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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DUANE WATERS, DEBRA TURNER and RUDY FAJARDO, on behalf of themselves, all others similarly situated and the general public,

Plaintiffs,

vs.

AT&T SERVICES, INC. (formerly SBC Services, Inc.) and DOES 1 through 10;

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

I, BARRETT S. LITT, declare:

BACKGROUND

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

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

3. I am an attorney duly licensed to practice in the State of California and in the Central District of California. I graduated from the University of California at Berkeley in 1966 and from UCLA Law School in 1969. For the first approximately ten years of my practice, I focused primarily in the area of criminal defense at the trial and appellate levels, mostly in the federal courts. In that capacity, I handled hundreds of matters, tried many cases ranging from immigration offenses to murders, and handled numerous appeals. For the past approximately 30 years, I, as well as the firms in which I have been a principal or partner, have focused primarily on complex civil litigation in the areas of constitutional law, civil rights law, class action litigation, and complex multi-party litigation.

4. My current and former firms listed in ¶2 all operated for the specific purpose of developing and maintaining a civil rights and public interest law practice which operates in the private sector on the basis of self-generated fee awards and other recoveries. Nearly all of the work of my past and present firms falls into this category. Litt & Stormer received the Pro Bono Firm of the Year Award from Public Counsel in 1987 in recognition of its public interest and civil rights work. Litt & Marquez received an award from the NAACP Legal Defense Fund in July, 1992, as civil rights firm of the year in recognition of its civil rights work, primarily for litigation I headed regarding the LAPD's canine unit. I received an award from UCLA School of Law as its public interest alumnus of the year in 1995. I am rated "AV" by Martindale-Hubbell and am listed as a "Superlawyer" in Southern California in the field of civil rights.

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

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

- *Craft v. County of San Bernardino*, No. EDCV05-0359 SGL (C.D. Cal.) (jail strip search class action settled for $25.5 Million; class certified and partial summary judgment for plaintiffs granted; final approval hearing set for March 31, 2008);
- *Williams v. Block*, No. CV-97-03826-CW (C.D. Cal.) and related cases (a series of cases county jail overdetention and strip search class actions, settled for $27 Million and a complete revamp of jail procedures);
- *Multi-Ethnic Immigrant Workers Organizing Network v. City of Los Angeles*, 246 F.R.D. 621 (C.D. Cal. 2007) (certified class action for police break-up of May Day 2007 march recently settled for $12.85 million);

- *Bynum v. District of Columbia*, No. 02-956 (RCL) (D.D.C.) (class action against the District of Columbia for overdetentions and blanket strip searches of persons ordered released from custody; final approval of $12,000,000 settlement occurred January 2006);
- *Lopez v. Youngblood*, 609 F. Supp. 2d 1125 ((E.D. Cal. 2009) (settlement in principle in October 2010 for putative class fund of approximately $7 Million for inmates strip searched after becoming entitled to release, and strip searched in groups, subject to preliminary and final court approval);
- *Ofoma v. Biggers*, No. 715400 (Complex Litigation Panel) (Orange County Superior Court) (family discrimination class action settled in 1996 for damages for the individual plaintiffs and the class of residents, a consent decree and an award of attorneys' fees);
- *Avelar, et al. v. Hilton Hotels Corporation,* No. BC 342499 (Los Angeles Superior Court) (class action filed on behalf of employees and former employees of the Hilton Los Angeles North/Glendale & Executive Meeting Center; settlement of $950,000);
- *Gail Marie Harrington-Wisely, et al. v. State of California, et al.*, No. BC 227373 (Los Angeles Superior Court) (class action involving searches of visitors to California prisons without reasonable suspicion; stipulated injunction entered);
- *People of the State of California v. Highland Federal Savings and Loan*, No. CA 718 828 (Los Angeles Superior Court) (class action filed on behalf of the People of the State of California and a class of tenants residing in several slum buildings located in Los Angeles for financing practices encouraging and perpetuating slum conditions, settled for $3.165 million after decision in *People v. Highland*, 14 Cal.App.4th 1692, 19 Cal. Rptr. 555 (1993) established potential liability for lenders);

