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5 *Attorneys for Plaintiffs and Plaintiff Class*

6
7 **UNITED STATES DISTRICT COURT**
8
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 THOMAS LA PARNE; EMILE BOUARI on)
11 behalf of themselves, the general public, and)
12 all others similarly situated,)

13 Plaintiffs,)

14 vs.)

15 MONEX DEPOSIT COMPANY, a)
California limited partnership; COMCO)
16 MANAGEMENT CORPORATION, a)
California corporation; MONEX CREDIT)
17 CORPORATION, a California limited)
partnership; METCO MANAGEMENT)
18 CORPORATION; and Does 1 through 10,)

19 Defendants.)
20)

Case No. SACV08-302 DOC (MLGx)
CLASS ACTION
DECLARATION OF ALEXANDER G. VAN BROEK IN SUPPORT OF APPLICATION FOR REASONABLE ATTORNEYS' FEES AND COSTS

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

1 I, Alexander G. van Broek, hereby declare:

2 1. I make this declaration of my own personal knowledge, and if called
3 to testify, I could and would testify competently to the matters stated herein, except
4 as to those matters stated on information and belief and, as to those matters, I
5 believe them to be true.

6 2. I am a lawyer and a member of the State Bar of California and
7 practice law in Oakland, California. I am an attorney duly licensed to practice
8 before this United States District Court in the Central District, and in the Northern
9 District of California. I am a sole practitioner in the Law Office of Alexander G.
10 van Broek, and one of Plaintiffs' legal counsel in this case. My co-counsel are
11 John M. Kelson of the Law Offices of John M. Kelson, and Justin T. Berger and
12 Niall P. McCarthy of Cotchett, Pitre & McCarthy.

13 3. I make this declaration in support of the settlement of this class
14 action and in support of the application of attorney's fees for representation of the
15 named plaintiffs and class representatives, and the class, and for enhancements for
16 the named plaintiffs.

17 4. I received my B.A. from the University of California at
18 Berkeley, in 1963, my M.A. from California State University, San Francisco, in
19 1972, and my J.D. from Golden Gate University School of Law in 1980. In 1979,
20 I served as a Judicial Extern for the Honorable Wakefield Taylor, California Court
21 of Appeal, First District, San Francisco, CA. Beginning 1979 I worked as a law
22 clerk for Silver & Siegel, San Francisco, CA, on employment discrimination cases.
23 After I passed the bar examination I opened my own office and have practiced law
24 as a sole practitioner since 1982, specializing in the representation of employees in
25 employment and labor law litigation. My office is now located at 1999 Harrison
26 Street, Suite 2675, Oakland, California, 94612.

27 5. I worked as a computer programmer and systems analyst from 1963
28 - 1980, primarily as an independent contractor in the San Francisco Bay Area. In

1 1976 I supervised a computer services contract with the Equal Employment
2 Opportunity Commission in San Francisco, providing the computer analysis for
3 two major discrimination cases with my team of four computer programmers.

4 6. My legal practice has focused on general civil litigation emphasizing
5 employment and labor law, wage and hour law, defamation, discrimination,
6 harassment, retaliation, severance, wrongful termination, breach of contract, civil
7 rights, torts, contracts, and intellectual property rights of employees. My
8 experience includes trials, appeals, and administrative hearings. I am trained
9 as a mediator and have mediated employment cases.

10 7. I am a member of the National Employment Lawyers Association,
11 the California Employment Lawyers Association, the Alameda County Bar
12 Association, and the Bar Association of San Francisco. I have recently served as
13 the vice chair and chair of the Alameda County Bar Association Labor &
14 Employment Section. I served as a Commissioner on the Oakland Police Review
15 Board for three years. I regularly volunteer as a supervising attorney for the
16 Workers' Rights Clinic of the Legal Aid Society. I have served as a Judge *Pro*
17 *Tem* with the Alameda County Superior Court, Small Claims Court Division, and
18 as an arbitrator in Mandatory Fee Dispute matters before the Alameda County Bar
19 Association and the California State Bar.

20 8. I have previously worked with co-counsel Chavez & Gertler in a
21 wage and hour class action entitled *Martinez vs. Penhall*, Alameda County
22 Superior Court Case No. HG03-107270. I am currently working on three wage
23 and hour class actions, including the instant case, and two cases in the Alameda
24 County Superior Court. I have litigated more than 12 representative actions under
25 the Unfair Competition Law or the Private Attorney General Act.

26 9. Attached hereto as **Exhibit A** is a true copy of a true summary of my
27 expenses incurred in this case. My total of out-of-pocket expenses is at least
28 \$7,709.51 through December 31, 2010.

1 10. The total of my hours expended in legal work on this case is at least
2 1,106.3 hours. This figure is based on my time recorded in my daily log. The time
3 was incurred by me from November 2007 through December 2010, and does not
4 include any time incurred during 2011. My current hourly rate of class actions and
5 statutory fee provision cases is \$395 per hour. 1,106.3 hours at \$395.00 per hour =
6 \$436,988.50.

7 11. A summary of my work on this case is as follows:

8 a. I was contacted by Thomas La Parne in November of
9 2007. I interviewed him and a number of other Monex employees. From those
10 interviews I determined that many of the former and then current employees of
11 Monex likely worked hours in excess of 40 hours per week or 8 hours per day, and
12 that at times sales personnel for Monex earned less than 1.5 times minimum wage
13 during the statutory pay period.

