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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN DOE, DAVID GUDEMAN, and PAOLA CORREA, on behalf of the State of California and aggrieved employees,

Plaintiffs,

vs.

GOOGLE, INC., ALPHABET, INC. ADECCO USA INC., ADECCO GROUP NORTH AMERICA and ROES 1 through 10,

Defendants.

Case No. CGC-16-556034

BAKER DECLARATION IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND AN INCENTIVE PAYMENT

(BAKER FEE DECLARATION)

Department: 304 (COMPLEX)
Judge: Hon. Curtis E.A. Karnow
Hearing Date: June 25, 2018
Time: 3:00 p.m.

Complaint Filed: December 20, 2016
Trial Date: November 6, 2018

I, Chris Baker, declare as follows:

1. I am counsel of record for the Plaintiffs in this action. I have personal knowledge of the following facts.

Attorney Background

2. As a lawyer, I have specialized in labor and employment law for about 23 years. I am currently a shareholder of Baker Curtis & Schwartz, P.C. Prior to that, I was the owner of the Baker & Schwartz Law Practice (known initially as the Baker Law Practice), which I founded in March 2013. From November 2008 through February 2013, I was a partner and then an equity partner at Nixon Peabody LLP, an AmLaw 100 Firm that – at the time – had more than 700 attorneys. From 1996 through November 2008, I was an associate and then a partner at Thelen Marin Johnson & Bridges (in all its iterations, ending with Thelen LLP), another AmLaw 100 firm. In 1995 and 1996, I was an associate at Littler Mendelson. In 1994-1995, I was a judicial clerk for Judge Bailey Brown of the United States Court of Appeals for the Sixth Circuit. Prior to that, I attended law school at the University of Cincinnati, where I was a Student Articles Editor of the Cincinnati Law Review, and where I externed for Judge David Nelson of the United States Court of Appeals for the Sixth Circuit.

3. I have two partners/shareholders, Deborah Schwartz and Mike Curtis. In 2014, Schwartz joined the practice and the firm became Baker & Schwartz, P.C. Deborah Schwarz has practiced labor and employment law since 2000. She was an associate at Thelen LLP, and an associate and partner at Nixon Peabody LLP. In 2015, Curtis joined Baker & Schwartz and the firm soon became Baker Curtis & Schwartz, P.C.as a partner. Curtis has practiced labor and employment law since 2007 and was previously a senior associate at Nixon Peabody. We are all very experienced, and our practice is not leveraged. There is very little of the "rework" that occurs at leveraged firms. That said, we do work on one another's cases, and we do communicate, strategize and provide input with respect to one another's work. We work together on large cases like this one.

4. At various times and in various years, all three of us have been rated "Super Lawyers" by our peers.

5. As lawyers, our practice has included, in significant respect, the defense (and now the prosecution) of complex wage and hour class, collective, PAGA, and qui tam actions. AS defense lawyers, we have represented corporate clients such as the Hertz Corporation (*see, e.g.*,

Hertz Corporation v. Friend (2010) 559 U.S. 77), Kaiser Permanente, the Golden State Warriors, Oracle, Solar City, Sharper Image, MediaNews Corp., American Laser Centers, and Redfin in employment class actions. As plaintiffs lawyers, we have prosecuted (or are prosecuting) employment class actions or PAGA cases against companies such as Bank of America, One West Bank, Chase, Fidelity, PennyMac, Mixpanel, and, of course, Google and Adecco.

Attorney Rates

6. Baker Curtis & Schwartz focuses on representing employees in individual, class, collective, PAGA, and other qui tam matters. While we primarily work on a contingency basis, we also represent employees – mainly senior executives and high income employees – and corporations on an hourly basis.

7. From the inception of work on this case through 2017, our standard hourly rates were $750 an hour for me (Baker), $615 an hour for Schwartz, and $550 an hour for Curtis. In 2018, we raised our rates to $800.00 an hour for me, $655 an hour for Schwartz, and $580 an hour for Curtis. These are the rates we currently charge new clients, as well as existing clients for new matters. I am confident these rates are competitive because, with limited exceptions (mainly with respect to Schwartz's work conducting workplace investigations), these are the rates that are actually paid to us by individuals and corporate clients for hourly matters, including litigation.

