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

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

Case No: CV 09-3983 BZ

**DECLARATION OF V. JAMES
DESIMONE 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: 1:30 p.m.
Courtroom: G

22 _____)
23)
24)
25 **DECLARATION OF V. JAMES DESIMONE**

26 I, V. James DeSimone, declare as follows:

27 1. I am an attorney-at-law and a partner with the firm Schonbrun DeSimone Seplow
28 Harris Hoffman & Harrison, LLP (“SDSHHH”). I am duly admitted to practice before this

1 Honorable Court and am one of the attorneys of record for Plaintiffs in this action. I have
2 personal knowledge of the facts set forth herein, (except where indicated upon information and
3 belief) and if called as a witness, could and would testify competently thereto. This declaration is
4 being made in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and
5 Certification of the Class and Motion for an Award of Attorneys Fees, Costs, Administrative
6 Expenses and Class Representative Enhancements.

7 **The Settlement is an Outstanding Result for the Class**

8 2. This Declaration is submitted to conjunction with the information
9 provided in the Declarations of Michael D. Seplow, Thomas W. Falvey, and J.D. Henderson
10 which are submitted concurrently with the Motion for Final Approval of Class Action Settlement
11 and Certification of the Class. At the outset, it should be noted that the settlement of this class
12 action provided very real and substantial benefits to each member of the class. The settlement
13 has received overwhelming support from members of the Class in that 84.4% of the 673 class
14 members have submitted claims, which amount to 87.5% of the compensable workweeks.
15 Indeed, there have been no objections to the settlement and only eight (8) class members have
16 opted out of the settlement. The average payment to class members is approximately \$18,085.00
17 with some class members receiving as much as \$32,708.94.

18 3. The \$17,000,000 settlement in this case is an extremely good settlement given the
19 potential uncertainty of recovery as well as the range of likely recovery in the event Plaintiffs
20 prevailed on their claims. In order to analyze the damages to the putative class, in April of 2010,
21 Plaintiffs' Counsel retained the services of an expert forensic accountant, Philip Gorman, Ph.D,
22 and worked closely with him to analyze the data provided by Defendant AT&T Services, as well
23 as the information contained in approximately 160 survey responses from putative class
24 members. The materials produced by Defendant included information and documents regarding
25 job titles, claimed overtime hours, work weeks and termination dates and payroll data for each
26 class member. The data provided to Dr. Gorman also included survey responses from
27 approximately 130 Senior Analysts and approximately 30 surveys from Senior Database
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1 Administrators. The total number of surveys – 160 – represents approximately 25% of the 673 e
2 class members. Based upon information received from Defendant, approximately 60 percent of
3 those class members, were employed by Defendant at the time of the analysis and 40 percent are
4 former employees.^{1/} Further, according to information obtained from Defendant and from
5 putative class members, AT&T re-classified the Senior Database Administrator position as “non-
6 exempt” in May 2009. The information obtained from Defendant and the surveys revealed that,
7 apart from the re-classification of Senior Database Administrators in May 2009, Defendant’s
8 practice during the class period with respect to the classification of Senior Analysts (including Sr.
9 IT Analysts and Sr. OC Test Analysts) as being exempt from overtime requirements is consistent
10 with the practice in effect during the named Plaintiffs’ employment.

11 4. Dr. Gorman produced a detailed analysis of his findings which was relied upon
12 extensively by Plaintiffs’ counsel in preparation for the mediation utilizing primarily the payroll
13 data supplied by Defendant and the overtime estimates provided by putative class members who
14 responded to the surveys. Using data provided by Defendant, Dr. Gorman estimated the total
15 number of workweeks to be 83,202 through April 30, 2010, and the classwide average hourly pay
16 rate to be \$36.43.

17 5. According to Dr. Gorman’s detailed analysis, based on the estimates of overtime
18 worked, the total potential unpaid overtime without penalties and interest, was approximately
19 \$42,333,151 for Senior IT Analysts. The total for Senior Database Administrators was
20 approximately \$5,308,501 for a total of approximately \$47,641,652 for the entire class. Thus,
21 the \$17,000,000 Class Action settlement provided, at the time the agreement was reached on
22 May 19, 2010, for a recovery of approximately 36% of the total potential unpaid overtime,
23 excluding penalties and interest.^{2/} This figure is based on the assumption that the estimates of
24

25 1. Plaintiffs’ counsel has received at least 67 surveys from current employees.

