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10 Attorneys for Plaintiffs

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12  
13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF FRESNO**

15 **MARY BARBER and ISABEL**  
16 **FERNANDEZ**, as individuals and on behalf  
17 of all others similarly situated,

18 Plaintiffs,

19 v.

20 **GRUNDFOS PUMPS CORPORATION**, a  
21 California corporation, and **DOES 1-20**,  
22 inclusive,

23 Defendants.

24 **Case No. 14CECG00166 KCK**

25 **DECLARATION OF CHARLES A.**  
26 **JONES IN SUPPORT OF**  
27 **APPLICATION FOR AWARD OF**  
28 **ATTORNEY'S FEES, COSTS AND**  
**INCENTIVE AWARDS TO**  
**NAMED PLAINTIFFS**

**Date:** March 9, 2016

**Time:** 3:30 p.m.

**Dept:** 403

29 I, Charles A. Jones declare as follows:

30 1. I make this declaration based upon my own personal knowledge and, if called  
31 upon to testify, I could and would competently testify in court to the facts declared herein.

32 2. I am the lead attorney representing the Plaintiffs in this action. I have been  
33 involved with every aspect of this case since its inception in January 2014, including the initial  
34 case investigation, the filing of the Complaint and Amended Complaint, drafting letters to the  
35 Labor Workforce and Development Agency (LWDA), interviews with numerous potential

1 class members, reviewing documents obtained from potential class members, drafting  
2 Interrogatories, Document Requests, and Requests for Admissions to Defendant and reviewing  
3 Defendant's responses thereto, drafting deposition notices to Defendant, reviewing over  
4 30,000 pages of documents and other information provided by Defendant, deposing  
5 Defendant's Person Most Knowledgeable Designate, preparing and filing Plaintiffs' Motion for  
6 Class Certification, Motion to Compel, Motions for Preliminary Approval, researching and  
7 analyzing applicable law relating to the merits of Plaintiffs' claims, Class Certification and trial  
8 methodology, preparing for and attending the mediation, and drafting the settlement  
9 agreements, Notices, Claim Forms and Exclusion Forms. I make this declaration in support of  
10 the application for Attorney's Fees, costs and incentive payments to the named Plaintiffs.

11 3. My qualifications are as follows: I graduated from the University of Puget  
12 Sound in 1994. In 1998, I graduated from the University of San Diego School of Law. I am  
13 licensed to practice law in the following jurisdictions: California, Colorado, Nevada and New  
14 York. Specifically, I am admitted to practice law before the following courts: (1) United States  
15 District Courts in the Northern, Central, Eastern and Southern Districts of California; (2) all of  
16 California's state courts; (3) United States District Court of Nevada; and (4) all of Nevada's  
17 state courts.

18 4. I have been practicing law full time for the past seventeen (17) years. My  
19 practice has been devoted almost exclusively to complex class action litigation for the past  
20 twelve (12) years. I have been appointed lead or co-lead plaintiffs' counsel in twelve (12)  
21 certified class actions alleging violations of various federal and/or state wage and hour laws on  
22 the issues of overtime compensation, meal and rest breaks, vacation pay, final payments at time  
23 of termination, off-the-clock compensation, failure to issue complaint wage statements and  
24 minimum wage violations. In total, I have handled over thirty-five (35) class actions alleging  
25 violations of federal and/or state wage and hour laws on the issues noted above. I am one of a  
26 select few of attorneys who has actually tried an employment-related wage and hour class  
27 action. Specifically, I was lead trial counsel in *Puchalski v. Taco Bell Corp.* (San Diego  
28 Superior Court Case No. GIC870429) which was tried before the Honorable Kevin Enright of

1 the San Diego Superior Court beginning in February of 2012. The *Puchalski* class action, an  
2 overtime exemption misclassification case, involved over four hundred class members. The  
3 trial of the *Puchalski* action lasted four months and resulted in the Plaintiff class calling over  
4 thirty (30) class members witnesses at trial. Based on my experience, I am very familiar with  
5 the law relating to class actions, their dynamics and also the risks inherent in litigating a class  
6 action through certification and trial.

7         5. I regularly speak on panels that involve class action and employment issue. On  
8 average, I speak at least once a year to organizations such as Sterling Education Services on  
9 issues involving matters such as ethics, class action trial methodology, class certification,  
10 discovery and a wide range of topics relating to employment law issues under the FLSA,  
11 Nevada law and California law.

