

5 21. I am very familiar with the market expectation for large contingent fee  
6 cases. The market expectation for class action cases is that counsel will fully  
7 participate in the benefit they create for the class. This involves a percentage of the  
8 recovery for the class, usually in the range of 25% on the low side to 40% on the high  
9 side. In mega-fund cases (which are defined differently by different courts but are by  
10 any measure over \$50 Million) the low end percentage may go below 25%. In cases  
11 between \$25-\$50 Million, the range of 25% or somewhat higher is common, but in  
12 cases under \$25 Million, such as this one, fee awards of 30% reflect the common  
13 market expectation.

14 22. Many courts and commentators have recognized that the percentage of  
15 the available fund analysis is the preferred approach in class action fee requests  
16 because it more closely aligns the interests of the counsel and the class, i.e., class  
17 counsel directly benefit from increasing the size of the class fund and working in the  
18 most efficient manner. *See, e.g., Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1266-  
19 67 & fn.3, 1271 (D.C.Cir.1993) (noting that the lodestar approach "encourages  
20 significant elements of inefficiency", by giving attorneys an "incentive to spend as  
21 many hours as possible" and "a strong incentive against early settlement"; the  
22 percentage approach "more accurately reflects the economics of litigation practice",  
23 and "the monetary amount of the victory is often the true measure of success, and  
24 therefore it is most efficient that it influence the fee award"; accordingly, "we join the  
25 Third Circuit Task Force and the Eleventh Circuit, among others, in concluding that a  
26 percentage-of-the-fund method is the appropriate mechanism for determining the  
27 attorney fees award in common fund cases"); *Camden I Condominium Ass'n v.*  
28

1 *Dunkle*, 946 F.2d 768, 774 (11th Cir.1991) (holding in a reversionary common fund  
2 case “that the percentage of the fund approach is the better reasoned in a common  
3 fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund  
4 shall be based upon a reasonable percentage of the fund established for the benefit of  
5 the class.”); Silber and Goodrich, *Common Funds and Common Problems: Fee*  
6 *Objections and Class Counsel's Response*, 17 RevLitig 525, 534 (1998) (the  
7 percentage approach avoids numerous drawbacks of the lodestar approach and is  
8 preferable because “the attorneys will receive the best fee when the attorneys obtain  
9 the best recovery for the class. Hence, under the percentage approach, the class  
10 members and the class counsel have the same interest -- maximizing the recovery of  
11 the class.”)<sup>2</sup>. *See also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir.  
12 2002) (“the primary basis of the fee award remains the percentage method”).

13 23. Among the drawbacks to the lodestar method listed by Silber & Goodrich  
14 are that the lodestar method increases the amount of fee litigation; the lodestar method  
15 lacks objectivity; the lodestar method can result in churning, padding of hours, and  
16 inefficient use of resources; when the lodestar method is used, class counsel may be  
17 less willing to take an early settlement since settlement reduces the amount of time  
18 available for the attorneys to record hours; and the lodestar method inadequately  
19 responds to the problem of risk. *Id.* at pp. 529-532. *See also Vizcaino v. Microsoft*  
20 *Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (“it is widely recognized that the lodestar  
21 method creates incentives for counsel to expend more hours than may be necessary on  
22 litigating a case so as to recover a reasonable fee”); *Mashburn v. National Healthcare,*  
23 *Inc.*, 684 F.Supp. 679, 689-91 (M.D. Ala.1988) (cataloguing criticisms of the lodestar  
24 approach to fee calculation); *Manual for Complex Litigation* 4<sup>th</sup> Ed. §14.121 (2004)  
25 (“in practice, the lodestar method is difficult to apply, time consuming to administer,  
26  
27

28 \_\_\_\_\_  
<sup>2</sup> A copy of the Silber & Goodrich article is submitted as Ex. 3.

1 inconsistent in result, ...capable of manipulation, ...[and] creates inherent incentive to  
2 prolong the litigation”).

3         24. Silber and Goodrich advocate that class fund fees should not diminish on  
4 a percentage basis, as some courts have done, because that undermines the full  
5 alignment between class counsel and the class. This is because, if the percentage of  
6 fees go down as the size of the fund goes up, a substantial increase in the size of the  
7 fund may be only marginally beneficial to the class counsel while it may be extremely  
8 beneficial to the class, with the result being that the economic interests of the class and  
9 counsel become mis-aligned. They also reviewed two studies of fee awards in  
10 common fund cases. One study, done of four districts in 1996 by the Federal Judicial  
11 Center, found that most fee awards in common fund class actions were between 20%  
12 and 40% of the gross monetary settlement, with little variation between districts. The  
13 other study, done by National Economic Research Associates, an economics  
14 consulting firm, in 1994, found that attorneys' fees in these class actions averaged  
15 approximately 32% of the recovery, regardless of the case size, and averaged 34.74%  
16 when the fees and expenses were added together. *Id.* at 545-546. Silber and Goodrich  
17 conclude with the observation that a 33% fee award is both reasonable, and in line  
18 with the general market for contingent fee work. *Id.* at 546-549.