26 2. These figures do not include potential penalties under California law for pay stub and
27 waiting time violations. Plaintiffs estimate that total pay stub and waiting time penalties of the
28 class to be in excess of \$5,000,000. However, in order to establish these penalties, Plaintiffs
would need to prove that Defendant acted “wilfully.” Defendant contends that its wage

1 overtime hours contained in the survey responses which were reviewed by Dr. Gorman were both
2 accurate and reflective of the class as a whole. Defendant AT&T Services, Inc. disputes these
3 estimates, as stated in the August 23, 2010 Declaration of Thomas E. Geidt previously submitted,
4 and contends that the potential recovery of damages in this action is much less.

5 6. An analysis of the Maximum Payment to class members, which in this
6 case is \$11,740,000, shows that the dollar amount recovered on behalf of the class, at the time
7 the agreement was reached on May 19, 2010, is approximately 25% of the total estimate of
8 potential unpaid overtime, excluding penalties and interest. The settlement amount is, of course,
9 a compromise figure, taking into account risks related to certification, liability, and damages.
10 While counsel for Plaintiffs believe that Plaintiffs would have prevailed both on a contested
11 Motion for Class Certification and in the liability and damages phase of this case, we are also
12 cognizant of the fact if the Motion for Class Certification were not granted or if the Court or the
13 jury determined that these putative class members were properly classified as exempt, that each
14 class member would likely receive no recovery whatsoever. Moreover, Defendant strongly
15 disputed the amount of overtime worked which, if believed by the trier of fact, would decrease
16 the damage estimates reflected in this Declaration. Counsel for Plaintiffs also recognize the
17 recent trend towards denial of class certification in general.

18 7. For the 673 potential class members, this case involves approximately 94,540
19 work weeks. Under the proposed settlement, each class member will receive approximately \$124
20 per work week. In this case, if the Motion for Final Approval is granted, each Class member will
21 receive approximately \$6,250 for every year worked in the eligible job positions. This means
22 that class members who were employed in these positions for four years will receive
23 approximately \$25,000.00, providing for a certain and definite monetary payment as contrasted
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25 statements and payments were made in good faith. Further, these figures do not include
26 payments for missed meal and rest breaks under California law, which is an area of great
27 uncertainty given the California Supreme Court's granting of review in *Brinkley v. Public*
28 *Storage, Inc.*, 198 P.3d 1087 (2009) and *Brinker Restaurant Corp. v. Superior Court*, 196 P.3d
216 (2008). Plaintiffs estimate the amount of meal and rest break penalties to be in excess of
\$15,000,000 for the entire class, a figure which is vigorously disputed by Defendant.

1 with the inherent uncertainty of litigation as well as the current uncertain economic climate.
2 There is also a strong value in the prompt resolution of this case, which will insure that class
3 members will receive compensation in the first quarter of 2011. Otherwise, they may have to
4 wait for a potential recovery for several years, given the normal pace of litigation and the
5 likelihood of an appeal of a substantial Plaintiffs' verdict. In light of all of these factors,
6 Plaintiffs' counsel and their clients are of the firm belief that this settlement is in the best interest
7 of the class.

8 8. I am fully familiar with the facts and history of this case as I have been one of the
9 day-to-day attorneys since the inception of this class action case. Prior to filing this lawsuit, I
10 wrote a letter to counsel for AT&T, Al Latham of Paul Hastings, setting forth our contention that
11 the members of the proposed class were misclassified by AT&T and were entitled to overtime
12 pay. Mr. Latham responded with an analysis of why AT&T contended that these employees were
13 properly classified as exempt from the Labor Code provisions providing for overtime pay. Thus,
14 when we commenced this litigation, we expected that AT&T would take the position that the
15 putative class members were not entitled to overtime pay and that we would likely have to
16 litigate this case through a trial on the merits. However, after the FRCP Rule 26 conference, we
17 were contacted by defense counsel who proposed staying discovery and engaging in informal
18 discovery prior to a mediation with a mutually agreed upon mediator. I am informed and believe
19 that one of the motivating factors guiding Paul Hastings' recommendation to its client to mediate
20 this matter is that my firm has vigorously litigated numerous employment cases against them and
21 its attorneys were well aware of our dedicated advocacy on behalf of our clients. In the past
22 twelve years, we have litigated approximately fifteen employment cases against Paul Hastings.