12         6. I am the owner of Jones Law Firm. My firm consists of two full time attorneys,  
13 myself and Kelly McInerney, and one full time legal secretary. Unlike larger litigation firms,  
14 nearly all of the work completed in the cases that my firm handles is completed by an attorney.  
15 Attorney Kelly McInerney graduated from the University of San Diego School of law in 1998.  
16 She is licensed to practice law in both California and Nevada. Ms. McInerney has dedicated  
17 her seventeen years in practice exclusively to class actions and has specialized knowledge of  
18 labor and class action law. She has handled over 20 employment related class action cases  
19 during her career.

20         7. I believe that I possess the experience and knowledge necessary to evaluate the  
21 claims, defenses, and risks presented by this case. I believe that the settlement is fair and  
22 reasonable as it provides significant monetary relief for the class members. The class members  
23 have shown overwhelming support for this settlement through the contacts from class member I  
24 have received in response to the notice program – as further evidenced by the fact that not a  
25 single class member has objected to the settlement, as of the date of the filing of this  
26 declaration. Further, based on my experience in handling similar class actions, I believe that  
27 the monetary recovery for both Sub-Classes is within the range of settlements that I have  
28

1 negotiated and which have been approved by other courts. Furthermore, I believe that all  
2 discovery necessary to make such a determination has been conducted.

3 **SUMMARY OF THE CASE AND SETTLEMENT TERMS**

4 8. This action was originally filed in this Court in January of 2014. The parties  
5 have engaged in extensive discovery including the production of over 30,000 pages of  
6 documents relating to the claims alleged and the wage statements issued to the Settlement Class  
7 Members during the class period. This proposed settlement was reached following prolonged  
8 negotiations between Plaintiffs and Defendant through an experienced mediator, Honorable  
9 Carl West (Ret.). This settlement was certainly reached as a result of “arm’s length  
10 negotiation,” as the settlement process took over two months to complete.

11 9. The proposed settlement of \$1,250,000 is a total payout, non-reversionary  
12 settlement in which no money reverts to the Defendant. As the settlement in non-  
13 reversionary, Grundfos will pay out the full \$1,250,000, regardless of the number of claim  
14 forms received by the classes. For example, if only half of the class members submit valid  
15 and timely claim forms, the settlement awards paid to those members who do submit timely  
16 and valid claim forms will increase substantially. (See, Stip. ¶¶33, 36.) From the total  
17 settlement amount of \$1,250,000 the following amounts will be deducted: (1) Attorney’s  
18 fees in the amount of \$416,666, subject to Court approval; (2) Attorney’s costs up to a  
19 maximum of \$20,000, subject to Court approval; (3) Enhancement Awards to the two named  
20 Plaintiffs in the amount of \$10,000 each, subject to Court approval; (4) Claim Administration  
21 Costs up to a maximum of \$10,000, subject to Court approval; and (5) a payment to the  
22 LWDA in the amount of \$7,500.

23  
24 Assuming that the Court approves all of the above amounts as requested, the non-  
25 reversionary Net Settlement Amount to be distributed to the Classes will be \$775,834. Of the  
26 non-reversionary Net Settlement Amount, \$773,500 is allocated to pay the claims of those  
27 Alternate Rate Sub-Class 1 members who timely submit a valid claim form. (*Id.* at ¶¶21, 23-26,  
28 32-37.) Similarly, of the non-reversionary Net Settlement Amount, \$2,334 is allocated to pay  
the claims of those Base Rate Sub-Class 2 members who timely submit a valid claim form. (*Id.*)

1 Under the terms of this settlement the Settlement Class Members will actually receive nearly  
2 100% of the maximum statutory penalties available to them under Labor Code §226 even after  
3 attorney's fees, costs, claims administration costs and incentive awards are deducted from the  
4 gross settlement amount.

5 **A. Sub-Class 1: Alternate Rate Sub-Class**

6 Of the Net Settlement Amount, \$773,500.00 is allocated to pay the claims of those non-  
7 exempt class members who timely submit a valid claim form "Alternate Rate Sub-Class  
8 Distribution Fund." (*Id.* at ¶¶32-37.) According to Defendant's records, there are a total of 263  
9 putative non-exempt class members who are members of the Alternate Rate Sub-Class. The  
10 members of the Alternate Rate Sub-Class consist of Putative Class Members who allegedly  
11 received non-complaint wage statements during the class period. *i.e.*, wage statements that did  
12 not include the hourly rates of pay when the class members received overtime pay, temporary  
13 lead pay, or temporary shift differential pay. Under the terms of the proposed settlement,  
14 assuming a 100% participation rate, Settlement Shares to the Alternate Rate Sub-Class 1  
15 Members will be paid out according to the following formula:

