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14  
15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17

18 **THOMAS LA PARNE** and **EMILE** )  
**BOUARI**, individually and on behalf of )  
19 themselves and all others similarly situated, )

20 Plaintiffs, )

21 vs. )

22 **MONEX DEPOSIT COMPANY**, a California )  
limited partnership; **COMCO** )  
23 **MANAGEMENT CORPORATION**, a )  
California corporation; **MONEX CREDIT** )  
24 **COMPANY**, a California limited partnership; )  
**METCO MANAGEMENT** )  
25 **CORPORATION**; and Does 1 through 10, )

26 Defendants. )  
27 )

**Case No.**  
**SACV08-302 DOC (MLGx)**

**CLASS ACTION**

**DECLARATION OF JOHN M. KELSON IN SUPPORT OF PLAINTIFFS' APPLICATION FOR AN AWARD OF REASONABLE ATTORNEYS' FEES AND ENHANCEMENTS**

Hearing: 8:30 a.m.  
Date: February 28, 2011  
Ctm: 9D  
Judge: Hon. David O. Carter

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I, John M. Kelson, declare:

1. I am a lawyer and a member of the State Bar of California and practice law in Emeryville, CA. I am admitted to practice before the Supreme Court of the United States, the Courts of Appeals for the Ninth Circuit and the District of Columbia, and the United States District Courts for the Northern, Eastern, Central and Southern Districts of California, and the District of Columbia. If called as a witness, I could and would competently testify to the matters set forth in this declaration based on my personal knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true.

2. I make this declaration in support of the Application for an Award of Reasonable Attorneys' Fees and for Enhancement Awards for the Named Plaintiffs and Class Representatives.

3. I am one of the attorneys, along with others, who participated in the institution and prosecution of wage and hour claims against the defendants, Monex Deposit Company, Comco Management Corporation, Monex Credit Company, and Metco Management Corporation (collectively, "Monex") on behalf of plaintiffs-class representatives Thomas La Parne ("La Parne") and Emile Bouari ("Bouari") (collectively, "Plaintiffs"). My co-counsel are Niall P. McCarthy and Justin T. Berger of the law firm of Cotchett, Pitre & McCarthy, located in Burlingame, California, and Alexander G. van Broek, who practices in Oakland, California. In the past, my co-counsel also included Laura Schlichtmann who formerly practiced with the law firm of Cotchett, Pitre & McCarthy.

4. The Joint Stipulation and Settlement of Class Action and Release ("the Settlement") in this case provides that Plaintiffs' application for attorneys' fees and enhancement payments shall be scheduled for hearing before this Court, and the instant application has

1 accordingly been scheduled for hearing on February 28, 2011, unless otherwise directed by the  
2 Court.

3           5.       Plaintiffs La Parne and Bouari, so I am informed and believe, support the  
4 Settlement as fair and reasonable and in the best interests of the class and collective group that  
5 they represent. My co-counsel and I also support the Settlement as fair and reasonable and in the  
6 best interests of the class and collective group. The Settlement will completely resolve the claims  
7 in the *Monex* litigation.  
8

9           6.       It is my understanding and belief that at all relevant times Plaintiffs La  
10 Parne and Bouari worked for Monex at its Newport Beach office. Although they were no longer  
11 employed by Monex when this action was filed, because this litigation was fraught with  
12 substantial risks and uncertainties, the Plaintiffs, in my opinion, exposed themselves to serious  
13 professional risks with respect to continued and/or future employment in the business community  
14 by coming forward to act as named plaintiffs and class representatives in an action against their  
15 former employer.  
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17           7.       Fear of retaliation for acting as a named plaintiff and class representative  
18 is a factor with which I am familiar in a significant number of contacts that I have had with  
19 plaintiffs and prospective plaintiffs in the wage and hour class actions in which I have been  
20 involved. There is a constant and continuing concern by plaintiffs and prospective plaintiffs  
21 about the impact of publicity within the business community and a fear of retaliation against  
22 them by their current employer and prospective employers. These concerns, in my experience,  
23 are well-founded and substantial. In many instances, these concerns will cause and have caused  
24 a potential plaintiff to refrain from coming forward and acting as a named plaintiff and class  
25 representative.  
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1           8.       Based on the foregoing concerns expressed to me, I am convinced that the  
2 fears of these employees are genuine and well-founded. These fears have substantial impact on  
3 any employee or former employee who thinks about vindicating his or her wage and hour claims  
4 in the face of possible employer retaliation. Nonetheless, despite these well-justified concerns,  
5 Plaintiffs La Parne and Bouari agreed to serve as named plaintiffs and class representatives in  
6 prosecuting the present wage and hour claims as class and collective actions.  
7