23 9. I was intimately involved in the day to day negotiations in setting up the
24 mediation in a manner that we believed was consistent with our obligations as class counsel to
25 keep the interests of the class as our paramount consideration.

26 10. As detailed in the declarations of Michael D. Seplow and Thomas
27 Falvey, after an agreement to mediate was reached, and as described above, class counsel sent
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1 surveys to each and every putative class member, analyzed the data received, and followed up
2 with telephone calls and emails again to dozens of class members.

3 11. Prior to the mediation, Class Counsel prepared a mediation brief involving a
4 comprehensive use of the information provided by AT&T's employees to establish that the job
5 duties performed by these individuals did not fall into any of the exemptions established under
6 California's Labor Code, Industrial Welfare Commission Wage Orders and applicable case law.
7 Class Counsel utilized this information, as well as an extensive report and analysis prepared by
8 forensic economist Phillip Gorman from Fractor, Phillips & Gorman, to demonstrate the
9 substantial unpaid overtime, value of missed meal and rest breaks, and penalties. My co-counsel
10 and I spent a substantial amount of time preparing for the May 12, 2010 mediation, including the
11 preparation of power point slides to show to the mediator.

12 12. On May 12, 2010, I and my co-counsel participated in a full day mediation in San
13 Francisco with Mark Rudy, of Rudy, Exelrod, Zieff and Lowe, a renowned mediator who has
14 successfully litigated and mediated numerous class action cases. At the end of the mediation, the
15 parties had reached an impasse and the mediator then proposed a mediator's compromise and
16 gave the parties until May 19, 2010 to respond to the proposal. On May 19, 2010, both sides
17 accepted the mediator's proposal in the amount of \$17,000,000 as a fair compromise of the
18 parties' respective positions.

19 13. At the Hearing on the Motion for Preliminary Approval of the Class Actions
20 Settlement, the Court expressed several concerns which included whether former employees
21 could represent current employees for the purpose of a class action, whether the Claims Notice to
22 current employees adequately informed them of their rights, and whether the parties had provided
23 for sufficient outreach to class members in order to ensure maximum participation. Counsel for
24 Plaintiffs promptly and diligently responded to the Court's concerns and submitted Supplemental
25 Declarations, Memorandum of Points and Authorities and Claims Notice Materials. After review
26 of the supplemental information supplied by Counsel, the Court preliminarily approved the Class
27 Action Settlement and certified the class on September 13, 2010.
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1 14. After the Motion for Preliminary Approval of the Class Action
2 Settlement was approved by the Court, a package of claims materials, reviewed and approved by
3 class counsel, was sent to each class member. AT&T did not agree to inform class counsel of the
4 identity of each class member. Accordingly, class counsel began a direct outreach to the class
5 members who had returned surveys to make sure that: 1) they received the claims forms, 2) knew
6 they had to return those promptly if they wanted to receive compensation and 3) would inform
7 their colleagues who might also be in the class to return the claims forms if they were interested
8 in receiving the substantial monetary benefit of the class action settlement.

9 15. In the meantime, Class Counsel continued to speak to class members in order to
10 make sure that they were properly informed of the details, requirements and benefits of the class
11 action settlement. During this time, we were contacted by numerous class members who had
12 questions about the settlement. I personally spoke with or responded to emails from
13 approximately ten class members, and worked with our co-counsel Thomas Falvey and the staff
14 of his law firm who spoke with many more.