14 b. In conjunction with co-counsel we filed suit on behalf of
15 the two named Plaintiffs in the Central District of California, where Monex is
16 located.

17 c. I was involved in the motion practice in this case,
18 reviewing documents, and attending most of the hearings in Santa Ana, including
19 the class certification motion, the motion to amend the complaint, and the
20 defending the summary judgment motion.

21 d. I was involved in the discovery in this case, either
22 assisting the taking and defending percipient and expert depositions, and in two
23 instances defending part of the deposition of Plaintiff Bouari and taking part of the
24 deposition of the Monex statistical expert.

25 e. I was the primary contact person with named Plaintiffs
26 throughout this case.

27 f. With co-counsel, I carried out legal research on matters
28 pertaining to all of the motion. I conducted the investigation into the legislative

1 history of a tax law favorable to the Monex founder, and through the services of a
2 legislative history consultant obtained documents showing that the founder of
3 Monex was a proponent of the tax measure on the ground that his commodity
4 transactions involving precious metals were for resale.

5 g. I do not believe that any of the time of the attorneys in
6 this case was duplicative, because we worked as a team, and shared
7 decision-making on nearly every matter.

8 h. A great deal of our time was taken with dealing with
9 defense counsel. For example, Ms. Schlichtmann and I spent many hours dealing
10 with, and eventually rectifying, the problem created by Attorney Goteiner taking
11 Plaintiff La Parne's deposition in another case without notice to us. Mr. Berger
12 and Ms. Schlichtmann, Mr. Kelson and I spent a great deal of time contending with
13 discovery disputes from defense counsel.

14 i. Ms. Schlichtmann and Mr. Berger had primary
15 responsibility for working with our experts and reviewing the data and results, but
16 I did spend a significant amount of time on those efforts.

17 j. I was involved in the mediation of this case and the
18 preparation of the mediation brief and exhibits.

19 12. In my opinion, named Plaintiffs Thomas La Parne and Emile
20 Bouari deserve enhancements for their service in this case and their willingness
21 to take on the responsibilities and duties of class representatives. Throughout this
22 case Mr. La Parne lived in or near Newport Beach and then Huntington Beach,
23 California, and Mr. Bouari lived in Las Vegas, Nevada. I spoke with former
24 employees of Monex who described facts which supported their claims for
25 overtime and reimbursement for headsets but they declined to be named
26 representatives, explaining to me that they feared retaliation by Monex. I am well
27 aware that defendants claim that the named Plaintiffs were untruthful and on that
28 ground argue that the named Plaintiffs should not receive enhancement awards.

1 To my knowledge, a number of other former employees declared and testified that
2 they also worked overtime. The records upon which Monex relies further
3 demonstrate overtime work. There may be reasonable dispute over the amount of
4 overtime, but in my opinion there is no reasonable basis for Monex to argue that
5 the account representatives did not work overtime. The expert retained by Monex,
6 Mr. Crandall, admitted under cross-examination by me that the clocks for the
7 elevator swipes and the clocks for phone logs did not, on at least some occasions,
8 jibe, and therefore further evaluation of his figures would be necessary. Given that
9 Defendants have agreed to settle this case, it is fair to conclude that this result
10 would not have occurred but for the willingness of the named Plaintiffs to serve as
11 class representatives.

12 13. Mr. La Parne, especially, and Mr. Bouari, both participated in
13 the litigation of this case. Mr. Bouari attended two depositions, in Las Vegas and
14 San Francisco, and spent time meeting with counsel in Burlingame, California, and
15 was on telephone standby for the mediation. Mr. La Parne attended depositions in
16 San Francisco, met with counsel in Burlingame, California, and attended the
17 mediation in San Francisco.

18 14. I believe that in light of the settlement in this case, a total
19 recovery to Plaintiffs' counsel of \$208,000 is reasonable.

20 //

21 I declare under penalty of perjury under the laws of the United States, that
22 the foregoing is true and correct, and that this declaration is executed at Oakland,
23 on January 10, 2011.

24

/s/

25

Alexander G. van Broek

26

27

28

EXHIBIT A

Law Office Of Alexander G. van Broek

La Parne, Bouari v. Monex Deposit Company, et al.

Litigation Expenses

December 2007 through December 2011

<u>DESCRIPTION</u>		<u>AMOUNT</u>
Attorney Service		
Court Costs		
Pacer for this case	\$	283.36
Alameda County Library Research	\$	15.00
Documents/Publications		
Legislative Analysis Service	\$	447.20
Overnite Express; Fedex	\$	967.97
Hearing Transcript		
Legal Consultation - ERISA	\$	25.00
Lexis/Nexis or Westlaw		\$4,000
Messenger/Deliveries		
Miscellaneous		
In-house Photocopies	\$	125.00
Outside Photocopies	\$	16.35
Postage	\$	135.00
Parking - San Francisco Depositions	\$	65.00
Sp Master/Arbitration		
Telephone/Fax		
Travel - Santa Ana, CA and Las Vegas, NV	\$	871.74
Witness Fees		
Central District Certificate	\$	185.00
Hotels for Client	\$	653.89
TOTAL LITIGATION COSTS	\$	7,790.51