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10 *Interim Lead Counsel for Plaintiffs and the [Proposed] Class*

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA -**
 13 **WESTERN DIVISION**

14	GOOD MORNING TO YOU	)	Lead Case No. CV 13-04460-GHK (MRWx)
15	PRODUCTIONS CORP., <i>et al.</i> ,)	
16	Plaintiffs,	)	DECLARATION OF OMEL A. NIEVES IN
17	v.	)	SUPPORT OF FINAL APPROVAL OF
18		)	CLASS ACTION SETTLEMENT AND
19	WARNER/CHAPPELL MUSIC,	)	REQUEST FOR ATTORNEYS' FEES AND
20	INC., <i>et al.</i>	)	EXPENSES
21	Defendants.	)	Room: 650
22		)	Judge: Hon. George H. King, Chief
23		)	Judge
		)	Date: June 27, 2016
		)	Time: 9:30 a.m.
)	

DECLARATION OF OMEL A. NIEVES IN
 SUPPORT OF FINAL APPROVAL OF CLASS
 ACTION SETTLEMENT AND REQUEST FOR
 ATTORNEYS' FEES AND EXPENSES

1 The undersigned, Omel A. Nieves, under penalty of perjury, hereby declares
2 and states as follows:

3 1. I am an attorney duly licensed to practice law in the State of California
4 and I am admitted to practice in this Court. I am a shareholder and managing partner
5 of the law firm of Hunt Ortmann Palffy Nieves Darling & Mah, Inc. (“Hunt
6 Ortmann”), Plaintiffs’ local counsel in this litigation. I have personal knowledge of
7 the matters set forth herein and, if called upon, I could and would competently testify
8 thereto.

9 2. I submit this Declaration in support of Plaintiffs’ motions for final
10 approval of the Settlement and for an award of attorneys’ fees and reimbursement of
11 expenses. These motions and supporting memoranda of law are filed concurrently
12 herewith.

13 3. This Declaration sets forth the nature of the work my firm performed in
14 the litigation to demonstrate why Plaintiffs’ Counsel’s request for attorneys’ fees and
15 expenses is reasonable and should be approved by the Court.

16 4. As the Court is likely aware, the Action was extensively investigated by
17 Plaintiffs’ Counsel before it was commenced, and was actively and aggressively
18 litigated by Plaintiffs’ Counsel until the Settlement was reached on February 8, 2016.
19 For their part, Defendants (and, to a lesser extent, the Intervenors) vigorously
20 defended themselves against Plaintiffs’ claims. The case presented novel and
21 complex issues and posed great risk to both sides. Nothing about the litigation was
22 simple.

23 5. My firm acted as local counsel for Plaintiff Rupa Marya, and all
24 Plaintiffs throughout the litigation. We were involved in most of the major efforts by
25 Plaintiffs’ Counsel. Specifically, Hunt Ortmann reviewed all documents prepared by
26 Plaintiff’s Counsel including filings to ensure conformance with the District Rules
27 and Local Rules. Hunt Ortmann reviewed pleadings, law and motion and discovery
28 in this matter and made appearances in court when necessary. Our work in each

1 phase of the litigation is described in detail below.

2 6. The information in this declaration regarding the firm's time and
3 expenses is taken directly from time and expense printouts and supporting
4 documentation prepared and/or maintained by the firm in the ordinary course of
5 business. I am the partner who oversaw and conducted the day-to-day activities in
6 this litigation and I reviewed these printouts (and backup documentation where
7 necessary or appropriate) in connection with the preparation of this declaration. The
8 purpose of this review was to confirm the accuracy of the entries on the printouts as
9 well as the necessity for, and reasonableness of, the time and expenses committed to
10 the litigation. As a result of this review, reductions were made to both time and
11 expenses in the exercise of billing judgment. As a result of this review and the
12 adjustments made, I believe that the time and the expenses for which payment is
13 sought as set forth in this declaration are reasonable in amount and was necessary for
14 the effective and efficient prosecution and resolution of the litigation.