8           9.       Based on my communications in this case, I believe that Plaintiffs La  
9 Parne and Bouari have been actively involved in the *Monex* litigation from the outset. They have  
10 been kept fully informed about the continuing developments in the case as they arose, including  
11 the settlement negotiations. Plaintiffs La Parne and Bouari have been significantly involved in  
12 the factual development of this litigation, including meetings with counsel, telephone  
13 conversations, exchanges of correspondence and faxes, gathering documents, responding to  
14 attorney questions about the operations of Monex and the issues presented in the case. Both  
15 have spent substantial time in preparing for and having had their depositions taken by defense  
16 counsel in this action. It is therefore accurate to say that Plaintiffs La Parne and Bouari have  
17 rendered invaluable assistance to their attorneys in many significant ways in connection with the  
18 handling of the litigation, including providing information detailing Monex' compensation  
19 policies as well as reviewing and evaluating the advisability of settling this litigation. In these  
20 circumstances, I believe that, given their respective commitments and involvement in this  
21 litigation, Plaintiff La Parne should be awarded \$5,000 as an enhancement award, and Plaintiff  
22 Bouari should be awarded \$2,500 as an enhancement award.  
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25           10.       Further, the *Monex* litigation involved a substantial amount of attorney  
26 time on my part, as well as on the part of my co-counsel. A summary of my work and that of my  
27 co-counsel follows:  
28

1 (a) In conjunction with my co-counsel, we conducted an extensive  
2 investigation of and consultation with persons willing to serve as plaintiffs-class representatives,  
3 including Plaintiffs La Parne and Bouari, as well as the factual investigation and fact finding and  
4 gathering process required to institute the *Monex* case;

5  
6 (b) Based on the factual information that we gathered, a complaint was  
7 then drafted for filing in the Central District of California. Together with my co-counsel, I  
8 reviewed, edited and commented upon this pleading, helped formulate the legal theories to be  
9 asserted and participated in strategic decisions relating to the prosecution of this suit;

10 (c) I was substantially involved in the discovery taken in this litigation,  
11 including my taking of the depositions of key defendant witnesses, including Louis Carabini,  
12 Michael Carabini, David Gala, Michael Maroney, and John Shannon. I also defended the  
13 depositions of Plaintiff Thomas La Parne and Don Kim (who was an opt-in FLSA claimant). I  
14 also participated in the drafting and propounding of discovery, including interrogatories and  
15 requests for production of documents, and reviewing the defendants' responses thereto.  
16 Additionally, I was involved in responding to defendants' discovery, including interrogatories  
17 and requests for production of documents.

18  
19 (d) I was also heavily involved in motions practice. In the first instance,  
20 this included extensive research relating to the preparation and filing of a motion for conditional  
21 certification under the Fair Labor Standards Act ("FLSA"), and the subsequent argument on this  
22 motion which was then granted by the District Court. Thereafter, I was significantly involved in  
23 the preparation of filing of a motion for Rule 23 class certification on behalf of class members in  
24 this litigation, and assisted at the argument of this motion which was subsequently granted in part  
25 by the District Court. I was further involved in the drafting of the Plaintiffs' opposition to  
26 Defendant Monex' motion for summary adjudication which thereafter resulted in the Court's  
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1 ruling that Monex was not a retail establishment for purposes of the FLSA. Prior to the  
2 disposition of these motions, I had been heavily engaged in the review and analysis of decisions  
3 on related wage and hour matters issued by courts nationwide and supplemental briefing on  
4 similar wage and hour issues arising under the FLSA and State law.

5  
6 (e) I also participated, together with my co-counsel, in developing and  
7 implementing our negotiating position in the mediation and eventual settlement of the *Monex*  
8 litigation. Although the matter was not settled at a formal mediation between the parties, as a  
9 result of the parties' subsequent direct communications between their respective counsel a  
10 settlement of the matter was thereafter reached and a formal Joint Stipulation of Class Action  
11 Settlement and Release negotiated and executed. My co-counsel and I engaged in many  
12 communications relating to the settlement discussions, participated in review of the settlement  
13 drafts, contributed comments and revisions and raised and analyzed strategic and tactical issues.  
14 Finally, I was involved in the implementation of the parties' settlement.