8. While at Nixon Peabody, I was a deputy department head of Nixon's labor group (consisting, at the time of my service, of more than 70 attorneys). In that position, I received information on standard hourly rates generated by law firm consultants, banks, and other sources. The hourly rates varied by geographic area. For example, a partner in the Bay Area would have a much higher rate than a partner in upstate New York. In my position as deputy, I advised on hourly rates for labor and employment attorneys in the group. In 2012-2013, the prevailing market rates for Bay Area labor and employment attorneys at firms comparable to Nixon ranged from $500 to $800 an hour. This is consistent with the case law. As explained in *Laffitte II,* in 2002, hourly rates ranged from $750 to $875 an hour, and in 2012, hourly rates ranged from $775 to $950 an hour. *Id.* at 152.

9. Based on my research, including (but not limited to) conversations with corporate

clients (who retain different firms), competitors, and colleagues in the defense bar, I understand that those rates have continued to increase

10. In addition, because I prepare fee applications in both class action and individual cases, I keep abreast of the market rates for fees. This includes reviewing fee applications in other cases, including expert declarations, and reviewing market research such as the "Real Rate Report" by CEB and Wolters Kluwer. According to press reports, and consistent with understanding, LexisNexis Counsel Link's 2018 Legal Management Report found an 8% increase in rates in 2017 among the 50 largest law firms, which includes Paul Hastings, Morgan Lewis, Latham Watkins, Kirkland & Ellis, Reed Smith, Goodwin Proctor, Covington & Burlington, and Sidley Austin. We have been adverse to all of these firms in the last two years.

11. As a contingency fee lawyer, I represent many clients where I take a percentage of any recovery in the case. I am, by necessity, keenly aware of the market for these cases, and communicate with other plaintiff's attorneys about their contingency fees (or learn about offered percentages from potential clients). In addition, when I represent defendants, I sometimes learn a plaintiff's attorney's contingency fee percentage in the course of negotiating a settlement. Currently, most plaintiff-side employment attorneys who work on a contingency basis for private clients charge 40% of the eventual recovery. Some start as low as 33%. Others go as high as 48%. I typically (though not always) enter into escalating fee deals with clients that start at 35%.

Time Spent on this Case

12. I am the primary attorney on this case and have done the vast majority of the work. Nevertheless, the case is large and it has been aggressively litigated. Accordingly, it has taken all three of us to litigate it.

13. We keep contemporaneous time records at our firm and record our time in the ordinary course of business.

14. In the course of preparing this motion, I reviewed and analyzed these time records. While doing so, I attempted to identify and remove duplicative or erroneous entries. I also attempted, where possible, to segregate the entries to exclude time spent on work unrelated to the claims released by the settlement.

15. After removing duplicative and erroneous time entries, and through May 31, 2018, our records evidence 325 separate entries and show that we have spent approximately 682 hours on this case. These numbers are consistent with my experience. With respect to the claims associated with the current settlement, a (very brief) summary is as follows:

16. I began working on this case more than two years ago, in April 2016. After initial settlement efforts failed, John Doe filed his initial PAGA complaint in December 2016. In February 2017, and after research and investigation to ensure the claims were viable, I notified the LWDA that Google requires all its employees and temporary workers to sign a "confidential" "Adult Content Liability Release." As explained in the pleadings on file in this action, as well the documents provided in support of the Joint Motion for Approval, under Google's non-disclosure (NDA) agreements, policies and practices then in effect, the "confidential" nature of the Liability Release meant it could never be shared with anyone. The Release also advised employees that they may be exposed to "sensitive 'adult' content" and that they "hereby release Google and its subsidiaries and affiliates from any and all liability associated with having this material present in the work environment, including but not limited to claims of harassment, hostile work environment, and discrimination."

17. Following Plaintiffs' PAGA notice, and as explained in the Joint Motion, Google rescinded the Release, declared it non-confidential, and instituted a new, non-confidential, policy. Following a dispute about the sufficiency of Google's cure, as well the expiration of the differing administration exhaustion periods (which Google refused to waive), on April 28, 2017, Plaintiffs filed their Third Amended Complaint (3AC). Google demurred to the 3AC, which was granted as to the Labor Code § 232.5 claim related to the Liability Release and denied as to the § 432.5 claim.