# Pay Periods For Which Employee Earned Compensation For Time Worked That Was Paid At Anything Other Than Base Rate (January 21, 2011 – December 14, 2013)	# of Alternative Rate Sub-Class Members in each group	Settlement Share	Total settlement payout for each group
1-10	39	\$500	\$19,500
11-20	28	\$1,000	\$28,000
21-30	22	\$2,000	\$44,000
31-40	14	\$3,000	\$42,000
41+	160	\$4,000	\$640,000

27 Pursuant to California Labor Code §226(e)(1) employees who suffer an injury as a  
28 result of a knowing and intentional violation of Labor Code §226(a) are entitled to recover

1 either actual damages or statutory damages of “fifty dollars (\$50) for the initial pay period in  
2 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a  
3 subsequent pay period, **not to exceed an aggregate penalty of four thousand dollars**  
4 **(\$4,000),”** plus attorney’s fees. (Labor Code §226(e)(1)[emphasis added]; *Brewer v. General*  
5 *Nutrition Corporation*, 2014 WL 5877695 at \*5 (N.D. Cal. 2014); *Jaimez v. DAIOHS USA,*  
6 *Inc.*, 181 Cal. App. 4<sup>th</sup> 1286, 1305 (2010). **Under the terms of this settlement, Alternate**  
7 **Rate Sub-Class 1 Members will recover nearly 100% of the maximum amount of**  
8 **statutory penalties available to them even after attorney’s fees and costs have been**  
9 **deducted. Specifically, 160 Sub-Class 1 Settlement Class Members will receive the**  
10 **maximum of award of \$4,000 each.**

11 As set forth in the above table, the settlement shares paid to each class member directly  
12 correspond to the harm suffered, *i.e.*, the number of instances in which the Class Members  
13 received non-compliant wage statements. This ensures that all Class Members are treated fairly  
14 with respect to their settlement awards. One of the true benefits of this settlement is that it is a  
15 total payout, non-reversionary settlement. What this means is that none of the settlement funds  
16 reverts to the Defendant and instead they are distributed to the class members on a pro-rata  
17 basis. See, Stipulation ¶36. The non-reversionary aspect of this settlement sets this settlement  
18 apart from many other class action settlements where the Defendant is able to recoup a portion  
19 of the settlement amount based on the number of claim forms received.

20 **B. Sub-Class 2: Base Rate Sub-Class**

21 Of the non-reversionary Gross Settlement Amount, \$2,334 is allocated to pay the claims  
22 of those Base Rate Sub-Class 2 members who timely submit a valid claim form. (*Id.* at ¶32-37.)  
23 There is a total of 15 putative Base Rate Sub-Class 2 Members. Under the terms of the  
24 proposed settlement, assuming a 100% participation rate, Base Rate Sub-Class 2 Members will  
25 receive \$155.60 net. Base Rate Sub-Class 2 Members consist of individuals who, according to  
26 Grundfos’s records, only received clearly compliant wage statements. *i.e.*, they never received  
27 a wage statement in which they received overtime pay, temporary lead pay, or shift differential  
28 pay.

1 Pursuant to California Labor Code §226(f), these Sub-Class members are arguably  
2 entitled to a penalty based on the fact that Grundfos allegedly failed to maintain copies of the  
3 actual wage statements issued to these Sub-Class members. However, in order to prevail on  
4 this claim, Plaintiffs would be required to prove that (1) the Defendant failed to maintain  
5 “copies” of the wage statements issued to the class (See, Labor Code §226(a)(b) and (c)) and  
6 (2) that the Defendant failed to permit the class members to inspect or copy their wage  
7 statements. While the entity who processed the payroll for Defendant during the release period  
8 failed to provide Grundfos with copies of the actual wage statements it issued to Defendant’s  
9 employees, it did provide Grundfos, but not the class members, with documents which identify  
10 all of the information required by Labor Code §226(a). As a result, the undersigned believes  
11 that there is a very low probability of success on this particular claim. Given that there are only  
12 15 Sub-Class members at issue, Class Counsel are pleased with the rate of recovery for these  
13 Sub-Class members.