- *Hernandez v. Lee*, No. BC 084011 (Los Angeles Superior Court) (class action on behalf of tenants of numerous buildings for slum conditions settled in 1998 for $1,090,000);
- *Mould v. Investments Concept, Inc.*, No. CA 001 201 (Los Angeles Superior Court) (race discrimination class action on behalf of a class of applicants and potential housing applicants, settled in 1992 for a total of $850,000 for the class and a comprehensive consent decree regarding the defendants' discriminatory policies and practices); and
- *California Federation of Daycare Association v. Mission Insurance Co.*, No.: CA 000 945 (Los Angeles Superior Court) (class action on behalf of several thousand family daycare providers whose daycare insurance policies were canceled mid-term or were not renewed by Mission Insurance Company, settled in 1980's for reinstatement of policies and attorneys' fees; brought at request of Public Counsel);
- *Solis v. County of Los Angeles*, No. CV06-1135 SVW (CTx) (C.D. Cal.) (pending class action for strip searches of new arrestees bound over after first court appearance without individualized suspicion and group strip searches; motion for summary judgment pending);
- *Davis v. Baca*, No. CV 04-8251 AHM (C.D. Cal.) (currently pending class action for failing to stop the spread of MRSA in Los Angeles County Jail; case filed and in early mediation talks);
- *Johnson v. District of Columbia*, No. 02-2364 (RMC) (D.D.C.) (pending class action against the District of Columbia and United States Marshals for blanket strip searches of arrestees without reasonable suspicion and not involved in drug or violent activity);
- *Powell v. Barrett*, No. 1:04-cv-1100 (N.D. Ga.)(RWS) (pending class action against the Sheriff of Fulton County, Fulton County, and the City of Atlanta,

Georgia, for overdetentions and blanket post-release strip searches of arrestees and persons ordered released from custody; interlocutory appeal presently pending before the 11th Circuit en banc);

- *Jones v. Murphy*, No. CCB 05 CV 1287 (D. Maryland) (pending class action challenging overdetentions and illegal strip searches in Central Booking in Baltimore, Maryland);
- *Nozzi v. Housing Authority of the City of Los Angeles*, CV 07-00380 GW (C.D. Calif.) (class action against the Housing Authority for violations of due process and federal regulations by failing to provide proper notice of Section 8 rent increase affecting approximately 22,000 tenants; summary judgment granted defendants; appeal pending);
- *Salazar v. Schwarzenegger*, No. CV 07-1854 SJO (VBKx) (C.D. Cal.) (pending class action to certify statewide Plaintiffs' and Defendants' classes to enjoin, and provide restitution or damages for, seizing and impounding vehicles pursuant to *California Vehicle Code Section* 14602; summary judgment granted defendants; appeal pending).

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

- *McClure v. City of Long Beach*, No. CV-92-2776-E (C.D. Cal.) (fair housing and equal protection case against City of Long Beach and its agents for preventing six group homes for Alzheimer's victims from opening; jury verdict of $22.5 Million (reduced on remittitur to $13,826,832) plus approximately $10,000,000 in attorneys' fees and costs, settled in 2005);
- *Goldstein v. City of Long Beach, et al.*, Case No. 04-CV-9692 AHM (Ex) (C.D. Cal.) (wrongful conviction case against Long Beach Police Department based on violation of *Brady v. Maryland* for man imprisoned for 24 years; $7.95 Million settlement in August 2010);

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

(2004), in which the California Supreme Court upheld catalyst fees under California law);

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

isolated minorities in housing developments, settled in 1998 for $1.3 Million plus a comprehensive structural relief settlement agreement);