15  
16 (f) I and my co-counsel regularly participated in developing litigation and  
17 tactical strategy throughout the pendency of the *Monex* litigation.

18 14. Prior to the instant application, I performed at least 752.1 hours of legal  
19 services that, if billed at my current rates (\$675/hour) for wage and hour class action cases  
20 similar to the present case, would amount to \$507,667.50 in billable time for me.<sup>1[1]</sup> In addition,  
21 paralegal services for my office were performed in the amount of 342.35 hours at the hourly rate  
22 of \$150.00, for a total of \$51,352.50 for paralegal services. Associate attorney services for my  
23 office were also performed in the amount of 37.90 hours at the hourly rate of \$275.00, for a total  
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27 <sup>1[1]</sup> Current rates are appropriate to use as a standard. *Missouri v. Jenkins*, 491 U.S. 274, 283-  
28 284 (1989); *Gates v. Deukmejian*, 987 F.2d 1392, 1406-1407 (9<sup>th</sup> Cir. 1992) and *Vizcaino v. Microsoft Corporation*, 290 F.3d 1043, 1051 (9<sup>th</sup> Cir. 2002).

1 of \$10,422.50 for associate attorney services. Thus, the total lodestar fees for my office, if billed  
2 at current hourly rates, are \$569,442.50.

3 15. I have also incurred substantial litigation expenses in this case which, if  
4 charged as billable items, total \$22,046.43, including Expert Consultants (\$9,500.00), Travel  
5 (\$6,960.40), In-house copying (\$3,115.00), Outside reproduction (\$458.80), Telephone/Fax  
6 (\$120.88), Federal Express/California Overnight (\$114), PACER (\$122.88) and chargeable  
7 LexisNexis searches (\$1,654.47), in connection with the prosecution and settlement of the  
8 *Monex* litigation, all of which are either personally known by me to be accurate or have been  
9 reported to me as accurate by my bookkeeper, and are based on records that are and have been  
10 maintained in the regular course of business.

11  
12 16. My own experience practicing law began in 1971 when I was admitted to  
13 the Bar of the State of Michigan. After working for the United States Department of Justice in  
14 Washington, D.C., I was admitted to the State Bar of California in 1977. I have had extensive  
15 wage and hour and other class action experience as plaintiffs' counsel, and have also represented  
16 defendants in class actions. My *curriculum vitae* is attached hereto as Exhibit 1.

17  
18 17. I submit that a total recovery of \$208,000 for all plaintiffs' Counsel are  
19 justified in the circumstances of this case and should be awarded collectively to all plaintiffs'  
20 Class Counsel, for division as counsel may agree; and that the plaintiffs-class representatives  
21 should be awarded incentive enhancements as follows: \$5,000 for Thomas La Parne and \$2,500  
22 to Emile Bouari.

23  
24 I declare under penalty of perjury under the laws of the United States that the  
25 foregoing is true and correct and that this Declaration is executed on January 9, 2011.

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28 /s/ John M. Kelson  
JOHN M. KELSON

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EXHIBIT 1

JOHN MALCOLM KELSON  
2000 Powell Street, Suite 1425  
Emeryville, California 94608  
(510) 465-1326  
Facsimile: (510) 465-0871

EDUCATION: Harvard Law School Juris Doctor,  
Cambridge, Massachusetts 1971  
  
University of Michigan A.B. (Philosophy),  
Ann Arbor, Michigan 1965, Graduated  
With Distinction,  
Angell Scholar

MILITARY United States Army, 1st Lt., Infantry  
EXPERIENCE: S2, Detachment B-24, 5th Special Forces Group  
(Kontum, RVN) (1968-1969)

PROFESSIONAL Law Offices of John M. Kelson  
EXPERIENCE: Oakland, California (1985 - Present)  
  
Managing Attorney: Responsible for conduct  
of general civil litigation, involving complex  
business disputes, constitutional tort claims,  
first party insurance "bad faith" cases,  
employment disputes, wage/hour class actions  
  
Self, Dang & Kelson  
Oakland, California (1983 - 1985)  
  
Managing Partner, General Civil Litigation  
  
Law Offices of Guy O. Kornblum  
San Francisco, California (1981 - 1983)  
  
Shareholder and Director, Insurance Litigation  
  
Pettit & Martin  
San Francisco, California (1978 - 1981)  
  
Litigation Associate: General Civil Litigation  
  
Littler, Mendelson, Fastiff & Tichy  
San Francisco, California (1977 - 1978)  
  
Litigation Associate: Labor and Employment

U.S. Department of Justice  
Washington, D.C. (1971 - 1977)

Trial Attorney: Responsible for litigation involving U.S. statutory and regulatory programs, defense of government officials, and prosecution of enforcement actions.