15 16. I have been directly involved in the litigation of this case including the preparation
16 of all pleadings in this case, including the Motion for Final Approval of the Class Action
17 Settlement, Attorneys' Fees, Costs and Class Representative Enhancement Fees as well as the
18 negotiations leading up to the resolution of this case and all aspects of following through on our
19 obligations to the class members to whom we owe a duty of vigorous representations. I am firm
20 in my conviction that this settlement is in the best interests of the class.

21
22 **The Outstanding Participation Rate of Class Members in the Settlement is a Result of Class**
23 **Counsel's Dedicated and Diligent Outreach to the Class**

24 17. From the moment the settlement was preliminarily approved, Plaintiffs' counsel
25 used their best efforts to maximize the number of class members participating in the settlement.
26 Each and every person who provided contact information to class counsel received follow up
27 telephone calls to inform them of the settlement, respond to any questions and concerns, and to
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1 remind them to submit claim forms so that every class member would have the opportunity to
2 participate in the benefits of this settlement agreement.

3 18. Plaintiffs' counsel was very aware that we did not have the contact information
4 for all class members, only those that chose to contact us by responding to surveys or other
5 outreach. Accordingly, the negotiated agreement provided for outreach by the Claims
6 Administrator, CPT Group, Inc. ("CPT"), by requiring CPT to send out reminder post cards and
7 also make follow up calls to class members whose claims forms have not been received. These
8 were terms which Plaintiffs' counsel insisted on in negotiations, and to which Defendant agreed,
9 in order to make sure class members were informed of their rights pursuant to the settlement.
10 Further, pursuant to the Court's directive at the August 4, 2010 preliminary approval hearing,
11 Defendant provided electronic notice to all class members who are current AT&T Services
12 employees about this settlement. Moreover, information concerning this case, including all
13 pleadings, motions and court order, as well as the terms of the settlement have been and are
14 prominently displayed on Plaintiffs' counsel's website. Throughout the claims period, Plaintiffs'
15 counsel engaged in a concerted effort to contact all class members for whom we had contact
16 information to encourage them and their colleagues to participate in the benefits of this
17 settlement.

18 19. While at the Preliminary Approval Hearing held on August 4, 2010, the Court
19 referenced the 25% bench mark for attorneys' fees for class action settlements, and also
20 indicated that it expected at least a 50% participation rate. However, in light of the tremendous
21 participation rate of class members in realizing the benefits of the settlement by claiming the
22 money to which they are entitled under the terms of the settlement based on the extraordinary
23 efforts of class counsel, Plaintiffs' counsel submits that a 30% attorneys fee rate is warranted.
24 The fact that 87.5% of compensable workweeks will be recovered by and used for the benefit of
25 those class members is the result of Class Counsel's strategic effort and due diligence in making
26 sure that each class member received the necessary information to make an informed decision as
27 to whether to participate in this class action settlement.
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1 **The Experience of Class Counsel and the Excellent Result Attained**

2 **Warrant the Requested Attorneys' Fees**

3 20. Class members in this case are represented by experienced and dedicated counsel.
4 I provide here a summary of my background and legal experience. I graduated from Johns
5 Hopkins University in 1981 with a B.A. degree in Political Science. I graduated from UCLA
6 School of Law in 1985 and was admitted to the California Bar that same year. I joined the Law
7 Firm of Beck and DeCorso in 1985, practicing civil litigation and white-collar criminal defense.
8 From 1987 to 1990, I was a staff attorney at Westside Legal Services, in Santa Monica,
9 California, where I was the lead trial lawyer representing lower-income families and individuals
10 who could not afford a lawyer.

11 21. In 1990, I joined Benjamin Schonbrun to form Schonbrun DeSimone LLP, where
12 I have concentrated primarily on the representation of individuals in civil rights matters
13 including employment and police misconduct cases. In 1999, the firm expanded to add Paul
14 Hoffman as a partner and the name of the firm was changed to Schonbrun DeSimone Seplow
15 Harris & Hoffman, LLP ("SDSHH"). In 2010, the firm further expanded to add Genie Harrison
16 as a named partner and the name of the firm was changed to Schonbrun DeSimone Seplow
17 Harris Hoffman & Harrison, LLP ("SDSHHH"). The vast majority of the cases I litigate settle
18 prior to trial and I have obtained several settlements in excess of \$1 million in civil rights cases.

