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& ARTENIAN LLP**

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13 ORLANDO CASTILLO

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 DANIEL ACOSTA, JOSE HERNANDEZ,
17 DENNIS EASLEY, and ORLANDO
18 CASTILLO,

Case No.: 15-cv-02128-JSC

CLASS ACTION

19 Plaintiffs,
20 vs.

Magistrate Judge:
Hon. Jacqueline Scott Corley

21 FRITO-LAY, INC.; FL TRANSPORTATION
22 INC.; PEPSICO, INC.; and DOES 1-100,
23 inclusive,

DECLARATION OF ANDREW B. JONES IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, LITIGATION COSTS
AND ENHANCEMENT AWARDS

24 Defendants.

DATE: 5/3/2018
TIME: 11 a.m.
CRTRM: F (15th Floor)

25 I, Andrew B. Jones, declare:

26 1. That I am an attorney at law licensed to practice in all courts of the State of California
27 and a senior founding partner in the law firm of Wagner, Jones, Kopfman & Artenian LLP,
28

1 attorneys for Plaintiffs herein.

2 2. I have personal knowledge of the facts alleged herein and if called upon as witness can
3 competently testify thereto. This declaration is being given in support of Plaintiffs' Motion for
4 Attorneys' Fees, Litigation Costs and Enhancement Awards.

5 **Counsel's Experience**

6
7 3. In law school I received the honor of membership on the Pepperdine University Law
8 Review and was published as the author of a commentary concerning "Parens Patriae Anti-Trust
9 Actions Maintained for The Common Good Of The Public". I graduated with my Juris
10 Doctorate in May, 1977, and was admitted to the State Bar of California and the Eastern District
11 of California December 21, 1977. I have been also been admitted to practice in other Federal
12 District courts and to argue before the Ninth Circuit Court of Appeals.

13
14 4. I have continuously practiced law from the date of my admission to the present in civil
15 trial litigation, emphasizing personal injury work until January, 1996, when I joined the Wagner
16 & Jones partnership. My current civil litigation practice is primarily in employment and
17 personal injury law (currently about 80%/20% of my time), but additionally I have done some
18 trial work in business litigation, insurance bad faith, medical malpractice, and elder abuse.

19
20 5. After obtaining a J.D. I was licensed and have practiced law from December 1977 to
21 the present. I am a member of the American Board of Trial Attorneys ("ABOTA") and AV
22 Rated by Martindale Hubble. I have been designated a "Super Lawyer" a number of times over
23 the past decade by that Northern California magazine. I have tried over fifty (50) jury cases to
24 conclusion in Superior Court. I have been appointed as adequate class counsel in numerous
25 Wage and Hour class actions within the past two decades. I was named by the Fresno County
26 Superior Court as a Neutral Case Evaluator in the employment field.
27
28

1 6. I handled the motions, research, and appellate proceedings in a rather well known
2 insurance coverage case, the Producers Dairy Delivery Company v. Sentry Insurance Company
3 (1984), a case which was decided favorably to my client before the California Supreme Court.

4 7. I have lectured regarding Wage and Hour Class actions and on employment law issues
5 at both statewide and national seminars in front of the National Employment Lawyers
6 Association (NELA), the California Employment Lawyers Association (CELA), and Consumer
7 Attorneys of California (CAOC). I am a founding charter member of the CELA Wage and Hour
8 Committee and am on the CELA Legislative Committee. I have also been asked to address
9 Workers Compensation Attorneys at two state conventions regarding cross over employment
10 issues.
11

12 8. The Wagner, Jones, Kopfman, Artenian LLP firm's experience, skill, and efforts have
13 resulted in the successful litigation of many employment actions. Approximately 10% of cases I
14 have tried have resulted in settlements, verdicts or judgments in excess of \$1,000,000. On the
15 other hand, in approximately 20% of cases I have tried, my client lost or did not receive more
16 than nominal damages from the jury. We negotiate nuisance value settlements, withdraw from
17 cases taken, and decline cases initially investigated on a regular basis where the facts developed
18 do not support recovery and in those matters the firm gets no fee or very nominal fees. In some
19 of the actions where our clients prevailed, the Wagner, Jones et al. law firm has been given a
20 substantial fee due to the risk, complexity, time demands, and general ferocity of this type of
21 litigation.
22