14 10. This settlement also includes a release for the failure to pay wages and/or  
15 premiums at the proper regular rate of pay. Due to the fact that class members were paid at  
16 higher rates of pay when they worked overtime and received lead pay, and the wage statements  
17 did not set forth the hourly rates of pay when the class members did so, Plaintiffs alleged that  
18 they and the class members were not paid at their proper rates of pay. After an in-depth review  
19 of the wages statements issued to the Class Members, it was determined that 208 class  
20 members were not paid at their proper rate of pay when they worked overtime or received lead  
21 pay. However, the median amount of underpayments relating to the failure to properly  
22 calculate the regular rate of pay during the class period amounts to only \$39.52. Thus, under  
23 the terms of this settlement, the Settlement Class Members will be reimbursed for any claims  
24 relating the failure to properly calculate their rates of pay.

25 **AWARD OF ATTORNEY’S FEES AND COSTS**

26 11. In the Preliminary Approval Order, this Court preliminarily approved an award  
27 of attorney’s fees in the amount of \$416,666 (33 1/3%) of the total settlement amount) and  
28 \$20,000 in costs. (Order Granting Preliminary Approval ¶9) For the reasons set forth below, I

1 respectfully request that the full amount of attorney's fees and costs be awarded. At the outset,  
2 I believe it is important to note that the Settlement Class Members were made aware of the  
3 amount of attorney's fees and costs sought in this case and that not a single class member  
4 objected to the amount of fees and costs sought by class counsel as of the date of the signing of  
5 this declaration. The undersigned will file a supplemental declaration once the claims period  
6 and date for objections has expired, updating the Court as to both the total amount of settlement  
7 payments to the classes, as well as whether any objections to this application have been filed.

8 **REASONABLE HOURLY RATES**

9 12. The fees being sought in this case are reasonable in light of the contingent nature  
10 of the fee, the amount of work performed by class counsel and the quality of the work  
11 performed.

12 13. As a practicing attorney, I regularly research and track the rates charged by my  
13 colleagues. Through these efforts, I have become familiar with the non-contingent market rates  
14 charged by attorneys in California and elsewhere. I have obtained this familiarity in several  
15 ways, including: (1) researching fee rates; (2) handling attorney's fee litigation; (3) discussing  
16 fees with other attorneys; (4) reviewing declarations regarding prevailing market rates in cases  
17 seeking fees; (5) reviewing attorney's fee applications and court awards in other cases, and (6)  
18 reviewing surveys and articles in legal newspapers and treatises on attorney's fees.

19 14. The information I have gathered, set out below, shows that the hourly rates being  
20 charged by counsel in this case are well within the range of non-contingent rates charged by  
21 California attorneys of equivalent experience, skill, and expertise for comparable services.  
22 Specifically, the reasonableness of the rates is shown by the following facts regarding the non-  
23 contingent rates charged by attorneys for litigation services:

24 a. Rate Information from Surveys and Other Cases: I have reviewed  
25 numerous declarations and depositions filed in other cases, as well as various surveys of legal  
26 rates including specifically the National Law Journal's 2010 Billing Survey. These sources show  
27 the hourly rates for litigation undertaken on a non-contingent basis by the following California  
28 law firms several years ago. The rates are no doubt much higher today:



1 Coughlin Stoia Geller Rudman & Robbins, LLP

2 2007 Rates:

3

<u>Years of Experience</u>	<u>Rate</u>
49	\$700
19	\$600
14	\$600-650
13	\$585

5 Fenwick & West

6 2007 Rates:

7

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$500-775
Associates	\$245-500

8 Gibson Dunn & Crutcher, LLP

9 2006 Rates:

10

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$675
Associates	\$475

11 Howard, Rice, et al

12 2007 Rates:

13

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$495-775
Associates	\$275-485

15 Kirkland & Ellis

16 2005 Rates:

17

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$725

18 Lewis Feinberg

19 2006 Rates:

20

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$700

21 Lieff, Cabraser, Heimann & Bernstein

22 2007 Rates:

23

<u>Years of Experience</u>	<u>Rate</u>
Partners (20-30 years)	\$675-700

24 Morgan, Lewis & Bockius

25 2006 Rates:

26

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$375-800
Associates	\$200-550

27 Morrison Foerster

28 2007 Rates:

<u>Years of Experience</u>	<u>Rate</u>
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Partners \$550-675

**Reed Smith**  
**2007 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$375-825
Associates	\$200-510

**Rudy, Exelrod & Zieff**  
**2007 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$500-700

15. The hourly rates set forth above are those charged where counsel expects full payment promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be deferred for any substantial period of time, for example, or if payment were to be contingent upon outcome or any other factor, the fee arrangement would be adjusted accordingly to compensate the attorneys for those factors.