19 22. I have also tried many cases to verdict over the years, including the civil rights
20 case of *Benham v. Walgreens et al*, which resulted in a \$2.1 million verdict to the Plaintiff in
21 December of 2007. Our law firm has numerous published decisions in the area of civil rights
22 law. I was lead counsel on the following cases: *Griffith v. Davis*, 161 F.R.D. 687 (C.D. Cal.
23 1995) (holding that Plaintiffs were entitled to discover the statement of an IRS special agent,
24 who shot and killed a young man while on duty) and *Mogilefsky v. Silver Pictures*, 20
25 Cal.App.4th 409 (1993) (the first published California decision to recognize that same sex
26 harassment violated the California Fair Employment & Housing Act). Additionally, I was lead
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1 appellate counsel in the case of *Johnson v. United Cerebral Palsey et al.* (2009) 173
2 Cal.App.4th 740, a precedent setting published decision in which the Court of Appeal reversed a
3 summary judgment and directed the trial court to admit evidence of other employees who
4 contended they were subjected to discriminatory conduct similar to that alleged by the Plaintiff.
5 I was also counsel of record in the published decision of *Wason v. AIG*, No. 09cv2752-LAB,
6 2010 WL 1881067 (S.D. Cal. May 6, 2010), holding that a supervisor's disability discrimination
7 against an employee constitutes extreme and outrageous conduct under California law and is
8 sufficient to maintain an infliction of emotional distress claim against an individual supervisor.
9 Recently, I was lead appellate attorney and obtained a 9th Circuit published opinion of *Xue Lu*
10 *et. al. v. United States of America*, 621 F.3d 944 (9th Cir. 2010), reversing dismissal of the case
11 against the United States of America while holding an asylum officer was acting in the course
12 and scope of employment when he demanded sexual favors and money in return for approving
13 asylum applications. This published decision came ten years after I was retained to represent the
14 Plaintiffs and we are now tasked with a Federal Tort Claim Act case in which we have a bench
15 trial and can recover only damages, and not attorneys' fees. Recently, in November, 2010, I was
16 lead trial counsel in the case of *Taylor Ewing v. City of Los Angeles*, No. CV 07-5556 GHK
17 (JWJx) (C.D. Cal. 2010), a civil rights case based on allegations of excessively tight handcuffs
18 in which we achieved a \$160,000 verdict on behalf of our client after nearly four years of
19 litigation.
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21 23. I have authored several articles on employment and civil rights matters. For
22 example, in April of 2006, I authored an article entitled *Discovery in Employment and Civil*
23 *Rights Cases: Finding Where the Bodies Are Buried*, published in the Consumer Attorneys of
24 Los Angeles' Advocate Magazine. In the Spring of 2009, I authored an article for the ABA
25 Small Practice and Solo Practitioner Journal entitled "*Employment Policies and Workplace*
26 *Responsibility.*" I co-authored an article for the California Employment Lawyer's Association
27 September 2009 Bulletin entitled, "*CONTEXT MATTERS: EXAMINING THE ADMISSIBILITY*
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1 OF 'OTHER EMPLOYEE/SUPERVISOR' EVIDENCE IN FEHA DISCRIMINATION CASES."

2 24. I have taught legal seminars on Trial Tactics & Techniques, Discovery in Police
3 Misconduct Cases, Nuts and Bolts of Settlement Agreements in Employment Law Cases, and
4 Current Trends in California Employment Litigation. In June of 2007, I taught trial techniques
5 at a seminar hosted by the Los Angeles County Bar on Successful Trial Techniques in
6 Employment Law Litigation. In September of 2007, I was one of the featured speakers at the
7 California Employment Lawyers Association Annual Employment Law Conference on the topic
8 of Winning Don't Come Easy, Tales from Trial Lawyers in the Trenches. In January of 2010, I
9 spoke on a panel hosted by the Los Angeles County Bar Association on the topic of *Mastering*
10 *the Mediation Process, Strategies and Secrets to Maximize Results*. In September of 2010, I
11 spoke at a meeting of the Orange County Employment Lawyers Association on the topic of
12 *Maximizing Emotional Distress Damages in Mediations and Arbitration*.