23 9. Wagner, Jones et al. LLP represents Plaintiffs on a contingent basis in employment
24 litigation. We advance costs and rarely if ever get those back in cases that are unsuccessful.
25

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1 **Chronology**

2 10. In December 2014, I was initially reviewed the case. Though I performed the original
3 intake investigation, I largely performed an oversight function in the early stages of litigation.
4 Attorney Daniel Kopfman was the primary attorney directing and performing follow-up
5 investigation with clients, formulating the claims, and it was Attorney Kopfman who undertook
6 preparation of the operative pleading. Shortly after service of the complaint substantive
7 discovery was undertaken.
8

9 11. As I would learn of the status of Rule 26 Disclosures, investigation, discovery
10 productions, or pleadings work, I would offer advice and assistance as necessary but Attorney
11 Kopfman bore the lion's share of work on the matter. Although some discovery was undertaken,
12 it wasn't until after the pleadings gestated, that the collection of information really matured in
13 late 2015. Attorney Kopfman then embarked on leading our discovery efforts. He obtained
14 preliminary information in 2015. Subsequent changes in law and potential statutory changes
15 untracked discovery temporary.
16

17 12. I was kept apprised of progress in the case as Attorney Kopfman began to develop a
18 damages analysis. We collaborated in-house on what needed to be done and eventually gathered
19 sufficient amounts of information to fairly consider negotiating for settlement in mediation. After
20 agreeing with Defendant to a mediation before Attorney Segal, to take place in June 2016,
21 damages numbers were developed with the objective of having the best possible numbers for the
22 Class to negotiate for settlement at mediation. The prospect of a mediation impeded normal or
23 regular litigation discovery. We were trying to work cooperatively with the Defendant to develop
24 numbers that both sides would recognize as reasonable estimates of potential damages.
25
26

27 13. During the run-up to mediation, a substantial amount of 'pre-mediation' discovery
28

1 was undertaken by both sides. This back and forth was a negotiation by Attorney Kopfman
2 dealing with the defense team. What information was pertinent or necessary would first be
3 discussed, then productions of agreed information would be obtained and reviewed, matters
4 delivered would be analyzed, next a determination of what was not being produced would be
5 made, finally a refinement of inquiries and follow-up to requests for more information from the
6 employer would be negotiated.
7

8 14. We were able to work up a damages model, which was within a range of reason.
9 Class Counsel went to mediation with full intent to negotiate a settlement but those hopes and
10 efforts failed in June of 2016.
11

12 15. Subsequently more work was performed in the case and eventually we returned to
13 mediation before Attorney Michael Dirkstein in April 2017. We were successful in reaching a
14 Memorandum of Understanding at that time.
15

16 16. Following Execution of the Stipulation for Settlement I have engaged in efforts to
17 assure my class clients participate to the fullest in the benefits of the compromise achieved.
18

19 17. I attended the Preliminary Approval to be available to render any in court unexpected
20 decisions as necessary.
21

22 18. I first commenced working on class-action cases in the year 2000. Over the next five
23 years we opened approximately six class actions before making our first substantial recovery in
24 the *Matt Batrich v Prudential Overall Supply*, Fresno County Superior Court Case No.
25 01CECG02512, misclassification case on the eve of trial. We had risked more than a year of one
26 attorney's productivity in prosecution of the Batrich case. As a firm of three attorneys at the time,
27 that constituted a firm-threatening risk to us. We have subsequently prosecuted and successfully
28 settled more than 15 class actions for over \$100 million. While I am proud of our contribution to

1 leveling the playing field between scofflaws and law-abiding companies, these cases continued
2 to present an ever enlarging risk both in outlay and attorney resources. For a variety of reasons
3 we have filed and found it necessary to dismiss at least five class actions with no recovery of fees
4 or costs. In one case for assistant managers' misclassification, against a nearly insolvent
5 restaurant chain, in order to make a small recovery for clients we waived fees. In more than one
6 case, our investigation into unfair wage practices have led companies to issue preemptive checks
7 for backpay to a prospective class of clients and we have obtained catalyst fees without litigation
8 in at least one of those matters that I can recall.
9