- *Melgar v. Klee* (Los Angeles Superior Court) (1988 $1.5 million jury verdict against Los Angeles Police Department for police shooting; settled for $1.45 million);
- *Heidy v. United States Customs Serv.,* 681 F.Supp. 1445 (C.D. Cal. 1988) (injunction against U.S. Customs Service for policies and practices of seizing materials from persons traveling from Nicaragua in violation of the First Amendment); and
- *Hernandez v. Avol* (Los Angeles Superior Court 1985) (action on behalf of approximately 350 slum housing residents, settled in 1988 for a comprehensive injunction and $2.5 million damages, plus a separate award of attorneys' fees).

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

9. I have both spoken and written on the subject of civil rights training. A few years ago, I published an article entitled "Class Certification in Police/ Law Enforcement Cases" in *Civil Rights Litigation and Attorney's Fee Annual Handbook*, Vol. 18, Ch. 3 (West Publishing 2002). I recently published an article in the *Los Angeles Lawyer* regarding the use of minimum statutory damages under the Unruh Act, particularly actions brought under Civil Code §52.1, to enhance the prospects for certifying class actions. See *Rights for Wrongs*, Los Angeles Lawyer December 2005. I also recently published a lengthy article on substantive legal issues suitable for class

action treatment, which included discussion of a variety of strip search issues, as well as over-detention and medical care issues, which was distributed to Plaintiffs' police abuse lawyers nationwide.

ATTORNEY'S FEE EXPERTISE

10. I am considered an expert in, among other things, attorneys' fees in civil rights cases. I have filed declarations on numerous occasions expressing expert opinions on the appropriate standards for awards of attorneys' fees in civil rights cases, which have been accepted by the courts. In the State Bar proceeding *In re Yagman*, I was qualified as an expert in attorneys' fees under 42 U.S.C. Section 1988 and testified on whether or not Mr. Yagman's fee arrangement in a police shooting case was or was not unconscionable, as the State Bar contended in that case. I was also qualified recently as a fee expert for Plaintiffs in a civil rights case that was settled, with the fees to be decided by a retired judge at an arbitration; in that case, I qualified and testified as an expert in attorneys' fees under state civil rights statutes. (Because the settlement was confidential, I can only describe the court's comments about me, but not the parties, issues or judge: Mr. Litt is "a prominent Los Angeles civil rights litigator experienced in fee issues arising from public interest litigation," whose "testimony …was credible and reliable; he has had a wide exposure to fees at a number of major firms in Los Angeles doing complex civil litigation. The arbitrator accepts his opinion that the fees of claimant counsel here are at the low end of that market.") In another recent case in which I wrote a fee declaration on behalf of Plaintiffs, *Atkins v. Miller*, CV No. 01-10574 DPP (C.D. Cal.), Judge Pregerson relied in part on a declaration from me regarding fees for complex civil rights litigation in the Los Angeles area in awarding hourly rates up to $675 per hour. I have on occasion represented other attorneys in their fee litigation seeking statutory attorneys' fees.

11. The next annual edition of West's *Civil Rights Litigation and Attorney's Fee Annual Handbook* will contain an article I recently authored, entitled, "Obtaining Class Attorney's Fees", in which many of the points I make in this declaration are discussed.

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

a. Kenneth Moscaret, a well known defense fee auditor, recently stated in a declaration where he addressed my qualifications that I had "an outstanding background and reputation in civil rights/constitutional litigation in Los Angeles", that I was "one of the top litigators in [my] field" and that he believed that my "skill, experience, and reputation in his field are deserving of a premium rate" (although he thought a premium rate was lower than I do).

b. Magistrate Judge Carla Woehrle, in awarding attorneys' fees in *Williams v. Block, supra*, commented that I am "considered one of the outstanding civil rights litigators in California, with special expertise in class actions, [and] the other attorneys involved in this litigation on behalf of the class are highly regarded, experienced and capable civil rights attorneys…."