19         25. In this case, plaintiffs are not seeking a 33.3% “common fund” award,  
20 but a 30% of the available fund award. This percentage reflects the low end of the  
21 contingent fee market and the mid-level for class action cases. It is well recognized  
22 that the attorney’s fees should be aligned with those of the class, which is best  
23 accomplished by awarding a percentage of the fund in the normal contingent fee  
24 range. In this way, class counsel has an interest in maximizing the recovery because a  
25 greater recovery directly benefits counsel as well as the class. In defining a  
26 ‘reasonable fee’ in representative actions, the law should ‘mimic the market.’ *Gaskill*  
27 *v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (“When a fee is set by a court rather  
28

1 than by contract, the object is to set it at a level that will approximate what the market  
2 would set.... The judge, in other words, is trying to mimic the market in legal  
3 services.”). Attorneys “regularly contract for contingent fees between 30% and 40%.”  
4 *In re Remeron Direct Purchaser Antitrust Litigation*, 2005 WL 3008808, 16 (D.N.J.  
5 2005)(citing cases), making a 33 1/3% figure highly reasonable in relation to the  
6 market for contingent fees).

7 26. It is well established that it is appropriate to award class fund attorney’s  
8 fees based on the gross settlement fund (inclusive of administrative costs and  
9 attorney’s fees). Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* §  
10 14.6 (4<sup>th</sup> Ed. 2007 update) (“[i]n *Boeing Co. v. Van Gemert*, [444 U.S. 156, 100 S. Ct.  
11 745 (1980)] the Supreme Court settled this question [of whether class fund fees are  
12 based on the gross settlement or net settlement funds actually claimed] by ruling that  
13 class counsel are **entitled to a reasonable fee based on the funds potentially**  
14 **available to be claimed, regardless of the amount actually claimed**”) (emphasis  
15 supplied); *Williams v. MGM-Pathe Commun. Co.*, 129 F.3d 1026 (9th Cir.1997)  
16 (reversing award of attorney’s fees because trial court failed to base fee award on the  
17 entire settlement, rather than the amount claimed); *Waters v. Int’l Precious Metals*  
18 *Corp.*, 190 F.3d 1291, 1295 (11th Cir.1999) (distribution of attorneys’ fees are to be  
19 based upon the funds available to eligible claimants, whether claimed or not;  
20 affirming a fee award nearly twice the amount actually claimed by the class from the  
21 fund); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2<sup>nd</sup> Cir. 2007)  
22 (the “entire Fund... is created through the efforts of counsel at the instigation of the  
23 entire class”; an “allocation of fees by percentage should therefore be awarded on the  
24 basis of the total funds made available, whether claimed or not”). I note that in this  
25 case there is little difference between the net and the gross here because over 82% of  
26 the available funds have been claimed.  
27  
28

1           27. In addition, it is well established that one important purpose of the class  
2 action device is that defendants should not benefit from their wrongdoing, and should  
3 be deterred from doing so by being vulnerable to class actions to remedy their  
4 wrongful conduct. *See, e.g.* Richard A. Posner, *Economic Analysis of Law* 626-27 (5th  
5 ed. 1998) (“the most important point from an economic standpoint is that the violator  
6 be confronted with the costs of his violation-this achieves the allocative purpose of the  
7 suit-not that he pays them to his victims”); John C. Coffee, Jr., *Reforming the*  
8 *Securities Class Action: An Essay on Deterrence and Its Implementation*, 2-3  
9 (Columbia Law. Sch. Ctr. for Law & Econ. Studies, Working Paper No. 293, 2006)  
10 (available at [http://ssrn.com/abstract\\_id=893833](http://ssrn.com/abstract_id=893833) (“[d]eterrence... is the only rationale  
11 that can justify the significant costs--both public and private--that securities class  
12 actions impose on both investors and the judiciary”). Through the deterrence prism, if  
13 the choice is between proposed attorney’s fees reverting to the defendant and being  
14 paid to the attorneys who created the fund, both equity and deterrence are far better  
15 served by paying the funds to the attorneys. As recent commentators have observed, if  
16 the economic interests of the class and counsel are mis-aligned, class counsel lose the  
17 incentive to maximize the benefit to the class because they do not participate, or do  
18 not fully participate, in the benefit of the larger recovery. *See, e.g.*, Myriam Gilles,  
19 *Exploding The Class Action Agency Costs Myth: The Social Utility Of*  
20 *Entrepreneurial Lawyers*, University of Pennsylvania Law Review, 155 U. Pa. L.  
21 Rev. 103 (November 2006).

