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

15
16 THOMAS LA PARNE and EMILE
17 BOUARI, individually and on behalf
of themselves and all others similarly
situated,

18 Plaintiffs,

19 vs.

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

25 Defendants.

Case No. SACV08-302 DOC (MLGx)

CLASS ACTION

**APPLICATION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
REASONABLE ATTORNEYS'
FEES, COSTS AND
ENHANCEMENT AWARDS**

Date: February 28, 2011

Time: 8:30 am

Ctrl: 9D

Judge: Honorable David O. Carter

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY

This case settled on the eve of trial, after more than two and a half hard-fought years of litigation. The settlement provides for \$78,786.00 in benefits to the class. Approximately half of this amount is for unreimbursed overtime wages under California law, and half is for unreimbursed business expenses. California’s overtime provision, found at Section 1194 of the Labor Code, contains an explicit fee shifting provision. Accordingly, under well-settled federal and state law, Plaintiffs are entitled to their reasonable attorneys’ costs and fees in this action. However, Plaintiffs’ counsel^{1/} are seeking reimbursement equivalent to only the costs expended in this matter.

In calculating reasonable attorneys’ fees and costs in the context of a fee-shifting statute, both the Ninth Circuit and California require use of the lodestar method. Plaintiffs have expended \$208,060.09 in costs and \$2,141,411.00 in fees. In this case, however, as detailed below, Plaintiffs **do not** seek reimbursement of their entire lodestar. Instead, Counsel for Plaintiffs seek only reimbursement of their expenses, or, in the alternative, approximately 8.85% of their total lodestar. Plaintiffs hope that this request will result in a less contentious resolution of this fee application.

In addition, Attorneys for Plaintiffs respectfully request fees and reimbursed expenses in the amount of \$208,000.00, and class representative enhancements of \$5,000 for Thomas LaParne and \$2,500 for Emile Bouari.^{2/}

¹ Cotchett, Pitre & McCarthy; Law Office of Alexander G. Van Broek; Law Offices of John M. Kelson.

² None of the hours or expenses used in this motion include the time spent on preparing this fee brief. Plaintiffs’ attorneys do not intend to seek further reimbursement of their fees or expenses as they relate to this brief, or the upcoming motion for final approval of the settlement.

1 **II. NATURE OF CASE AND PROCEDURAL HISTORY**

2 **A. Nature of Case**

3 This wage and hour collective and class action was brought by Plaintiffs
4 who were employed by one of the Defendants in positions referred to in this
5 litigation as Account Representatives. Plaintiffs alleged that Monex failed to pay
6 Account Representatives the required overtime premiums under federal and state
7 law, and that Account Representatives were not reimbursed for business purchases
8 necessary to their jobs. This case presented an issue of first impression regarding
9 whether sellers of commodities such as Defendant constitute “retail
10 establishments” for purposes of the federal Fair Labor Standards Act (“FLSA”),
11 and was closely and tenaciously contested on several other points of law.

12 **B. Procedural History**

13 The original complaint in this action was filed on March 18, 2008. *See*
14 Declaration of Justin T. Berger in Support of Application for Reasonable
15 Attorneys’ Fees (“Berger Dec.”) ¶ 5. After conferring with Defendants, Plaintiffs
16 agreed to drop a conversion claim, and filed the First Amended Class Action and
17 Collective Action Complaint on May 22, 2008. This is the operative complaint
18 which was ultimately settled. Defendants filed their Answer on May 27, 2008.
19 *See id.*, at ¶ 6.

20 Extensive discovery was undertaken during the litigation in preparation for
21 trial. Both parties produced substantial data and documents, as well as exchanging
22 written discovery totaling over 100 requests. *See id.*, at ¶ 7. The parties also took
23 a total of fourteen depositions, including those of the named Plaintiffs, three
24 absent class members and five management or executive level employees of
25 Monex. *See id.*, at ¶ 8. Of these depositions, four lasted more than one day,
26 including the depositions of both named Plaintiffs. The parties also deposed three
27 experts in this case - two for the Plaintiffs and one for the Defendant. In sum, five
28

1 depositions were taken in northern California, nine in southern California and one
2 deposition was continued in Nevada. *See id.*, at ¶ 9; *see also*, Declaration of John
3 M. Kelson (“Kelson Dec.”) ¶ 4(c).