18. Discovery has also been contested in this case. As it relates to the settled claims, in January 2017, Plaintiffs sought discovery concerning Google's employment of employees working at other Alphabet subsidiaries. Google refused to respond. My meet and confer efforts were unsuccessful, and eventually I prepared and filed a motion to compel responses to this discovery (among other things). This motion was taken off calendar when the case was

transferred to the complex department. Eventually (in October 2017), Google provided a supplemental response concerning this discovery.

19. In June 2017, Plaintiffs sought discovery concerning the Liability Release claims from both Adecco and Google, as well as discovery relevant to Correa's claim that both Google and Adecco were her "joint employers." Defendants generally refused to respond to this discovery as well. I again met and conferred with Google's counsel. Eventually, Plaintiffs moved to compel Google's response to certain of this discovery as it relates to the Liability Release claims. In December 2017, the Court granted this motion.

20. In August 2017, Plaintiffs propounded discovery concerning the integrity of the judicial process as it relates to Google's authorization under the law and its own policies to access the Court's, Plaintiffs' counsel, and Plaintiffs' "User Data" in connection with this litigation, and whether Google had actually accessed this "User Data" (an electronic form of surveillance analogous to, but exponentially more intrusive than, the surveillance that is the subject to Form Interrogatory 13.1). Google refused to respond to this discovery, leading to additional meet and confer efforts and a supplemental (but still incomplete) response in November 2017.

21. In September 2017, Google served discovery on Plaintiffs related to the Liability Release claims. Plaintiffs responded to this discovery.

22. In October 2017, Plaintiffs served additional discovery on Google concerning its employment of Correa and other contingent workers, as well as its possession of employment documents signed by Plaintiffs. In response, Google (eventually) produced an NDA signed by Correa in the applicable limitations period that included the Liability Release.

23. There has also been motion practice on the merits of the settled claims. In late November 2017, Google moved for judgment on the pleadings as the Liability Release Claims under Labor Code § 432.5. Plaintiffs opposed the motion. In December 2017, the Court ruled in Plaintiffs' favor.

24. Following the Court's December 2017 rulings, Plaintiffs and Google agreed to mediate the matter. Between January and March 2018, Google voluntarily provided my firm with extensive information concerning the PAGA claims in preparation for mediation.

25. In February 2018, in light of certain rulings in the *Doe* and *Moniz* cases evidencing that resolution of these cases was not near, my firm and prepared and filed a writ petition seeking a reversal of the Court's *Garmon* preemption rulings, including as it relates to the Labor Code § 232.5 claims associated with the Liability Release. Google filed a preliminary opposition to this petition.

26. The parties mediated the case on March 22, 2018. As of the date of the mediation, the Court of Appeal had not yet ruled on the writ. On March 29, 2018, the Court of Appeals would deny the writ petition on the sole basis that it was timely.

27. At the March 22, 2018 mediation, the parties reached a Memorandum of Agreement resolving the Liability Release claims. Subsequently, we negotiated and drafted a long-form agreement. We also drafted and filed the Joint Motion for Approval and the supporting papers presently before the Court.

Discount and Exclusion Analysis and Summary of Time Spent

28. My analysis of our time records show that approximately **229** of the hours expended on this case, in my view, cannot be reasonably attributed to prosecuting the claims subject to settlement. Items of excluded time are time spent combating Google's attempt to the expand the scope of the proceeding before the National Labor Relations Board (and thus buttress its *Garmon* preemption argument), time spent on discovery solely associated with *Garmon* preemption of the primary NDA claims, discovery and motion practice concerning catalyst fees for the primary NDA claims, and motion practice, settlement efforts, and discovery requests and responses directed solely towards Adecco and related to the Adecco claims.

29. Of the **453** hours that are potentially relevant to the Settlement, approximately **59** of them are properly attributed only to the Liability Release claims against Google. This work includes legal research, drafting the initial PAGA notice and disputing the cure, opposing the motion for judgment on the pleadings, seeking and moving for discovery associated solely with the Liability Release as to Google, negotiating the long form settlement, and research and preparing the joint motion for approval. Of these 59 hours, approximately fifty were spent by me and nine were spent by Schwartz. The fees associated with this work comes to $43,758.