22                   **PERCENTAGE OF THE AVAILABLE FUND AWARDS ARE**  
23                   **PARTICULARLY APPROPRIATE IN EARLY SETTLEMENTS.**

24           28. It has been noted that percentage of the available fund awards are  
25 particularly well suited where there is an early settlement of a class action. Judge  
26 Marilyn Hall Patel carefully analyzed fee awards in *In re Activision Securities*  
27 *Litigation*, 723 F.Supp. 1373 (N.D.Cal.1989). In that case, Judge Patel elucidated the  
28

1 problems caused by the lodestar approach, and then explained why a percentage of the  
2 fund was particularly well suited for early settlements: “Most important, however, is  
3 the effect the process has on the litigation and the timing of settlement. Where  
4 attorneys must depend on a lodestar approach there is little incentive to arrive at an  
5 early settlement.” *Id.* at 1375. Accordingly, Judge Patel concluded that a percentage  
6 award was the better practice and that the typical percentage should be 30%:

7 “Therefore, this court concludes that in class action common fund cases  
8 the better practice is to set a percentage fee and that, absent extraordinary  
9 circumstances that suggest reasons to lower or increase the percentage, the rate  
10 should be set at 30%. This will encourage plaintiffs' attorneys to move for early  
11 settlement, provide predictability for the attorneys and the class members, and  
12 reduce the time consumed by counsel and court in dealing with voluminous fee  
13 petitions.” *Id.* at 1378.

14 29. Numerous courts have explained that class counsel should be fully  
15 awarded percentage of the fund fees where there is an early settlement that is in the  
16 interests of the class. *See, e.g., Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th  
17 19, 28-29, 97 Cal.Rptr.2d 797, 805 (Cal.App. 1 Dist. 2000) (lodestar method, among  
18 other things, “encourages lawyers to expend excessive hours, and ... engage in  
19 duplicative and unjustified work,” “creates a disincentive for the early settlement of  
20 cases,” and deprives trial courts of “flexibility to reward or deter lawyers so that  
21 desirable objectives, such as early settlement, will be fostered”, quoting *Report of the*  
22 *Third Circuit Task Force, Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246-  
23 249); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862, 16 (N.D. Cal. 2007)  
24 (25% of the \$45,000,000 reversionary fund awarded; “Class counsel's prompt action  
25 in negotiating a settlement ... should be fully rewarded”; no lodestar cross check  
26 conducted or needed) (emphasis supplied); *Kirchoff v. Flynn*, 786 F.2d 320, 325-26  
27 (7th Cir.1986)(“The contingent fee uses private incentives rather than careful  
28

1 monitoring to align the interests of lawyer and client. The lawyer gains only to the  
 2 extent his client gains.... The unscrupulous lawyer paid by the hour may be willing to  
 3 settle for a lower recovery coupled with a payment for more hours. Contingent fees  
 4 eliminate this incentive and also ensure a reasonable proportion between the recovery  
 5 and the fees assessed to defendants....At the same time as it automatically aligns  
 6 interests of lawyer and client, rewards exceptional success, and penalizes failure, the  
 7 contingent fee automatically handles compensation for the uncertainty of litigation.”);  
 8 *In re M.D.C. Holdings Securities Litigation*, 1990 WL 454747, 8 (S.D.Cal.,1990)  
 9 (“[T]he results reached here were accomplished in a remarkably short period of time.  
 10 It is my strong belief that in general the actual amount of recovery, if any, which  
 11 ultimately goes to plaintiffs in the majority of cases is inversely proportional to the  
 12 time spent in litigation....¶ And finally, concluding litigation quickly and with a fair  
 13 result is beneficial to the general public in that it frees the resources of the courts to  
 14 deal with other matters.”) (quoting another court); *Report of the Third Circuit Task*  
 15 *Force, Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246-249 (lodestar  
 16 method needlessly increases judicial workload, creates disincentive for early  
 17 settlement, and causes unpredictable results); *Mashburn v. National Healthcare, Inc.*,  
 18 684 F.Supp. 679, 695 (M.D.Ala.1988) (“[o]ne of the reasons for supporting a  
 19 percentage fee award is to encourage early settlement of cases,” citing H. Newberg,  
 20 *Attorney Fee Awards*, § 2.07 at 48-51).