c. United States District Judge Stephen Larson, in awarding attorneys' fees in *Craft v. County of San Bernardino, supra*, commented that "Plaintiffs' counsel are experienced civil rights litigators who are at the top of their field of expertise – civil rights litigation with special expertise in civil rights class actions."

d. United States District Judge Consuela B. Marshall, in awarding attorney's fees in *Gamino v. County of Ventura,* CASE NO. CV-02-9785 CBM (Ex), stated, "Mr. Litt is widely known as one of the

foremost civil rights attorneys in California, having a particular expertise in civil rights class actions and other complex multi-party civil rights cases, especially law enforcement class actions."

THE INSTANT WATERS V. AT&T CASE.

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

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

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

c. Plaintiffs sought overtime compensation, waiting-time penalties, premiums for missed meal periods and rest breaks, interest, and attorneys' fees and expenses. AT&T maintained that it properly classified Senior Analysts and Senior Database Administrators as exempt, denied liability, and denied further that plaintiffs or the class sustained any loss or is entitled to any recovery. AT&T contended that class certification was likely to be denied because of,

among other things, the disparate nature of the job duties of the putative class members.

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

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

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

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

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

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

c. Defendant denied and continues to deny any liability or wrongdoing of any kind and further contends that Defendant has complied with the California Labor Code, the California Business and Professions Code, the applicable Industrial Welfare Commission Wage Orders, and similar federal laws, including but not limited to the federal Fair Labor Standards Act. Defendant contended that case law supports its position that the employees at issue are exempt and also that the case would not be certified for a class action due to the predominance of individualized issues. Defendant contended that the class members were properly designated as exempt. In particular, this case involved application of the administrative exemption, which is still a developing area of the law. For example, a U.S. District Court in California

recently found that the administrative exemption applied to employees with arguably similar job duties as the Plaintiffs in this case. *See Heffelfinger v. Electronic Data Systems Corp.*, 580 F. Supp. 2d 933 (C.D. Cal. 2008). Defendant contended that the *Heffelfinger* case supported its position that the Class Members were exempt employees. Plaintiffs contend that *Heffelfinger* is readily distinguishable from this case and instead contend that this case is more analogous to *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120 (9th Cir. 2001) and *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363 (2007), in which the employees were determined to be non-exempt. Nonetheless, the uncertainty in the law regarding whether the Class Members were non-exempt is an example of the risks Plaintiffs faced were the parties to engage in lengthy litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] 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.

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

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

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

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

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

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

PLAINTIFFS' REQUEST FOR PERCENTAGE OF THE MAXIMUM SETTLEMENT AMOUNT.

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

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

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

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

[2] A copy of the Silber & Goodrich article is submitted as Ex. 3.

inconsistent in result, …capable of manipulation, …[and] creates inherent incentive to prolong the litigation").

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS OF THE LOAD STAR RATES OF PLAINTIFFS' COUNSEL

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

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

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

Michael Seplow	$600	1990
Michael Morrison	$500	1999
Thomas W. Falvey	$700	1975
J.D. Henderson	$375	2005
Courtney Abrams	$275	2009

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

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

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

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

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

[3] Of the firms that I review, almost all have offices in Los Angeles, which (with the possible exception of Silicon Valley) is the highest market in California, and second if 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).

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

FIRM	GRAD	RATE	YEAR
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, Gotscahl & 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, Gotscahl & Manges	1 [2008]	$355	2009
O'Melveny & Myers	1 [2007]	$330	2008
Skadden Arps	1 [2004]	$320	2005

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

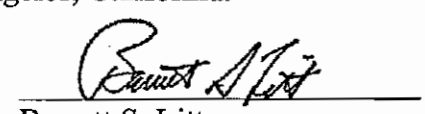
rate of $750 for SDSHHH partner Paul Hoffman and $625 per hour for V. James DeSimone.

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

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

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 13, 2010, at Los Angeles, California.



Barrett S. Litt