30. The remaining **394** hours concern other work on the case that furthered the prosecution of the settled claims, as well as the other claims against both Adecco and Google. This time is not subject to reasonable segregation. This work includes legal research, investigation, client communications, preparing the 3AC, other discovery requests and responses (including as to joint employer liability), discovery motion practice centered on all the claims, motion practice concerning both the NDA and Liability Release claims (such as opposing Google's demurrer to the 3AC), preparing for and attending court conferences, drafting the writ petition (which sought reversal of the Court's *Garmon* ruling related to the Liability Release § 232.5 claim *and* the other NDA claims), and preparing for and attending the March 22, 2018 mediation. About three hundred and fifty one (351) of these 394 hours were spent by me, thirty-eight (38) were spent by Schwartz (primarily on legal research and reviewing and revising pleadings and motions), and five were spent by Curtis (primarily on the writ petition). The total fees associated with this intertwined work is $297,677.

31. In deciding how best to "value" the intertwined fees, I thought it made the most sense to attribute 25% of these fees to the settled claims for lodestar cross-check purposes. This is because there are four main claims in this case: the "primary NDA claims" pled against Google and Adecco (claims 1 and 2) and the "release claims" also pled against Google and Adecco (claims 3 and 4). The time is clearly intertwined because sometimes the same act – such as attending a case management conference – furthers all the claims. The claims themselves are intertwined in the sense that the Liability Release claims include an "NDA claim" under Labor Code § 232.5.

32. Applying this reasoning, our "lodestar" for purposes of the cross-check is $118,177.25. Checking this lodestar against the requested percentage recovery yields a multiplier of 2.93.

Preclusion of Other Employment and Contingent Nature of Case

33. My firm has taken this case on contingency and are advancing its costs.

34. Since filing the PAGA notice asserting the Liability Release claims, my firm has declined to take on more than 200 potential matters. (We make records in client inquiries for conflict-of-

interest purposes.) While we would decline to handle many of these matters regardless of the circumstances, a significant number them were either hourly matters or had merit as contingency cases. We nevertheless declined these opportunities (and revenue) due to bandwidth constraints caused by the time and energy required of this case. In short, this matter has undoubtedly precluded us from taking on other cases.

Costs

35. In addition, in calculating our hard litigation costs with respect to this settlement, we faced the "intertwined" problem. Our "total" hard litigation costs for this case is $28,452.30. If the Court seeks an itemized cost report and backup receipts, we can provide them. A general breakdown of costs, though, is as follows:

Category	**Amount**
Pleadings and Other Filing Fees	$3.074.29
Court Reporter Fees	$3,820.88
Postage and Overnight Delivery	$221.02
Travel	$185.57
Legal Research (not including research covered by firm overhead)	$610.40
Mediation Services	$19,250
Total	$28,327.30

36. In the course of preparing this motion, I reviewed the itemized costs, and I excluded costs that are clearly unrelated to the present settlement (such as the separation mediation with Mark Rudy that only involved Adecco). Costs associated only with settled claims (such as the cost of filings involving Google's motion for judgment on the pleadings), I included. Costs that could not be clearly allocated to one claim or another, I discounted by 75%. As a result

of this process, the costs related to the settled claims comes to **$7,207.50.** Plaintiffs request that this amount be deducted from the common fund as reimbursement of litigation costs.

Incentive Payments

37. All of the named Plaintiffs in this case have actively supported it. They have been responsive. They have been communicative. They have asked very good questions and they understand the case. They have also risked a lot. It is scary to sue Google, and this is a high-profile case. John Doe attended the Google mediation and both Correa and Gudeman were available throughout the day. (Correa would later attend the Adecco mediation.) They have all reviewed the documents in this case. They have responded to discovery and provided evidentiary support to the motion practice and otherwise. None of these plaintiffs will "benefit financially" from this settlement in any meaningful sense, yet they have obtained a substantial payment to the State of California. Moreover, through their efforts, they have changed Google's behavior, forced it to announce a new policy, and rescinded more than 10,000 releases signed by their fellow co-workers, all of which purported to require them to waive important rights.

38. I fully support their request for modest incentive payments of $1000 each.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 1st day of June, 2018, in San Francisco, California.

Chris Baker