4 The parties briefed three significant dispositive motions: for FLSA
5 collective action certification, for Rule 23 class certification, and for summary
6 adjudication. *See Berger Dec.* ¶ 10. The motion for FLSA certification was filed
7 on February 6, 2009 and granted on March 9, 2009. On April 10, 2009, the Court
8 approved Plaintiffs’ Proposed Notice to a conditional FLSA class numbering 276
9 former and current Monex ARs. This motion consisted of five declarations and
10 significant briefing by both parties. *See id.*, at ¶ 11; *see also* Kelson Dec., at ¶
11 4(d).

12 The Plaintiffs filed a motion to certify a Rule 23 class on September 28,
13 2009. The Court certified a Rule 23 class on December 22, 2009. This motion
14 involved the filing of a memorandum, opposition, reply and surreply by the
15 parties, in addition to thirty-seven declarations by Plaintiffs, Defendants, their
16 attorneys and other witnesses. The application to file a surreply was also fully
17 briefed. *See Berger Dec.*, at ¶ 12; *see also* Kelson Dec., at ¶ 4(d).

18 The parties also briefed (including briefing to file a surreply) and argued
19 Defendants’ motion for summary adjudication, regarding whether Monex Deposit
20 Company is a “retail establishment” under Section 7(i) of the Fair Labor Standards
21 Act (“FLSA”). *See Berger Dec.*, at ¶ 13. It is undisputed that this presented an
22 issue of first impression in this Court and the entire country, and was very closely
23 and tenaciously contested. *See id.*, at ¶ 14. The parties submitted four briefs, ten
24 declarations, three sets of evidentiary objections, two “supplements” and a
25 statement of disputed facts to this court in connection with the motion. *See id.*, at
26 ¶ 15. Plaintiffs also provided an extensive legislative analysis of applicable tax
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1 law, showing that the owner of Monex had argued that commodity transactions
2 with customers were for resale. *See id.*, at ¶ 16; *See also* Kelson Dec., at ¶ 4(d).

3 In addition to these three motions, the parties also fully briefed a motion to
4 file a second amended complaint and filed several declarations and notifications
5 regarding discovery disputes. *See* Berger Dec., at ¶ 17.

6 The parties engaged in a formal mediation session conducted by Hon.
7 William J. Cahill (Ret.) on August 31, 2009. *See id.*, at ¶ 18. Beyond this formal
8 session, the parties participated in extensive settlement discussions which were
9 adversarial, non-collusive and at arm's length, at all times. *See id.*, at ¶ 19. A
10 settlement was eventually reached between the parties and noticed to this Court on
11 August 12, 2010, just weeks before the trial was set to begin. *See id.*, at ¶ 20. The
12 motion for preliminary approval was filed on September 23, 2010 and granted by
13 this Court on November 29, 2010. The motion for final approval of settlement is
14 set to be briefed and argued before this Court on February 28, 2011. *See id.*, at ¶
15 21; *see also*

16 In sum, this matter was intensively litigated for nearly three years and
17 resulted in a settlement of \$78,786.00 for a class of 352 individuals, which
18 represents a substantial and important financial reward of between \$78 and
19 \$4,558.24 for each class member.

20 **III. PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS'**
21 **FEES AND REIMBURSEMENT OF EXPENSES SHOULD BE**
22 **APPROVED**

23 **A. In Class Actions, Plaintiffs Are Typically Reimbursed Their Costs**
24 **in Addition to Fees**

25 In a class action suit, Plaintiffs' Attorneys are entitled to a reimbursement of
26 all reasonable costs. (*See Knight v. Red Door Salons*, 2009 U.S. Dist. LEXIS
27 11149, at *8 (N.D. Cal. February 2, 2009) ("Attorneys may recover their