16. Similar to the federal court process, many California Superior court judges have adopted the percentage method for determining fee awards in class action settlements. Below is a sampling of other wage and hour class action cases that I have handled where California Superior Court Judges awarded fees based on a percentage of the overall settlement amount:

(a) In *Yates v. Wingfoot Commercial Tire Systems, LLC* (Sacramento Superior Court Case No. 04AS00160) the Honorable Thomas M. Cecil awarded a 33% fee request in an overtime exemption class action lawsuit that settled prior to certification and was presented by class counsel herein. A true and correct copy of this order is attached as Exhibit 1.

(b) In *Lindley v. Discount Tire Centers, Inc.* (Los Angeles Superior Court Case No. BC239094) the Honorable Peter Lichtman awarded a 33% fee request in an overtime exemption class action lawsuit that settled prior to trial and was presented by class counsel herein. A true and correct copy of this order is attached as Exhibit 2.

1 (c) In *Alfaro v. Senior Classic Leasing, LLC* (Los Angeles County Superior  
2 Court Case No. BC328987) the Honorable William Highberger awarded a 33% fee request in  
3 an overtime exemption class action lawsuit that settled prior to certification and was presented  
4 by class counsel herein. A true and correct copy of this order is attached as Exhibit 3.

5 (d) In 2014 in *Carl v. Advanced Call Center Technologies, LLC*  
6 (Sacramento County Superior Court Case No. 34-2013-00148310) the Honorable Alan G.  
7 Perkins awarded a 33 1/3% fee request in a class action lawsuit that settled prior to certification  
8 and was presented by class counsel herein. A true and correct copy of this order is attached as  
9 Exhibit 4.

10 (e) In *Puchalski v. Taco Bell Corp.* (San Diego Superior Court Case No.  
11 GIC870429) the Honorable Kevin Enright awarded a 50% fee request in a class action lawsuit  
12 that settled during trial and was presented by class counsel herein. A true and correct copy of  
13 this order is attached as Exhibit 5.

14 17. In my experience, fee awards are almost always determined based on current  
15 rates, such as the attorney's rate at the time a motion for fees is made rather than the historical  
16 rate at the time the work was performed. This Court can appreciate that litigating a high-  
17 stakes case against a defendant represented by a top-notch law firm in an unsettled area of law  
18 is not appealing to most lawyers.<sup>1</sup> Heightening the risk is the fact that the plaintiffs' lawyer  
19 will have to finance the litigation. It is not a cause undertaken lightly. One difficulty in  
20 determining the hourly rate of attorneys of similar skill and experience in the relevant  
21 community is the scarcity of hourly fee-paying clients in class action litigation. As a practical  
22 matter, few if any consumers or employees pay attorney's fees on an hourly basis for such  
23 extensive litigation. Thus, in such cases, including the instant case, attorneys base their retainer  
24 agreements on a contingency fee relationship.

25 18. The work in this case involved a class action and California's wage and hour  
26 law. Litigating a wage and hour class action through trial takes years and frequently requires  
27 the investment of hundreds of thousands of dollars in costs. Further, little case law interprets

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1 Gibson Dunn & Crutcher LLP, represents the Defendant.

1 the proper methodology for litigating a class action involving the claims alleged in this case.  
2 This is a very difficult area of law and not within the knowledge of many lawyers. Class action  
3 work of this type requires specialized learning and the willingness to take large risks.  
4 Plaintiffs' counsel used a high level of skill in the difficult questions that arose in this case.  
5 When taking on this case, it was apparent to counsel that there were difficult evidentiary issues  
6 concerning Plaintiffs' ability to demonstrate the class was not issued compliant wage  
7 statements or properly paid for all hours worked at the correct legal rate of pay. However,  
8 Plaintiffs were confident that they could not only make the requisite showing the court for  
9 certification but also at trial.

10 19. Given the size of my firm, a practice like mine can only properly litigate so  
11 many cases at one time. My firm limits the number of class action cases prosecuted at any  
12 given time due to the complex nature of class actions and the time required to properly litigate  
13 them. The time requirements of this case were significant. There is no question that my firm  
14 was precluded from taking other cases, and in fact, had to turn away other meritorious fee-  
15 generating cases in order to meet the demands of this case.