15 7. My firm incurred minimal costs of which we are not seeking
16 reimbursement.

17 8. After the reductions referred to above, the number of hours spent on
18 litigation by my firm is 102.70¹. The fee amount for attorney time based on the firm's
19 current billed rates is \$56,631.00. The hourly rates shown below are the usual and
20 customary rates set by the firm for each individual, and are rates that are actually
21 billed to, and paid by, clients of the firm.

22 **A. Attorneys' Fees**

23 9. My firm assisted with primarily reviewing and advising on (1) the initial
24 complaint; (2) amended complaint; (3) response to Defendants' Motion to Dismiss;

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26 _____
27 ¹ This figure includes three (3) additional hours that Omel A. Nieves reasonably anticipates spending on
28 travel to and attendance at the June 27, 2016 hearing, and conferences with Plaintiff's Counsel and the client regarding the hearing.

1 (4) discovery; (5) cross-motions for summary judgment; (6) settlement negotiations;
2 and (7) settlement approval and administration. As stated above, as local counsel,
3 my firm was responsible to ensure all District and local rules were followed. As a
4 result, all documents were passed by my firm for quality assurance.

5 10. The work and the amount of time performed by the attorneys of my firm
6 during this phase of the litigation is summarized below:

7

Attorney	Position	Hours Worked	Hourly Rate	Total
Omel A. Nieves	Partner	65.40 ²	\$575.00	\$37,605.00
Alison C. Gibbs	Associate	3.7	\$420.00	\$1,554.00
Katherine J. Odenbreit	Associate	16.80	\$465.00	\$7,812.00
Tina B. Nieves	Of counsel	16.80	\$575.00	\$9,660.00
TOTALS:		102.70		\$56,631.00
Lodestar (3)				\$169,893.00

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14 11. In a complex class action contingency case such as this, my firm
15 typically requests a *Lodestar* factor of three. The total fee request, therefore, is
16 **\$169,893.00**.

17 12. I graduated from the University of California, Davis School of Law, was
18 admitted to the California Bar in December 1989, and am a Shareholder and
19 Managing Partner with Hunt Ortman Palffy Nieves Darling & Mah, Inc. ("Hunt
20 Ortman").

21 13. For the past 26 years I have specialized in complex litigation with an
22 emphasis on business and real estate matters. As managing partner, I oversee the
23 firm's 23 attorneys and its considerable inventory of litigation matters which range in
24 value from \$25,000 up to complex multiparty cases with claims in excess of \$200
25 million. In addition, we handle many transactional matters for our clients in contracts
26 worth over five (5) hundred million dollars. I have also represented large numbers of

27 ² This figure includes three (3) additional hours that Mr. Nieves reasonably anticipates spending on travel to
28 and attendance at the June 27, 2016 hearing, and conferences with the client regarding the hearing.

1 plaintiffs in the Northridge Earthquake Insurance Claims litigation, a collective
2 action which yielded multiple multimillion dollar settlements for our clients.

3 14. I am an experienced trial lawyer. Throughout the course of my practice,
4 I have successfully tried in excess of 25 high value bench and jury trials in addition
5 to countless arbitrations. I have represented cross complainants in a large complex
6 multiparty construction action captioned *SSR Marlowe, LLC v Taisei Construction*
7 *Corporation, et.al.* LASC Case No. BC363862I which was resulted in a very
8 favorable confidential settlement. I represented plaintiffs in a Consolidated Complex
9 action captioned *In Re UCLA Westwood Replacement Hospital Cases* LASC Case
10 No. SC096499 which resulted in a large confidential settlement on the eve of trial. In
11 addition, I represented plaintiff's in a Class Action action captioned
12 *Dalal Abedrabo, et al vs. AT&T Mobility Services LLC, a Delaware limited liability*
13 *company* USDC Central District Case No. SACV 11-01388 VAP, which resulted in a
14 confidential settlement prior to trial. This is just a small sampling of the complex
15 actions in which I have been involved. As a consequence, I have extensive
16 experience in managing and directing large discovery efforts, overall litigation
17 strategy, interviewing and deposing percipient and expert witnesses, developing
18 experts in a wide variety of fields, and in all aspects of trial preparation and
19 management.