### 21 ANALYSIS OF THE LOAD STAR RATES OF PLAINTIFFS’ COUNSEL

22 30. Moreover, I have also been informed that the attorneys working on this  
 23 matter put in over \$1.2 million in lodestar time, a substantial effort on their part.  
 24

25 31. I understand that Plaintiffs’ counsels’ billing rates are set forth below.

26 Attorneys	Rate	Year of Graduation
27 V. James DeSimone	\$650	1985

1	Michael Seplow	\$600	1990
2	Michael Morrison	\$500	1999
3	Thomas W. Falvey	\$700	1975
4	J.D. Henderson	\$375	2005
5	Courtney Abrams	\$275	2009

6  
7 32. It is my opinion, based on my knowledge of the experience and skill of  
8 each attorney and/or my knowledge of billing rates for lawyers of similar skill,  
9 reputation and experience in the Los Angeles area, that these rates are well within the  
10 range of reasonable market rates for each attorney. I base this opinion on my  
11 knowledge of the Los Angeles legal market as reflected above, my extensive  
12 experience with attorney fee applications for my own firm, and the cases in which I  
13 have provided fee declarations for other attorneys in civil rights cases. The following  
14 is information constituting just a small sampling of the information I have gathered in  
15 this area.

16 33. Based on my work, contact with lawyers from major firms in Southern  
17 California, and review of relevant publications, court filings and court orders, I am  
18 very familiar with the standard billing analysis applied by law firms in Southern  
19 California in determining whether to take a public interest case in which the primary  
20 expectation of payment is contingent on winning and recovery of fees under one of the  
21 fee-shifting statutes. This analysis either adopts a formula utilizing hourly billing  
22 rates higher than that for retained work in order to account for delay in payment, risk  
23 of loss, risk of partial recovery, or other contingent factors; or it is done by relying on  
24 a request for augmentation of the lodestar by a multiplier applied to regular hourly  
25 rates to compensate for the contingent nature and the delay in payment of the fee  
26 recovery.

27 34. I regularly review a variety of material to keep abreast of rates charged  
28 and awarded for complex litigation in Southern California. I do this in a variety of

1 ways, including review of rates reported in Court Express for bankruptcy work by  
 2 California law firms; contacting firms to provide (on either a public or confidential  
 3 basis) current rate information; speaking with other attorneys familiar with complex  
 4 litigation rates; and reviewing court filings regarding attorney's fees (including both  
 5 fee applications and fee awards). My review of selected billing rate information has  
 6 included, at various times, review of rates from large firms such as Robins Kaplan,  
 7 Miller & Ciresi, LLP; Munger, Tolles & Olson LLP; Paul, Hastings, Janofsky &  
 8 Walker LLP; O'Melveny & Myers; Quinn, Emanuel, Urqhart, Oliver & Hedges LLP;  
 9 Gibson, Dunn & Crutcher LLP; Foley & Lardner LLP; Kirkland & Ellis LLP; Lieff,  
 10 Cabraser et al.; Heller Ehrman, LLP; Latham & Watkins; White & Davis; Hennigan,  
 11 Bennett & Dorman; Morrison & Forrester; Davis, Polk & Wardwell; Weil, Gotscahl  
 12 & Manges; Klee, Tuchin, Bogdanoff, & Stern; and Pachulski, Stang et al.<sup>3</sup> It has also  
 13 included review of rates sought and awarded to such boutique civil rights firms as the  
 14 ACLU; the Disability Rights Legal Center; Hadsell, Stormer et. al.; the Law Offices  
 15 of Carol Sobel; Schonbrun, DeSimone et. al., as well as rates awarded to my firm over  
 16 the years.

17 35. I am familiar with several court attorneys' fees awards in which rates in  
 18 line with those sought here have been awarded. All of the billing rates for counsel in  
 19 this case are well within the rates charged by attorneys of comparable experience in  
 20 the Southern California area for complex civil rights work and employment litigation.  
 21 In the charts below, I provide rates obtained from a combination of the foregoing  
 22 sources, listed by the firm ("Firm"), the years of experience at the time the award was  
 23 sought or awarded, with the year of graduation in brackets ("Grad"), the rate sought or  
 24

25 \_\_\_\_\_  
 26 <sup>3</sup> Of the firms that I review, almost all have offices in Los Angeles, which (with the  
 27 possible exception of Silicon Valley) is the highest market in California, and second if  
 28 at all only to New York. The firms I review that do not have Los Angeles offices are  
 Weil, Gotscahl & Manges and Davis, Polk & Wardwell (Silicon Valley), and Leiff,  
 Cabraser (San Francisco).