10 19. In my billing practices, I exercise restraint. I maintained contemporaneous records on
11 my office computer but generally did not capture much of the daily back-and-forth among
12 attorneys, or instructions to staff that occurred throughout the case. I have read and received
13 literally thousands of emails concerning every aspect of the case but very few of them are
14 reflected in my time records. The same is true of probably hundreds of unrecorded conversations
15 about the case among counsel over lunches or by telephone in the evenings or on weekends.
16 Attached hereto as Exhibit "A" is a true and correct copy of my billing hours for this case
17 totaling 113.6 hours.
18

19
20 I declare under penalty of perjury that the foregoing is true and correct. Executed this
21 14th day of March, 2018, Fresno, California.
22

23 /s/ Andrew B. Jones
Andrew B. Jones

24 In compliance with Local Rule 5-1(i)(3) and as the filer of this declaration and its attached
25 exhibits, I have obtained the concurrence of each other signatory to file this document.
26

27 /s/ Daniel M. Kopfman
Daniel M. Kopfman
28

EXHIBIT “A”

<u>Attorney</u>	<u>Date</u>	<u>Activity</u>	<u>Time</u>
ABJ	12/23/2014	IN OFFICE MEMO RE POSSIBLE CLASS ACTION	0.1
ABJ	8/18/2015	CORRESPONDENCE W/ BUTCH, LARRY, & DAN RE ADR PHONE CONFERENCE - DEF REQ EARLY ADR W/ A MAGISTRATE - MEMO TO FILE RE ADR CONFERENCE	0.3
ABJ	11/23/2015	CONFERENCE W/ BUTCH, LARRY, & DAN ABOUT POTENTIAL TO STAY THE LITIGATION PENDING THE OUTCOME OF THE DENHAM AMENDE	0.8
ABJ	3/9/2016	DISCUSS STATUS CONFERENCE WITH DMK & CALL FROM MEDIATOR	0.4
ABJ	3/10/2016	PREPARE FOR & ATTEND MEDIATION STATUS CONFERENCE	1.7
ABJ	3/10/2016	IN OFFICE MEMO RE MEDIATION IN SAN FRANCISCO W/ SEGAL	
ABJ	5/19/2016	CORRESPONDENCE RE ESTIMATION FOR DAMAGE MODEL FOR MEDIATION	0.2
ABJ	5/21/2016	IN OFFICE MEMO RE SEA OF HARPER PROVISION	0.1
ABJ	5/24/2016	CORRESPONDENCE TO DAN ABOUT CANCELING MEDIATION FOR FAILURE TO RECEIVE DATA TO PREPARE A DAMAGE MODEL	0.3
ABJ	5/26/2016	REVIEW FILE FOR MEDIATION IN TWO WEEKS	3.9
ABJ	6/6/2016	REVIEW FOR MEDIATION; DISCUSS WITH ASSOCIATE AND READ PAPERS	5.6
ABJ	6/7/2016	TRAVEL TO SAN FRANCISCO AND ATTEND MEDIATION	16
ABJ	6/7/2016	REVIEW OF DENHAM UPDATE	0.1
ABJ	1/18/2017	REVIEW OF DEFS ORDER APPROVING LTR PER COURT	0.1
ABJ	2/1/2017	IN OFFICE MEMO RE SCHEDULING MEDIATION	0.1
ABJ	2/3/2017	CORRESPONDENCE RE LOCATION OF MEDIATION	0.1
ABJ	4/13/2017	MULTIPLE COMMUNICATIONS REGARDING PREPARATION FOR MEDIATION	2.3
ABJ	4/14/2017	REVIEW OF DOCUMENTS AND FORMER MEDIATION BRIEF RE PROOF OF VIOLATIONS	3.7
ABJ	4/14/2017	REVIEW PAGA NTS LTR	0.3
ABJ	4/14/2017	REVIEW MEDIATION BRIEF AND PREPARE FOR MEDIATION	3.5
ABJ	4/14/2017	CORRESPONDENCE W/ DAN, LARRY, & BUTCH RE STATUS OF THE UPDATED DAMAGES MODEL	0.4
ABJ	4/18/2017	REVIEW DAMAGE ESTIMATES	2.5
ABJ	4/21/2017	PRE MEDIATION CONFERENCE W/ DAN RE MEDIATION BRIEF, TERM SHEET, DRIVER DOT LOGS, DRIVER TRIP SHEETS, ETC.	1.5
ABJ	4/21/2017	CONFERENCE W/ DAN RE UPCOMING MEDIATION NEXT TUESDAY	0.5
ABJ	4/24/2017	TRAVEL TO SAN FRANCISCO FOR MEDIATION (TOMORROW)	3
ABJ	4/25/2017	TRAVEL TO MEDIATION; ATTEND MEDIATION AND SETTLEMENT FOLLOW-UP; DRIVE BACK TO FRESNO	15
ABJ	4/26/2017	POST MEDIATION FOLLOW-UP	1.2
ABJ	6/27/2017	REVIEW OF 2017-2018 TRAILER BILL PROVISIONS	0.1
ABJ	8/3/2017	IN OFFICE MEMO RE STIP FOR SETTLEMENT	0.1
ABJ	8/23/2017	REVIEW OF STIP FOR SETTLEMENT	0.1