20 15. Katherine Odenbreit was a Senior Attorney with the Class Action
21 Program at the law firm Hunt Ortmann.

22 16. Ms. Odenbreit has been an attorney nearly 18 years and has exclusively
23 dedicated her practice to litigating class actions for the past 9 years. She is a member
24 of the California Employment Lawyers' Association ("CELA"), a state-wide
25 association of over 1,000 plaintiff lawyers who focus on employment law and
26 currently serve on the Wage and Hour Committee and as Chair of the Federal
27 Practice sub-committee. She has been invited to be a guest speaker at many wage
28

1 and hour seminars, including those sponsored by Bridgeport and CELA.

2 17. Prior to joining Hunt Ortmann, she was one of the founding partners of
3 Barge, Petersen & Odenbreit LLP. Barge, Petersen & Odenbreit LLP was a boutique
4 firm whose practice was dedicated to representing employees and peace officers in
5 wage and hour class and collective actions. The firm represented over 2,500 Los
6 Angeles Police Department officers in wage and hour claims in the California
7 Central District Court and the California Southern District Court. Barge, Petersen &
8 Odenbreit was also lead or co-lead counsel on numerous state and federal wage and
9 hour class actions.

10 18. Prior to Barge, Petersen & Odenbreit, she was the Director of Litigation
11 for the firm Class Action Litigation Group APC ("CALG"). CALG's practice was
12 exclusively dedicated to state and federal wage and hour class and collective actions.
13 As Director of Litigation, she was responsible for oversight of litigation of all cases,
14 including supervision of attorneys and staff, case management and making key court
15 appearances.

16 19. The first 7 years of her legal career, her practice was focused on
17 criminal defense where she litigated over 30 cases to jury trial in both state and
18 federal courts and handled numerous appeals.

19 20. She began class action practice at the law firm of Spiro, Moss, Barness,
20 Harrison & Barge (aka "Spiro Moss"). At the time she was there, the firm had
21 approximately 8-10 attorneys and focused primarily on employment wage and hour
22 class actions.

23 21. Her collective firms and attorneys have handled more than 200 overtime
24 and other wage related class actions for the past 9 years. Her collective firms and/or
25 herself have been appointed lead or co-lead counsel and/or counsel for representative
26 plaintiffs in FLSA collective actions in over fifty matters in federal and state courts
27 throughout California, many of those by way of certification motion. The following
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1 is a small sample of employers where she and/or her firm were appointed class
2 counsel:

- 3 • Dibel v Jenny Craig, USDC Southern District, 06CV2533 JLS (AJB);
- 4 • Boyce v. 24 Hour Fitness, USDC Southern District, 03CV2140 BEN (BLM) [over
5 40,000 class members];
- 6 • Harris v. Liberty Mutual Ins. Co., JCCP 4234; California Supreme Court Case No.
7 S156555;
- 8 • Salvador v. PLS Financial Services, USDC Central District, 08CV00882 AHM
9 (CWx);
- 10 • Lockhart v. County of Los Angeles, USDC Central District, 07CV1680 ABC
11 (CWx);
- 12 • Oberschlake v. St. Joseph's Hospital, Orange County Superior Court, 04CC00301;
- 13 • Solley et al. v. Pier 1 Imports, JCCP 4373;
- 14 • Hoke v. Construction Protective Services, Los Angeles Superior Court, JCCP 4605;
- 15 • DeLao v. Kazi Foods, Inc., Los Angeles Superior Court, BC386085

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17 22. She was also lead counsel on the matter of *Brennan v. U.S. TelePacific*,
18 Orange County Superior Court, 30-2010-00422317; Fourth Appellate District,
19 Division 3, Case No. G046225. This matter is a consumer class action currently on
20 appeal following an order denying a motion to compel arbitration. This case
21 involves issues recently raised by the United States Supreme Court in *AT&T v.*
22 *Concepcion*.