#### 16 LITIGATION EFFORTS

17 20. In preparing this fee application, I reviewed the firm's time records, files and  
18 emails. Based on my review of these records, I can attest that all of the time set forth was  
19 reasonably devoted to pursuing the best interests of the two Sub-Classes and otherwise would  
20 have been billed to a fee-paying client.

21 21. Class counsel request a fee award as a percentage of the total fund; however,  
22 class counsel's fee requested is also supported, or "cross-checked," by a lodestar with an  
23 appropriate multiplier. Attached as Exhibit 6, is a spreadsheet setting forth the categories of  
24 work performed and time spent by my firm on this case. To summarize, Jones Law Firm  
25 worked 619.75 hours (505 by Charles A. Jones and 114.75 by Kelly McInerney) on this case.  
26 In addition to these hours, I anticipate that Ms. McInerney and I will spend approximately an  
27 additional 65 hours on this case prior to the Final Approval hearing communicating with the  
28 settlement administrator class members and defense counsel regarding this settlement and

1 resolving work week disputes and eligibility to participate in settlement, reviewing reports  
2 submitted by the settlement administrator, researching and drafting the Motion for Final  
3 Approval of this settlement, handling any objections and preparing, traveling and attending the  
4 Final Approval hearing. The hours expended are neither duplicative nor unreasonable. We  
5 request the Court find that the requested hourly rate of \$600 for Charles A. Jones and Kelly  
6 McInerney to be reasonable. The rates sought above have been approved by trial courts in  
7 California. Specifically, the rates have been approved by the Honorable Kevin Enright of the  
8 San Diego Superior Court in *Puchalski v. Taco Bell* and the Honorable William B. Shubb of the  
9 Eastern District of California in *West v. Circle K Stores, Inc.* Under a strict lodestar, the fees  
10 expended to date for Jones Law Firm alone equal \$ 371,850. Including the additional time that  
11 we anticipate spending on this case through the Final Approval hearing (65 additional hours),  
12 the lodestar amounts to \$410,850. The requested rates are in line with the market rate.

13 22. In the event that the Court does not utilize the percentage of the common fund  
14 approach in awarding attorney's fees, the Court should enhance the lodestar with a multiplier  
15 because the case and the settlement will benefit a large group of people beyond the members of  
16 the class and the risks throughout the case were large. Plaintiffs' counsel were paid nothing  
17 along the way and had to pay considerable expenses for costs. I believe a 33 1/3% percent fee –  
18 cross-checked with a lodestar and a reasonable 1.13 multiplier – is reasonable in this case.

19 23. As set forth in Exhibit 6, the work performed by Jones Law Firm on this case  
20 includes, but is not limited to, the following:

21 (1) Pre-filing investigation and factual research: telephone and in-person meetings  
22 with putative class members and class representatives, reviewing and analyzing documents  
23 provided by putative class members and their personnel files prior to drafting the complaint,  
24 analyzing potential claims to be asserted against defendant, researching and analyzing the law  
25 related to the claims alleged in the Complaints, researching and analyzing defendant's  
26 operations, pay schemes, practices and financials, and researching venue issues.

27 (2) Discovery and Document review: drafting two sets of Interrogatories and Document  
28 Requests and one set of Requests for Admissions, reviewing and analyzing Defendant's

1 responses to Plaintiffs' discovery requests, drafting Person Most Knowledgeable Deposition  
2 Notices for Defendant covering 22 separate topics, deposition preparation, traveling to and  
3 from Fresno and deposing Defendant's PMK on deposition topics, reviewing and summarizing  
4 deposition of Defendant, reviewing and analyzing over 30,000 pages of documents produced  
5 by Defendant and putative class members, researching applicable law and preparing Motion to  
6 Compel names and address of putative class members, researching applicable law and  
7 preparing Motion to Compel further responses to Interrogatories, Document Requests and  
8 Requests for Admissions, and reviewing Defendant's notice of deposition and document  
9 requests.

10 (3) Pleadings and LWDA letters: Review applicable law and draft two separate letters  
11 to California Labor Workforce and Development Agency, draft Complaint and First Amended  
12 Complaint, Review Defendant's Answer.

13 (4) Mediation and Travel: review potential mediators for case, communication with  
14 mediators prior to mediation; complete damage analysis and potential distribution formulas  
15 prior to mediations, draft mediation statements, mediation preparation, travel to/from Los  
16 Angeles and attend mediation.<sup>2</sup>

17 (5) Litigation Strategy, Analysis and Case Management: draft Case Management  
18 Conference Statements, Review scheduling and trial setting orders, research and draft  
19 stipulated protective orders, review, develop and update trial plan and litigation strategy based  
20 on claims alleged and relief sought, research class certification orders and rulings from Fresno  
21 County Superior Court Judges, draft update letters to class, perform searches for updating  
22 contact information, identify potential trial and class certification witnesses, prepare  
23 declarations.