BAR State of California; District of Columbia;  
ADMISSIONS: State of Michigan

PROFESSIONAL United States Attorney General's Special  
AWARDS: Commendation Award (1974)

United States Attorney General's Special  
Commendation Award (1973)

ARTICLES: Harvard International Law Journal (Spring, 1972):  
"State Responsibility And The Abnormally  
Dangerous Activity"

Harvard Legal Commentary (Spring, 1970): "Sales  
Commission Agreements In The Oil Industry"

SPEAKER: Panels, California Continuing Education of The  
Bar:

Bad Faith Litigation: Recent Trends and Effective  
Tactics (March, 1987)

Fundamentals of Civil Litigation Before Trial  
(January, 1985)

How To Handle Commercial Bad Faith Cases  
(July/August 1985)

PROFESSIONAL American Bar Association  
ASSOCIATIONS: San Francisco Bar Association  
Alameda County Bar Association

REPORTED UA Local 343 v. Nor-Cal Plumbing, Inc.,  
CASES: 48 F.3d 1465 (9th Cir. 1994) (as appellate counsel,  
obtained reversal of lower court's award of  
compensatory and punitive damages in a labor action  
arising under the Labor Management Relations Act  
and Employee Retirement Income Security Act)

Johnny Pflocks, Inc. v. Firestone Tire & Rubber  
Co., 634 F.2d 1215 (9th Cir. 1980) (as appellate  
counsel, obtained dismissal of appeal by tire  
distributor from lower court's order compelling  
discovery and awarding sanctions in Robinson  
Patman Act litigation)

REPORTED  
CASES:

Willson v. Cagle, 711 F.Supp. 1521 (N.D. Cal. 1988)  
as lead trial counsel, successfully defended and  
obtained summary judgment for Commanding Officer  
claims of constitutional tort violations  
in protestors' suit for civil damages)

Rush v. Obledo, 517 F.Supp. 905 (N.D. Cal. 1981)  
as lead trial counsel, obtained summary judgment  
on behalf of licensed home day care providers,  
holding that State warrantless inspection program  
under California Health & Welfare Code was  
unconstitutional as violative of Fourth and  
Fourteenth Amendments to U.S. Constitution)

United States v. Ford Motor Co., 421 F.Supp. 1239  
(D.D.C. 1976) (as lead trial counsel, obtained  
summary judgment in Safety Act litigation against  
auto manufacturer, ordering defect notification and  
recall of 500,000 automobiles which contained  
defective seat back brackets)

United States v. General Motors Corp., 417 F.Supp.  
933 (D.D.C. 1976) (as lead trial counsel, obtained  
summary judgment in Safety Act litigation against  
auto manufacturer, ordering award of \$400,000 civil  
penalty and defect notification, involving 186,000  
automobiles equipped with defective carburetors)

Ford Motor Co. v. Coleman, 402 F.Supp. 475 (D.D.C.  
1975) (As lead trial counsel, in summary proceed-  
ings before three-judge panel obtained judgment  
upholding penalty provisions of the National  
Traffic and Motor Vehicle Safety Act of 1966)

Fitzgerald v. Seamans, 384 F.Supp. 688 (D.D.C.  
1974) (As lead trial counsel, obtained summary  
judgment on behalf of federal defendants in a  
\$3,500,000 damage action against officials of the  
Departments of Defense and the Air Force who had  
purportedly retaliated against plaintiff because he  
had testified before Congress concerning cost  
overruns in federal military procurement program)

Mahaley v. Cuyahoga Metropolitan Housing  
Authority, 355 F.Supp. 1245 (N.D. Ohio 1973)  
(as lead trial counsel, obtained dismissal of  
Federal defendants before three-judge panel in  
action challenging the constitutionality of  
requirement for "local cooperation agreements" in  
HUD-sponsored low rent housing projects)