1 awarded (“Rate”), and the year the rate was sought, set or awarded (“Year”). As can  
 2 be seen, the rates listed here are significantly below those listed in the charts.

<b>FIRM</b>	<b>GRAD</b>	<b>RATE</b>	<b>YEAR</b>
Morrison & Forrester	24 [1985]	\$750	2009
White & Case	24 [1985]	\$750	2009
Pachulski, Stang et al.	24 [1985]	\$675	2009
Davis, Polk & Wardwell	23 [1986]	\$960	2009
Weil, Gotschahl & Manges	23 [1986]	\$799	2009
O’Melveny & Myers	23 [1985]	\$820	2008
Pachulski, Stang et al.	22 [1987]	\$725	2009
Munger, Tolles & Olson	22 [1987]	\$725	2009
Pachulski, Stang et al.	20 [1989]	\$645	2009
Lieff Cabraser	19 [1991]	\$650	2010
Gibson Dunn & Crutcher	18 [1991]	\$610	2009
Morrison & Foerster	17 [1992]	\$650	2009
Lieff Cabraser	15 [1995]	\$625	2010
O’Melveny & Myers	14 [1994]	\$675	2008
Hadsell, Stormer et al.	13 [1995]	\$550	2008
Klee, Tuchin, Bogdanoff, & Stern	12 [1997]	\$650	2009
Gibson Dunn & Crutcher	12 [1997]	\$635	2009
White & Case	8 [2001]	\$655	2009
Loeb & Loeb	8 [2001]	\$475	2009
Law Office of Carol Sobel	8 [2001]	\$425	2009
Dewey & Le Boeuf	8 [2000]	\$505	2008
Kirkland & Ellis	7 [2000]	\$485	2007
White & Case	6 [2003]	\$600	2009
White & Case	5 [2004]	\$600	2009
Weil, Gotschahl & Manges	1 [2008]	\$355	2009
O’Melveny & Myers	1 [2007]	\$330	2008
Skadden Arps	1 [2004]	\$320	2005

24  
 25 36. In *MIWON v. City of Los Angeles*, Case No.: CV 07-3072 AHM.  
 26 (FMMx), Judge Matz approved rates for me of \$800 per hour, based on 2009 rates.  
 27 SDSHH was one of the co-counsel on that matter. Judge Matz approved the requested  
 28

1 rate of \$750 for SDSHHH partner Paul Hoffman and \$625 per hour for V. James  
2 DeSimone.

3 37. In *Rogel v. Redevelopment Agency of the City of Lynwood*, BS106592  
4 (L.A. Superior Court), Judge Kevin Brazile approved Gibson, Dunn & Crutcher's  
5 rates, including an hourly rate of \$905 for a 1983 graduate, \$525 for a 2004 graduate,  
6 and \$495 for a 2004 graduate. See Declaration of Wayne Barsky in Support of  
7 Plaintiff's Motion for Order Awarding Attorneys' Fees in *Redevelopment Agency of*  
8 *the City of Lynwood*, BS106592 (L.A. Superior Court) (requesting rates); Order  
9 Awarding Fees in *Rogel* (approving rates). The rates Gibson attorneys sought in *Rogel*  
10 were the same as their actual 2009 billing rates for the Gibson lawyers. Although the  
11 fee award was reduced for other reasons in *Rogel*, the Court found the requested rates  
12 (up to \$905 for lead counsel, a 1983 law graduate and a partner at Gibson, Dunn &  
13 Crutcher) had not been shown to be above the community norm for similar work.

14 38. In *Lauderdale v. City of Long Beach*, CV 08-979 ABC (JWJx), Judge  
15 Collins awarded rates of \$525 for a 1999 graduate, \$475 for a 2001 graduate, \$400 for  
16 a 2004 graduate, \$375 and \$395 for a 2005 graduate, and \$350 for a 2006 graduate.

17 39. For the reasons I have explained above, it is my opinion that a fully  
18 compensatory percentage-of-the-fund fee is appropriate in this case. It is further my  
19 opinion that the fact that the case was settled early makes the percentage of the fund  
20 award particularly appropriate. Finally, it is my opinion that the requested 30% fee is  
21 below the average of contingent fees in cases of this type.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on December 13, 2010, at Los Angeles, California.

24  
25   
26 Barrett S. Litt