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24  
25 2 There were two separate mediations scheduled in this case. The first mediation was  
26 scheduled with the Honorable Howard Broadman (Ret.). This mediation was abruptly canceled  
27 by Defendant shortly before it was set to commence and after Plaintiffs had drafted their  
28 mediation statement due to the fact that Defendant terminated its prior defense counsel,  
Barsamian & Moody, and transferred the case to Shook Hardy and Bacon. Thereafter, I  
communicated with Shook, Hardy, and Bacon regarding potential other mediators for this case.  
Ultimately, Defendant also terminated its relationship with Shook Hardy and Bacon and  
retained current counsel, Gibson Dunn & Crutcher LLP.

1 (6) Class Certification: research applicable case law relating to all claims alleged in  
2 FAC, draft and revise Motion for Class Certification, declarations and proposed class notice;  
3 identify documents and evidence to be used in support of class certification motion.

4 (7) Settlement: draft, review and revise settlement agreement, proposed notice, claim  
5 forms, exclusion forms, release for named Plaintiffs and proposed orders granting preliminary  
6 approval, review and revise potential distribution formulas to putative class members, research  
7 potential claims administrator, research Preliminary approval orders and rulings from other  
8 courts, draft Motions for Preliminary approval, review tentative rulings from Court regarding  
9 preliminary approval, research cases cited in tentative preliminary approval orders, prepare for  
10 and participate in oral arguments regarding preliminary approval, review case law and rulings  
11 from other court's regarding attorney's fees, costs and incentive awards to class representatives,  
12 draft and prepare Application for attorney's fees, costs and incentive awards to class  
13 representatives, communicate with settlement administrator regarding distribution formulas,  
14 claim form, notice form and disputes from class members regarding eligibility for recovery,  
15 review status reports from settlement administrator.

16 (8) Communications with Defense Counsel and Class Members: letters, e-mails and  
17 telephone conversations with three different sets of defense counsel on discovery disputes,  
18 names and addresses of putative class members, court appearances, extensions of time to  
19 respond to discovery, trial planning and scheduling, motions to compel, mediation and  
20 settlement, protective orders, etc. Conversations with and interviews of putative class members  
21 regarding claims alleged and relief sought, eligibility to participate in class action and  
22 settlement, documents provided during discovery, Defendant's operations, policies and  
23 procedures, settlement procedure, potential recovery, and claims process. As of the date of the  
24 filing of this declaration, Class Counsel have exchanged and reviewed over 500 e-mails with  
25 defense counsel and the class members.

26 24. I am extremely pleased with the result achieved in this litigation and believe that  
27 the amount obtained for the settlement class members is very fair and reasonable. This is the  
28 first class action that I have handled in which the class members will actually recover nearly

1 100% of the value of the primary claims alleged in the First Amended Complaint (failure to  
2 issue accurate wage statements in violation of Labor Code §226(a)), even after attorney's fees,  
3 costs, claims administration costs and incentive awards have been deducted from the gross  
4 settlement amount. For the vast majority of the class member population, receipt of this  
5 recovery will be something of a windfall in that the class members never even knew they could  
6 be entitled to the statutory penalties recovered herein when Plaintiffs filed this case. As the  
7 average Alternate Rate Sub-Class Member earns \$13.00 an hour and will receive thousands of  
8 dollars under the terms of this settlement, the amount recovered is truly meaningful.<sup>3</sup> The same  
9 is true for the Base Rate Sub-Class Members. The average class member's recovery is an  
10 amount that in no way a party can characterize as merely "symbolic" or "paltry." It is just the  
11 opposite: it is a sum that exceeds most class members' expectations and an amount that will  
12 make a real impact on their lives. Further, the settlement formula allocates more funds to those  
13 who received a large number of non-complaint wage statements in order to achieve an  
14 equitable division of the settlement proceeds. In addition, to date not even one class member  
15 has filed an objection to this settlement.