13 25. In 2008, I was one of the finalists for Trial Lawyer of the Year for the Consumer
14 Attorneys Association of Los Angeles. In both 2009 and 2010, I was honored by the Daily
15 Journal as one of the Top Ten Plaintiff Employment Lawyers in the State of California. In
16 2009, 2010 and, upcoming in, 2011, I have been designated as a Super Lawyer in the area of
17 Civil Rights and Employment. In 2009, I was awarded \$600.00 per hour by Judge Soussan
18 Bruguera in a Motion to Enforce a Settlement Agreement in the case of *Acosta v. The Mobile*
19 *Solutions*, Los Angeles Superior Court, Case No. BC 366268. In 2009, I was awarded \$625.00
20 per hour by Judge Matz in the case of *Multi-Ethnic Immigrant Workers Organizing Network v.*
21 *City of Los Angeles*, USDC CV 07-3072 AHM (FMOx). In 2010, I was awarded attorneys fees
22 by Judge Carolyn Kuhl where my requested hourly rate was \$650.00.

23 26. I am currently working on approximately seven class action cases. Recent class
24 actions that I have worked on include a California Fair Employment & Housing matter,
25 approved by the Court for settlement in the amount of \$1,500,000 (*Fontana v. St Joseph*
26 *Hospital*, Orange County Superior Court, Case No. 03CC02559) and two involving wage and
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1 hour violations, approved by the Court for a class action settlement in the amount of
2 \$16,000,000 (*Shoff, et al. v. AT&T et. al.*, Case No. CV 07-3289-DSF (C.D. Cal. Nov. 28,
3 2008)) and \$10,500,000 (*Doyle et. al. v. AT&T et. al.*, Case No. CV 08-1275-JAH (S.D. Cal.
4 Mar. 1, 2010)).

5 27. I was also a member of the steering committee for the Plaintiff's side in the
6 coordinated action *The Clergy Cases (Clergy I)*, Case No. JCCP 4286, which settled for over
7 \$660,000.000.00 with the Archdiocese of Los Angeles for minor sexual abuse committed by
8 priests of the Los Angeles Archdiocese. In *Lita v. Bunim-Murray Productions, et al.*, Los
9 Angeles Superior Court, Case No. BC 350590, the Court approved a settlement for \$5,000,000.

10 28. My firm has actively commenced, prosecuted and concluded numerous class
11 actions and other complex cases. For example, we were lead counsel in a class action case
12 against Magic Mountain for race and ethnic discrimination that settled for over \$5,000,000
13 (*Elizabeth Morrison, et al. v. Six Flags Theme Park, Inc., et al.*, Case No. BC 253314). Our
14 firm was one of the lead counsel on the groundbreaking case, *Doe, et al. v. Unocal Corp., et al.*,
15 Case No. CV 96-6959-RSWL (C.D. Cal.), in which Unocal was sued for human rights abuses
16 committed during the construction of an oil pipeline in Myanmar. Currently, my firm is
17 prosecuting several human rights class action cases including the *In re Apartheid Cases*, Case
18 No. 02 Civ. 4712 (S.D.N.Y.) (suing companies who sponsored the Apartheid regime in South
19 Africa), *Presbyterian Church of Sudan, et al. v. Talisman Energy, Inc., and the Republic of*
20 *Sudan*, Case No. 07-0016) (2d Cir.) (suing Talisman Oil for its assistance in human rights
21 abuses committed by the Sudanese government), and *John Roe, et al. v. Bridgestone Corp., et*
22 *al.* (Southern District of Indiana) (suing for human rights abuses committed on Bridgestone's
23 rubber plantation in Liberia).