1 reasonable expenses that would typically be billed to paying clients in non-
2 contingency matters. Plaintiffs' counsel's expenses are documented in detail in
3 the declarations from counsel. The expenses relate to online legal research, travel,
4 postage and messenger services, phone and fax charges, copying, court costs and
5 the costs of travel. Attorneys routinely bill clients for all of these expenses and it
6 is therefore appropriate for counsel to recover these costs. . . .") (internal citations
7 omitted); *see also Harris v. Marhoefer*, 24 F. 3d 16, 19 (9th Cir. 1994) ("Harris
8 may recover as part of the award of attorney's fees those out-of-pocket expenses
9 that would normally be charged to a fee paying client. [collecting cases] Thus
10 reasonable expenses, though greater than taxable costs, may be proper."); *see also*
11 *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, Fed.
12 Sec. L. Rep. P. 94,376, Nos. CV 87-3962 KN(GX), CV 86-3538 KN(GX), 1989
13 WL 73211, at *6 (C.D. Cal. March 9, 1989); and, *In re GNC Shareholder Litig.*,
14 668 F. Supp. 450, 452 (W.D. Pa. 1987); Conte, Attorneys' Fee Awards, § 2.08 at
15 50-51 (2d ed. 1977).) In this action, Plaintiffs expended \$208,060.09. *See*
16 **Exhibit B** to Berger Dec.; *See also Exhibit A* to Declaration of Alexander G. Van
17 Broek ("Van Broek Dec."); and, Kelson Dec., at ¶ 15. These expenses were both
18 necessary and reasonable in order to achieve the settlement. *See* Berger Dec., at ¶
19 28. While class counsel recognize that this is not a common fund recovery, the
20 amount of costs expended on behalf of the class is a relevant factor.

21 **B. Plaintiffs' Fees and Costs Calculated Under the Lodestar Method**

22 **1. A Lodestar Analysis Must Be Used To Determine Whether**
23 **The Requested Fees Are Reasonable**

24 The "reasonableness" of a fee award is calculated based on the "lodestar
25 method." (*Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003) ("In order to
26 encourage private enforcement of the law, however, Congress has legislated that
27 in certain cases prevailing parties may recover their attorneys' fees from the
28

1 opposing side. When a statute provides for such fees, it is termed a ‘fee-shifting’
2 statute. Under a fee-shifting statute, the court must calculate awards for attorneys’
3 fees using the lodestar method, which involves multiplying the number of hours
4 the prevailing party reasonably expended on the litigation by a reasonably hourly
5 rate, and, if circumstances warrant, adjusting the lodestar to account for other
6 factors which are not subsumed within it”); *Caudle v. Bristow Optical Co.*, 224
7 F.3d 1014, 1029 (9th Cir. 2000) (finding an abuse of discretion where the court
8 did not explicitly follow the lodestar method and noting that a modest amount of
9 recovery cannot be used to reduce an award below the lodestar amount); *see also*
10 *Pelligrino v. Robert Half International, Inc.*, 182 Cal. App. 4th 278 (2010) (using
11 the Lodestar method to calculate an award of attorneys’ fees was reasonable, but
12 reducing the award due to the use of an excessive multiplier used by the trial
13 court); *Stuart v. RadioShack*, 2010 U.S. Dist. LEXIS 92067 (N.D. Cal. 2010)
14 (awarding a lodestar amount of \$1,500,000 in settled wage and hour lawsuit.)

15 **2. Under Both Federal and State Lodestar Analyses Plaintiffs’**
16 **Fee Request Is Imminently Reasonable**

17 California’s lodestar method was adopted in *Serrano v. Priest*, 20 Cal. 3d
18 25, 48 (1977) and *Ketchum v. Moses*, 24 Cal. 4th 1122, 1134 (2001). Under that
19 method, trial courts must first calculate the “lodestar” - reasonable hours times
20 reasonable rates - compensating successful counsel for “*all the hours reasonably*
21 *spent*, including those relating solely to the fee.” (*Ketchum*, 24 Cal. 4th at 1133
22 (emphasis in original).) The Ninth Circuit’s lodestar approach is similar. (*See*
23 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir.1975).) That lodestar may
24 then be enhanced or multiplied to take into account factors other than hours and
25 rates that go into the determination of a reasonable attorneys’ fee. “The unadorned
26 lodestar reflects the general local hourly rate for a fee-bearing case; it does not
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28

1 include any compensation for contingent risk, extraordinary skill, or any other
2 factors a trial court may consider. . . .” (*Ketchum*, 24 Cal. 4th at 1138.)