16 **COUNSEL'S COSTS**

17 25. Jones Law Firm requests that its costs be reimbursed in the amount of  
18 \$16,775.65. This law firm reasonably incurred these costs in the prosecution of this matter.  
19 These costs include court fees, filing fees, mediation fees, research fees, postage, service of  
20 process fees, expenses associated with mediation, travel expenses, and photocopy charges. In  
21 addition to these costs, I anticipate that I will incur at least \$800 in additional costs associated  
22 with filing fees, travel, and administration expenses prior to the final approval hearing. These  
23 costs are itemized and attached hereto as Exhibit 7.

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26 3. I also am pleased with the amount of recover for the 15 Sub-Class 2 members. This Sub-  
27 Class is comprised of individuals who received complaint wage statements and are not entitled  
28 to any recovery under Labor Code §226(a). Nevertheless, they will still receive compensation  
under the terms of this settlement for potential violations of Labor Code §226(f). However, as I  
explained in my prior declarations filed in support of preliminary approval, the chance of  
success on this claim is low.





1 No. 04CV00044 BEN (BLM), United States District Court Judge for the Southern District of  
2 California, Robert Benitez, approved service payments of \$20,000 each to the two named class  
3 representatives in a wage and hour overtime class action which settled for \$3,900,000. (Exhibit  
4 8, Order Awarding Additional Compensation) In *Lindley v. Discount Tire Centers, Inc.*, Case  
5 No. BC239094, the Honorable Judge Peter Lichtman (Ret.) approved service payments totaling  
6 \$110,000 for the five class representatives in an overtime class action which settled for  
7 \$3,250,000. (Exhibit 9, Order Awarding Additional Compensation.) Recently, in *Carl v.*  
8 *Advanced Call Center Technologies, LLC*, Case No. 34-2013-00148310, the Honorable Alan  
9 G. Perkins awarded incentive payments to the five class representatives in the amount of  
10 \$10,000 each in a wage and hour class action which settled for \$2,475,000 (Exhibit 4, Final  
11 Approval Order).

12 Attached to my Declaration are true and correct copies of the following documents:

- 13 Exhibit 1: Order awarding attorney's fees of 33% in class action handled by Class Counsel  
14 titled *Yates v. Wingfoot Commercial Tire Systems, LLC* (Sacramento Superior Court Case No.  
15 04AS00160);
- 16 Exhibit 2: Order awarding attorney's fees of 33% in class action handled by Class Counsel  
17 titled *Lindley v. Discount Tire Centers, Inc.* (Los Angeles Superior Court Case No. BC239094);
- 18 Exhibit 3: Order awarding attorney's fees of 33% in class action handled by Class Counsel  
19 titled *Alfaro v. Senior Classic Leasing, LLC* (Los Angeles County Superior Court Case No.  
20 BC328987)
- 21 Exhibit 4: Order awarding attorney's fees of 33 1/3% and service payments to the five  
22 class representatives in the amount of \$10,000 each in class action handled by Class Counsel  
23 titled *Carl v. Advanced Call Center Technologies, LLC* (Sacramento County Superior Court  
24 Case No. 34-2013-00148310);
- 25 Exhibit 5: Order awarding attorney's fees of 50% in class action handled by Class Counsel  
26 titled *Puchalski v. Taco Bell Corp.* (San Diego Superior Court Case No. GIC870429);
- 27 Exhibit 6: Spreadsheet listing hours worked by Class Counsel and lodestar figures;
- 28 Exhibit 7: Memorandum of costs;

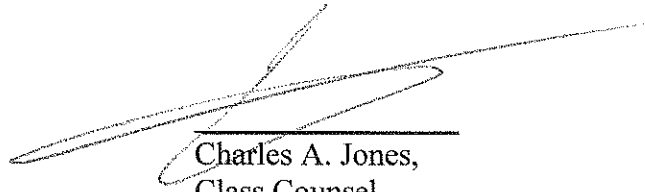
- 1 Exhibit 8: Order approving service payments of \$20,000 each to two named class  
2 representatives in *Doornbos v. Pilot Travel*, Case No. 04CV00044 BEN (BLM) (S.D. Cal.);  
3 Exhibit 9: Order approving service payments totaling \$110,000 to the five class  
4 representatives in *Lindley v. Discount Tire Centers, Inc.*, (Los Angeles Superior Court Case No.  
5 BC239094)  
6 Exhibit 10: Notice; and  
7 Exhibit 11: Joint Stipulation of Class Action Settlement

8 I declare under penalty of perjury in accordance with the law of the State of California  
9 and the United States that the foregoing is true and correct.

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Dated: December 29<sup>th</sup>, 2015

JONES LAW FIRM



Charles A. Jones,  
Class Counsel