24 29. My law firm is able to take substantial risks and prosecute civil and
25 human rights cases, when this work is balanced by cases in which we receive a percentage of the
26 recovery we negotiate for the class. The cases described above are only representative samples
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1 of the civil and human rights cases we take on as advocates for those who are unable to afford
2 an attorney. The critical importance of having civil rights law firms dedicated to achieving
3 justice in these matters is well-recognized by the Ninth Circuit as reflected by the Court's
4 opinion in *Moreno v. City of Sacramento*: "If private citizens are to be able to assert their civil
5 rights, and if those who violate the Nation['s] fundamental laws are not to proceed with
6 impunity, then citizens must have the opportunity to recover what it costs them to vindicate
7 these rights in court." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008),
8 quoting S.Rep. No. 94-1011, at 2 (1976), as reprinted in 1976 U.S.C.C.A.N. 5908, 5910.

9 30. Civil and human rights cases, including employment cases, have substantial risk
10 factors. For example, as noted above, in November of 2010, I tried a case involving the
11 allegations of a police officer applying excessively tight handcuffs to my client causing her
12 injuries. A Westlaw survey of cases which alleged civil rights violations based on excessively
13 tight handcuffs revealed that out of one hundred reported cases, ninety seven of them resulted in
14 defense verdicts. We were informed by the Magistrate Judge who reviewed the evidence in the
15 case that it was "unwinnable" and we should consider dropping the case. Nonetheless, my firm
16 put the resources necessary into trying the *Taylor Ewing* case because we believed our clients
17 rights were violated and we were committed to vindicating our client's civil rights. In this
18 instance, our belief was affirmed by the jury. This, however, is not always the case. I have
19 tried similar civil rights cases expending substantial attorney time and money and the jury has
20 found for the defense.

21 31. As a civil and employment rights lawyer, I and my firm can take the risk of trying
22 those cases precisely because in cases such as *Waters et al. v. AT&T*, we obtain the benefit of a
23 hard-fought settlement. That is not to say that at the time of filing the *Waters* matter, it did not
24 entail substantial risk. Defendant AT&T informed us prior to filing the case that it would
25 vigorously contest our allegations. As detailed in the Declarations of Michael Seplow, Barrett
26 Litt and Douglas Silverstein filed contemporaneously herewith, the filing of this Class Action
27 was accompanied by substantial risk that Plaintiffs' counsel could invest hundreds, or even
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1 thousands, of hours of attorney time, and tens or hundreds of thousands of dollars at the risk of
2 receiving no compensation whatsoever for the “sweat equity” invested and losing a substantial
3 amount of money.

4 32. Plaintiffs’ counsel has worked diligently to arrive at a fair and just
5 resolution of this matter and will continue to work diligently to promote the best interests of the
6 class members. The proposed settlement in this case is eminently fair and reasonable and
7 provides a substantial benefit to the class members, who, if the settlement is approved, are each
8 likely to receive several thousands of dollars in early 2011. The settlement avoids protracted
9 and uncertain litigation in a hotly contested matter, and thereby promotes the interests of the
10 Courts, the Defendant and the proposed class members. Therefore, we respectfully request that
11 the Court grant final approval of this settlement, and attorneys’ fees in the amount requested.

12 33. I have expended at least 275 hours litigating this matter for the
13 benefit of the members of the class. All of the work I performed was necessary in order to
14 achieve the excellent result that occurred in this case. My current hourly rate is \$650.00. I
15 believe this hourly rate to be justified in light of my experience and the excellent results I have
16 achieved in the past, as detailed above, as well as based on the attorneys’ fees rates awarded to
17 attorneys with similar experiences and backgrounds as I in other cases, as detailed in the
18 declarations of Barrett S. Litt, Randy Renick, Douglas Silverstein, and Matthew Righetti. My
19 lodestar to date is on this case is \$178,750 (275 x \$650).