3 Attorney fee awards often significantly exceed the damages recovered when
4 the fees are necessary to obtain relief: “A trial court does not under California law
5 abuse its discretion simply by awarding fees in an amount higher, *even very much*
6 *higher*, than the damages awarded, where successful litigation causes ‘conduct
7 which the [statute] was enacted to deter and [to be] exposed and corrected.’”
8 (*Beaty v. BET Holding, Inc.*, 222 F.3d 607, 612-13 (9th Cir. 2000) (quoting *Vo v.*
9 *Las Virgenes Municipal Water District*, 79 Cal. App. 4th 440, 445 (2000)
10 (emphasis added)).) This rule recognizes that 1) the rights at issue are important
11 enough to enforce even if their monetary value would not otherwise justify the
12 litigation, and 2) the level of fees often results from the tactics employed by the
13 defense. (*Beaty*, 222 F.3d at 613.)

14 The overarching principle is that successful plaintiffs’ attorneys are entitled
15 to be fully compensated *at full market value* for all of their reasonable efforts, or
16 skilled counsel will be reluctant to take on such cases in the future. (*See, e.g.*,
17 *Blum v. Stenson*, 465 U.S. 886, 893 (fee awards must make civil rights cases as
18 financially attractive as “other types of equally complex . . . litigation.”).)

19 Here, Plaintiffs’ claims enforced important rights of individuals related to
20 their wages and hours and reimbursement of their work related expenses. The
21 importance of these rights has been expressly recognized by the California courts.
22 (*See Ramirez v. Yosemite Water Co., Inc.* 20 Cal. 4th 785, 794 (1999) (“past
23 decisions . . . teach that in light of the remedial nature of the legislative enactments
24 authorizing the regulation of wages, hours and working conditions for the
25 protection and benefit of employees, the statutory provisions are to be liberally
26 construed with an eye to promoting such protection.”); *see also Sav-on v. Superior*
27 *Court* 34 Cal. 4th 319, 340 (2000) (“Labor Code section 1194 confirms a clear

1 public policy . . . that is specifically directed at the enforcement of California’s
2 minimum wage and overtime laws for the benefit of workers.”.) Fee awards in
3 other cases have been based on the enforcement of similar, if not identical, rights.
4 (*See Estrada v. FedEx Ground Package System, Inc.*, 154 Cal. App. 4th 1, 16-17
5 (2007) (action enforcing rights of 209 FedEx drivers to recover work expenses);
6 *see also Plumbers & Steamfitters, Local 290 v. Duncan*, 157 Cal. App. 4th 1083,
7 1096 (2007) (action enforcing prevailing wage laws).)

8 Additionally, the settlement amount of \$78,786 provides significant benefits
9 to each of the class members in this action. This is not a “coupon” settlement.
10 Instead, individual class members will receive a payment of at least \$78 each, and
11 in most cases will receive payments of between \$150 and \$4,600 dollars. These
12 are not trivial amounts.

13 This settlement is an especially favorable result to the Class considering the
14 complexity of the action and inherent risk in proceeding forward in light of this
15 Court’s ruling on the Motion for Summary Adjudication. As noted above, this
16 case presented an issue of first impression and several other closely contested legal
17 questions.

18 The reaction of class members to the preliminary approval of the settlement
19 has been exceedingly positive. To date, only one exclusion out of a total class of
20 three hundred fifty two people has been received by Plaintiffs’ attorneys.
21 Plaintiffs’ attorneys have received no objections to the settlement to date. *See*
22 *Berger* Dec. ¶ 23. These facts demonstrate that the settlement is both fair,
23 reasonable and well-received by the class members and that the benefit conferred
24 on the class is substantial and important.