ABJ	8/24/2017	REVIEW OF STIP FOR SETTLEMENT	2
ABJ	11/6/2017	REVIEW OF STIP FOR SETTLEMENT CONVERSATION WITH PARTNERS RE OPT OUTS AND CLASS CONTRACTS RE SETTLEMENT; REVIEW PROTECTIVE ORDER	1.5
ABJ	11/13/2017	MEMO RE LETTER RE PROTECTIVE ORDER	1.7
ABJ	11/13/2017	MEMO RE LETTER RE PROTECTIVE ORDER	0.1
ABJ	11/14/2017	MEETING TO DISCUSS LETTER TO CLASS AND CLASS CONTACT EFFORT	1.2
ABJ	11/14/2017	IN OFFICE MEMO RE VARIOUS PROPOSED DRAFTS OF CLASS LTR	0.2
ABJ	12/11/2017	IN OFFICE MEMO RE UPDATED DRIVER MTG APPOINTMENTS	0.1
ABJ	12/12/2017	TRAVEL WITH ASSOCIATE TO BAKERSFIELD TO MEET WITH 13 PUTATIVE CLASS MEMBERS RE FLA OPT IN AND STATUS OF CASE	7.5
ABJ	12/19/2017	PREPARE FOR AND TRAVEL TO BAKERSFIELD; MEET WITH CLIENTS TO EXPLAIN FLA APPLICATION AND SETTLEMENT PROCESS	8
ABJ	12/19/2017	T/C W/ DRIVER RE UPDATE	0.1
ABJ	12/27/2017	IN OFFICE MEMO RE SCHEDULING DRIVER MTGS	0.1
ABJ	1/6/2018	TRAVEL TO SAN FRANCISCO FOR PRELIMINARY APPROVAL HEARING AND RETURN TO FRESNO	8
ABJ	1/9/2018	MEMO RE UPDATE CLASS NTS	0.1
ABJ	1/24/2018	IN OFFICE MEMO RE UPDATE CLASS NTC	0.2
ABJ	1/24/2018	CONFERENCE W/ DAN, LARRY, AND BUTCH RE SIMPLURIS' WEBSITE TO POST PLTF MTN FOR ATTY FEES	2.6
ABJ	1/30/2018	IN OFFICE MEMO RE MEDIATION	0.1
ABJ	2/11/2018	CORRESPONDENCE W/ DAN, LARRY AND BUTCH RE SETTING FOURTH THE COURTS	0.3
ABJ	2/23/2018	ORDER RE THE COST AWARD AND ATTORNEY FEE AWARD REQUIREMENTS	0.1
ABJ	2/28/2018	CORRESPONDENCE FROM DAN ROJAS RE WEEKLY REPORT FOR ADMINISTRATOR	0.2
ABJ	3/2/2018	MEMO TO DMK RE FSCA RESPONSE FOR ADMIN	0.1
ABJ	3/2/2018	CORRESPONDENCE FROM DAN ROJAS RE NTC PACKET	0.1
ABJ	3/2/2018	CORRESPONDENCE FROM DAN ROJAS RE WEEKLY REPORT FROM ADMIN	0.1
ABJ	3/3/2018	CORRESPONDENCE FROM DMK RE TIME RECORDS	0.1
TOTAL:			113.6