20 34. Additionally, Michael Morrison, a former partner with my firm expended 146
21 hours in litigating this matter. In particular, Mr. Morrison worked with forensic accountant Phil
22 Gorman in analyzing data and preparing the calculated damages for presentation at the
23 mediation. Mr. Morrison was integral in negotiating the settlement in this case. Mr. Morrison
24 is an experienced class action litigator who is currently Of Counsel to the Law Firm of
25 Alexander, Krakow and Glick. He is a 1999 graduate of the University of California at Los
26 Angeles School of Law and was admitted to the California State Bar in 1999. He has been a
27 member of the United States Supreme Court Bar since 2004. He has co-authored and worked
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1 on two merits briefs for the United States Supreme Court in the cases *Muehler, et al. v. Mena*
2 (2004) 544 U.S. 93, and *Sosa v. Alvarez-Machain* (2004) 542 U.S. 692. In addition, three cases
3 that he personally briefed and argued at the appellate level have been published. These cases are
4 *Blankenhorn v. City of Orange, et al.* (9th Cir. 2007) 485 F.3d 463; *Macias v. County of Los*
5 *Angeles, et al.* (2006) 144 Cal.App.4th 313; *Cinquegrani, Royea v. Department of Motor*
6 *Vehicles for the State of California, et al.* (2008) 163 Cal.App.4th 741. While employed with
7 us, Mr. Morrison also focused his practice on wage and hour class action cases and has
8 distinguished himself with his excellent work on those cases. His hourly rate when employed by
9 my firm for the years 2009 and 2010 was \$500. His lodestar on this case is 146 hours times
10 \$500 an hour for a total of \$73,000.00.

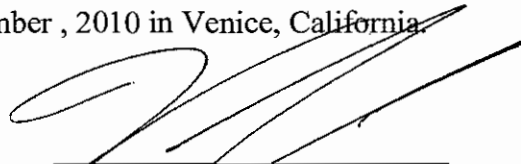
11 35. In addition to the work of Mr. Morrison and my co counsel Mr. Seplow (who
12 is submitting his own declaration under separate cover in which he states that his lodestar
13 amount for this case is \$346,680 (577.8 hours x \$600)), attorney Courtney Abrams from our
14 firm also did extensive work on this case, including contacting all of the class members and
15 conducting dozens of telephone interviews, reviewing all of the surveys and compiling a
16 detailed spreadsheet that was used to prepare for the mediation, and helping with the preparation
17 and research for the preliminary and final approval papers. Ms. Abrams is a 2009 graduate of
18 Southwestern Law School where she distinguished herself as a dedicated civil and employment
19 rights advocate. I became acquainted her as member of the California Employment Lawyers
20 Association, where she impressed me with her legal acumen and skills. She began working as a
21 contract attorney on selected projects for our law firm and did such an outstanding job we hired
22 her as an Associate. Ms. Abrams' hourly rate is \$275 and she has spent at least 130 hours
23 working on this case, according to her time records. Her lodestar is at least \$35,750 (130 x
24 \$275). In addition, to Ms. Abrams, two paralegals employed by our office (Kai Valenzuela and
25 Bill Clifton) spent substantial time supporting this action. The hourly rate for these paralegals
26 is \$150 and they have spent at least 120 hours working on this case. Their total lodestar amount
27 is \$18,000 (120 x \$150).
28

1 36. SDSHHH's total lodestar is \$652,180 and the Falvey firm's total lodestar is
2 \$607,500. Accordingly, at the time of the filing of this motion, Plaintiffs' counsels' total
3 lodestar is \$1,259,680. I have kept detailed records which reflect the amount of time spent on
4 this case and the specific tasks that I worked on. Upon request, we will provide my time
5 records, as well as those of the other attorneys from my firm, to the Court for *in camera* review.

6 37. With the guiding principle that early class action settlements are
7 favored and may not diminish an award of attorneys' fees as set forth below, Class Counsel
8 submit that the fee request is fair and reasonable in light of: (1) the enormous benefits to the
9 class member by providing them with compensation for disputed claims for overtime, including
10 missed meal and rest breaks; (2) the substantial time and effort expended by Class Counsel in
11 order to reach a settlement; (3) the litigation risks and complexity of the case; (4) the experience
12 and diligence of counsel; (5) the fees commonly awarded in cases of this type; and (6) the
13 extensive efforts by Class Counsel to increase participation by Class Members during the claims
14 administration process resulting in 87.5% of the available workweeks being claimed.

15
16
17 I declare under penalty of perjury that under the laws of the State of California and the
18 United States of America that the foregoing is true and correct.

19
20 Executed this 22nd Day of December , 2010 in Venice, California.

21
22
23 
24 V. James DeSimone