25 As an additional matter, the settlement between Plaintiffs and Monex in this
26 action explicitly precludes the payment of any attorneys’ fees out of the settlement
27

1 amount of \$78,786. All fees and costs will be paid separately by Monex, and will
2 have no impact on the class recovery.

3 Moreover, although Plaintiffs' attorneys' fees and expenses exceed the class
4 recovery, this is due to the tenacious litigation efforts of Defendants. This reality
5 is recognized by cases interpreting the fee-shifting statutes, awarding successful
6 plaintiffs' counsel full compensation for their efforts, even where the fees exceed
7 the damages recovered. (*See e.g. Beaty v. BET Holding, Inc.*, 222 F.3d 607 (9th
8 Cir. 2000).)

9 **3. Plaintiffs' Lodestar Total Is \$2,349,471.09**

10 As described above, this matter has been intensively litigated for nearly
11 three years by experienced and skilled counsel. At all stages, the litigation has
12 been contentious and hard fought by attorneys for both sides. Additionally, the
13 case represented novel and complex legal questions, requiring significant amounts
14 of research, the hiring of experts and many hours of work by skilled and
15 experienced attorneys.

16 Attorneys for Plaintiffs have spent a total of 3,664.1 hours on this matter.
17 The rates billed by those attorneys range from \$350 - \$750 per hour, well within
18 the prevailing market rates for attorneys of equivalent skill and experience. (*See*
19 *Children's Hospital and Med. Center v. Belshe*, 97 Cal. 4th 740, 783 (2002)
20 (affirming rates that were "within the range of reasonable rates charged by and
21 judicially awarded comparable attorneys for their work").) Counsel's rates here
22 are well within the range of rates charged by and awarded to comparably qualified
23 attorneys for comparable work. In addition to this, paralegals and other legal
24 assistants have spent 1,360.30 hours working on this matter, billing at rates
25 between \$150 and \$250 per hour, both rates which are eminently reasonable.

26 ///

27 ///

1 The attorneys for Plaintiffs have expended \$208,060.09 out of pocket for
2 items such as service, the hiring of experts, travel, copies, witness fees and other
3 items. A breakdown of these costs is attached as **Exhibit B** to the Berger Dec.,
4 **Exhibit A** to the Van Broek Dec., and the Kelson Dec., at ¶ 15. These costs were
5 vital and necessary in the process of moving toward the eventual settlement.
6 These costs, including travel for depositions, witness fees and other expenses were
7 a necessary part of reaching the settlement. The formal mediation did not result in
8 a settlement, and only after the full briefing of the Motion for Summary
9 Adjudication, and the two class certification motions did Defendants provide a
10 settlement offer. *See* Berger Dec. ¶ 28. There was no opportunity to settle this
11 matter until more than two years after the original complaint was filed, despite
12 having continual discussions and an official mediation session prior to that time.

13 The Lodestar total for Plaintiffs' Counsel is \$2,141,411.00,^{3/} plus expenses
14 of Plaintiffs' Counsel in the total \$208,060.09. Thus, the total amount Plaintiffs
15 could seek is \$2,349,471.09.

16 **4. Plaintiffs Are Seeking Only \$208,061, Making The**
17 **Request Even More Reasonable**

18 While Plaintiffs' attorneys believe they are statutorily entitled to a full
19 award of their fees and costs, they recognize that the difference between the total
20 award to the Class Members and the amount of time and money Class counsel
21 spent on this matter has the potential to cause alarm to the parties and to this
22 Court. Consequently, Plaintiffs' attorneys seek only to recover \$208,000, or
23 approximately 8.82% of their lodestar and recoverable expenses.

24 This amount means that attorneys for Plaintiffs will lose a significant
25 amount of money on this litigation, which was doggedly and aggressively pursued
26

27 _____
28 ³ 5,404.65 hours at rates between \$150 and \$750 per hour.