23 23. Alison C. Gibbs is an associate with Hunt Ortmann.

24 24. For the past three years, Ms. Gibbs has devoted her practice to
25 representing workers nationwide in wage and hour class and collective actions. She
26 has quickly become recognized as a skilled and efficient litigator in wage and hour
27 class actions litigating against defendants such as Downey Savings & Loan, the
28 Federal Depository Insurance Company ("FDIC"), TelePacific Communications Inc.,

1 Countrywide Financial Corporation, Kinecta Alternative Financial Solutions, Inc.,
2 Jenny Craig, PLS Financial Services, Inc., A Place For Mom, Inc., Intel Corporation
3 and Kazi Foods, Inc. She is a member of the Orange County Bar Association's Labor
4 and Employment Section and Young Lawyers Division, California State Bar Labor
5 and Employment Section, and the California Employment Lawyers Association
6 ("CELA") organization. Prior to becoming an attorney, she worked directly for the
7 General Counsel of the Distilled Spirits Council of the United States on a variety of
8 cases including class actions. She was also active in protecting workers' rights as a
9 member of Educating for Justice non-profit organization where she was instrumental
10 in seeking fair wages for employees around the world.

11 25. Tina B. Nieves was Of Counsel to the Hunt Ortmann law firm. As of
12 January 1, 2012, the firm had engaged her services to work on all of the firm's class
13 action matters.

14 26. In addition to her association with Hunt Ortmann as Of Counsel, she
15 was formerly founding partner in the firm of Gancedo & Nieves LLP, which
16 specializes in Wage and Hour, Consumer Fraud and Products Liability Class Actions
17 and Pharmaceutical Mass Torts. In her 24 years of practice, she has represented
18 thousands of plaintiffs who have been the victims of corporate fraud and
19 wrongdoing.

20 27. She had been appointed lead or class counsel in the following class
21 actions, among others: *Youngberg v. Bank of America National Trust and Savings*
22 *Association*, Civil Action No. BC105027, *Mazzarella v. Bank of America Corp* BC
23 310413(settled banking fee class action), *Babinski v. Pilot Catastrophe Adjusters,*
24 *Inc.* Civil Action No. CV-988459 JSL, and *Gospodnetich v. Rite Aid Corp.* CV
25 17594 (settled nationwide wage and hour overtime class actions). She was appointed
26 class counsel in *O'Connor v. Boeing North American Inc.*, Civil Action No. 97-1554
27 ABC and *In re Burbank Environmental Litigation, CV-96-5584 MRP* (settled
28

1 environmental class actions); *In re Woodlawn Memorial Park Litigation* BC 227385
2 (settled cemetery abuse class action); and *In re CD Antitrust Litigation*, MDL No.
3 1361.

4 28. In addition to her 26 years' experience representing plaintiffs in class
5 actions, she also developed a specialty in pharmaceutical mass torts and has been
6 appointed to serve as lead counsel, liaison counsel, or to serve on the Plaintiffs
7 Executive Committees in a wide variety of these cases nationwide. She has
8 represented thousands of individuals injured by Fen-Phen, Rezulin, Propulsid, PPA,
9 Baycol, Fosamax, Avandia, Vioxx, Celebrex and Bextra, Medtronics Sprint Fidelis
10 Leads, and Yaz, Yasmin and Ocella.

11 29. Based on my experience practicing law in the area of complex litigation
12 and class actions, it is my opinion that the hours charged and the rates are reasonable
13 and consistent with community standards. Furthermore, the hours were necessarily
14 incurred.

15 Executed this 25th day of May, 2016, at Pasadena, California.

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18 Omel A. Nieves
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