1 over nearly three years. Plaintiffs’ attorneys also recognize that this Court does
2 not wish to “relitigate” the entire case in a dispute over attorneys’ fees and hopes
3 that this reduced and wholly reasonable request will result in a less contentious
4 resolution of the fee application.

5 **C. Attorneys’ Fees and Costs Are Mandatory Pursuant to Labor**
6 **Code Section 1194**

7 This case settled shortly after Defendants’ successful motion for summary
8 adjudication of Plaintiffs’ overtime claims under the FLSA. Accordingly, the
9 settlement resolved Plaintiffs’ remaining claims, for overtime under California
10 Labor Code section 1194(a), and unreimbursed business expenses, also under the
11 California Labor Code.

12 Labor Code Section 1194(a), the California minimum wage and overtime
13 statute which is the basis for approximately half of this settlement, requires an
14 award of “reasonable attorney’s fees, and costs of suit.” This statute is a “one-way
15 fee-shifting statute made specifically applicable by the Legislature to overtime
16 compensation claims.” (*Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1429
17 (2000).) This fee-shifting provision reflects, as California courts have “long
18 recognized,” that “wage and hour laws concern not only the health and welfare of
19 the workers themselves, but also the public health and general welfare.” (*Id.*, citing
20 *Gould v. Maryland Sound Industries*, 31 Cal.App.4th 1137 (1995) and *Monzon v.*
21 *Schaefer Ambulance Service*, 224 Cal.App.3d 16 (1990).)

22 The above statute and cases “unquestionably entitle Plaintiffs, as prevailing
23 party in this litigation to attorneys’ fees.” (*Velasquez v. Khan*, 2005 U.S. Dist.
24 LEXIS 28956, *2 (E.D. Cal. 2005).)⁴ Plaintiffs reasonable fees and expenses
25

26 ⁴ There is no question that Plaintiffs are considered the “prevailing party” for
27 purposes of this fee shifting statute under both state and federal law. (*See Hensley*
28 *v. Eckerhart*, 461 U.S. 424, 433 (1983) (under federal law, “plaintiffs may be
considered 'prevailing parties' for attorney's fees purposes if they succeed on any

1 using the lodestar method, as detailed above, are \$2,349,471.09. Plaintiffs are
2 seeking only \$208,000.00, or approximately 8.85% of the lodestar total.

3 **IV. ENHANCEMENT PAYMENTS SHOULD BE AWARDED TO CLASS**
4 **REPRESENTATIVES**

5 Incentive awards promote the public policy of encouraging individuals to
6 undertake the responsibility of representative lawsuits. (*See, e.g., In re Mego Fin.*
7 *Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000); *Staton v. Boeing*, 327 F.3d
8 938, 977; *Stevens v. Safeway, Inc.*, 2008 U.S. Dist. LEXIS 17119 (C.D. Cal.
9 2008); *see also* Manual for Complex Litig., § 21.62 n.971 (4th ed. 2004)
10 (incentive awards may be “merited for time spent meeting with class members,
11 monitoring cases, or responding to discovery”).)

12 Incentive payments are more-than appropriate for the two class
13 representatives in this case, who dedicated a great deal of time and energy to
14 prosecution of this action. (*Staton*, 327 F.3d at 977; *In re Mego Fin. Corp. Sec.*
15 *Litig.*, 213 F.3d at 463.) Moreover, the payments requested here are at the modest
16 end of the spectrum. (*See, e.g., Hughes v. Microsoft Corp.*, 2001 U.S. Dist. LEXIS
17 5976, at *36-38 (approving incentive awards of \$7,500, \$25,000, and \$40,000);
18 *Carroll v. Blue Cross & Blue Shield of Mass.*, 157 F.R.D. 142, 143 (D. Mass.
19 1994), *aff'd* 34 F.3d 1065 (1st Cir. 1994) (“the class representatives shall receive
20 payments of \$7,500 each as compensation for services rendered to the class in
21 initiating and prosecuting this action”); *Bogosian v. Gulf Oil Corp.*, 621 F. Supp.
22 27, 32 (E.D. Pa. 1985) (stating “the propriety of allowing modest compensation to

23 _____
24 significant issue in litigation which achieves some of the benefit the parties sought
25 in bringing suit”); *see also Echostar Satellite Corp., v. NDS Group PLC*, 2010
26 U.S. App. LEXIS 16600 (9th Cir. August 4, 2010) (“Under federal law, a
27 ‘prevailing party’ is one that succeeds on any significant issue in litigation which
28 achieves some of the benefit the parties sought in bringing suit.”); and Cal. Code
29 Civ. Proc. Section 1032(a)(4) (“Prevailing Party includes the party with a net
30 monetary recovery”). Here, Plaintiffs achieved some of the benefit they sought in
31 bringing the suit, and also received a “net monetary recovery” pursuant to the
32 terms of the settlement. (*See Berger Dec.*, at ¶ 22.)

1 class representatives seems obvious,” and awarding \$25,000 to two named class
2 representatives); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 457, 463
3 (approving service awards of \$5,000); *Razilov v. Nationwide Mut. Ins. Co.*, No.
4 01-CV-1466- BR., 2006 WL 3312024, *3-*4 (D. Or. Nov. 13, 2006) (approving
5 \$10,000 award to each class representative); *Steinberg v. Morgan Stanley & Co.*
6 *Inc.*, Case No. 06-cv-2628 (S.D. Cal.) (\$20,000 enhancements); *Glass v. UBS*
7 *Financial Services, Inc.*, Cas No. 06-cv-4068 (N.D. Cal.) (\$25,000 enhancements);
8 *Bahramipour v. CitiGroup Global Markets, Inc.*, Case Nos. 04-cv-4440 and 07-
9 cv-0801-CW (N.D. Cal.) (\$20,000 enhancements); *Ross v. U.S. Bank National*
10 *Association*, Case No. 07-cv-2951 (N.D. Cal.) (\$20,000 enhancements); *Lewis v.*
11 *Starbucks*, Case No. 07-cv-0490 (E.D. Cal.) (\$5,000 enhancements for settlement
12 resulting in average payments of approximately \$86 to each class member.)

13 Both class representatives took significant risks and provided substantial
14 assistance to class counsel throughout this case. These risks included both the
15 pecuniary and non-pecuniary. Furthermore, both class representatives responded
16 to formal discovery requests and made themselves available for deposition. Mr.
17 La Parne, who lives in southern California, traveled to northern California on two
18 occasions and sat for two days worth of deposition. Mr. Bouri, who lives in Las
19 Vegas, also traveled to northern California for deposition. *See Berger Dec.* ¶ 31;
20 *Kelson Dec.*, at ¶¶ 6-9; *Van Broek Dec.*, at ¶¶ 12, 13.

21 The class representatives’ efforts in bringing this lawsuit have conferred a
22 significant benefit upon a large class of employees of Defendants. Additionally,
23 the lack of objections by class members demonstrates the quality of the settlement
24 and the appreciation that class members seem to have for the risks and efforts of
25 the class representatives. Therefore, Plaintiffs’ attorneys respectfully request that

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27 ///

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1 the Court approve the enhancements awards of \$5,000 to Mr. LaParne, and \$2,500
2 to Mr. Bouari.^{5/}

3 **V. CONCLUSION**

4 For the foregoing reasons, Plaintiffs’ counsel respectfully requests that this
5 Court GRANT approval of an award to Plaintiffs’ attorneys’ in the amount of
6 \$208,000.00, and class representative enhancements in the total amount of \$7,500.

8 Dated: January 10, 2011

COTCHETT, PITRE & McCARTHY

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/s/

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Justin T. Berger

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⁵ The difference in the two amounts reflects the approximate difference in time dedicated by the two class representatives in assisting counsel with the prosecution of this action.

24

Neither of these awards is disproportionate as to the awards that the rest of the class is receiving. As noted above, class members will receive up to \$4,558, and numerous members will receive more than \$500.

25

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In contrast to the award of attorneys’ fees and expenses, which will be paid by Monex apart from the award to the class, the settlement agreement provides that the incentive payments to Mr. LaParne and Mr. Bouari be paid from the class settlement fund.

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