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DALLAS, TEXAS

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CIVIL ACTION NO. C07 0943 WHA

HERBERT ANTHONY ADDERLEY,
 on behalf of himself and all others
 similarly situated,

Plaintiff

vs.

NATIONAL FOOTBALL LEAGUE
 PLAYERS ASSOCIATION, a Virginia
 corporation, and NATIONAL
 FOOTBALL LEAGUE PLAYERS
 INCORPORATED d/b/a PLAYERS
 INC, a Virginia corporation,

Defendants.

**DECLARATION OF LEWIS T.
 LeCLAIR IN SUPPORT OF
 CLASS COUNSELS' RENEWED
 APPLICATION FOR FEES,
 EXPENSES, AND AN
 INCENTIVE PAYMENT FOR
 CLASS REPRESENTATIVE,
 HERBERT ADDERLEY**

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LEWIS T. LeCLAIR declares:

I am an attorney and a member of the bar of the State of California. I am a shareholder at the law firm of McKool Smith, P.C. in Dallas, and served as lead counsel for my firm and co-counsel for plaintiff Herb Adderley and the certified class in this action.

I filed an original declaration in this matter on November 26, 2008 after the jury verdict was rendered earlier that month. By Order dated January 13, 2009, the Court denied our application for attorneys fees and costs without prejudice to renewal after appeal of the judgment. Once the matter settled and the Court preliminarily approved the settlement on August 18, 2009, the Court, by Order dated September 2, 2009, ordered Class Counsel to file a final Application for Attorneys on or before September 24 (extended at Class Counsel’s request to October 2). This declaration updates and replaces my previous declaration filed last year and now provides complete information for all relevant time periods through August 31, 2009.

I have personal knowledge of the matters stated in this declaration, and if called as a witness could testify competently to all such matters.

McKOOL SMITH’S ROLE IN THIS LITIGATION

1. I was approached by Ron Katz in December 2006 with respect to joining Mr. Katz and his firm in a potential class action on behalf of retired NFL football players. Mr. Katz had been contacted by Bernie Parrish and Mr. Katz was interested in partnering with another firm that had both class action and contingency fee experience. Our firm reviewed a number of documents that were provided by Mr. Parrish and did considerable research and due diligence on the potential claims. We ultimately decided to partner with Mr. Katz and Manatt in bringing a putative class action on behalf of the retired NFL players.

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2. I have been a shareholder of McKool Smith since 1997, having previously practiced with most of the shareholders of McKool Smith at another large firm in Dallas. During my legal career, I have worked on a significant number of class action matters. Our firm took the lead in the case with respect to many of the matters related to class certification, class notice, and decertification. We worked closely with Manatt on all aspects of the case.

3. In January and February of 2007, Mr. Katz and I executed engagement letters with Bernie Parrish and Herbert Adderley to pursue the putative class action. A copy of the firm’s engagement letter with Mr. Adderley is attached hereto as **Exhibit A**. Pursuant to that engagement letter, Manatt and McKool advanced all of the costs of the litigation and provided their legal services on a contingency basis pending the outcome of the litigation. It was anticipated and agreed with our clients that the two firms would apply for attorneys fees and costs out of any recovery in the class action.

4. Mr. Katz and I also executed a Co-Counsel Agreement in January of 2007, a copy of which is attached hereto as **Exhibit B**. The terms of that agreement are still in effect, however, there is a pending dispute with Sam Mutch, who was a party to the agreement, but then was suspended from the practice of law during a portion of this case. That dispute is subject to arbitration in accordance with the terms of the Co-Counsel Agreement.

5. I have been the billing attorney on this case for McKool Smith at all times since it was filed on February 14, 2007. Even though McKool Smith did not send any bills in this case, I have reviewed the detailed billing records prepared by McKool Smith in connection with this matter. The billing records prepared in connection with this case were generated from McKool’s timekeeping systems and are maintained in the ordinary course of business. As billing attorney, I have reviewed and approved the amounts sought in this application.

1 Calculation of the Lodestar

2 6. The lodestar in this case for McKool Smith is \$3,253,630.63. Timekeepers at
3 McKool Smith maintain their time on a contemporaneous basis. Time is recorded and billed in
4 1/10 of an hour increments. I have applied billing judgment to amounts recorded, writing off or
5 writing down time spent on particular tasks. Although the case has evolved through the filing of
6 four separate complaints and three motions to dismiss, all of that work was appropriate and
7 necessary to develop this difficult case to the point that it could be successfully tried and won. I
8 have therefore not written off time that might be related to one or more of the theories of the case
9 that were not ultimately pursued at trial. However, even if such time were to be determined not
10 to be appropriately considered on a lodestar basis, the time actually and reasonably incurred by
11 McKool on this matter would fully support the fee award sought in this case. Because Manatt
12 and McKool have made the decision to pursue thirty percent (30%) of the amount awarded by
13 the jury minus expenses, as attorneys fees, the lodestar amount is substantially equivalent and
14 any multiplier is entirely reasonable. In fact, Petitioners' request for 30% of the settlement
15 amount minus expenses is lower than typical contingency agreements in commercial cases of
16 this magnitude which range from 33% to 40%. This was a very difficult case where we faced
17 tenacious and aggressive defense counsel. We fought hard with defense counsel at every step of
18 the way and had to take many professional risks in order to pursue this matter to conclusion. For
19 that reason, the percentage of recovery sought in this matter is no more than fair compensation
20 for the effort and risk associated with pursuit of this matter. Based upon my knowledge and
21 experience, given the nature and complexity of the case, the skill of the attorneys on both sides
22 of the case, and the result obtained, it is my opinion that the time expended by McKool Smith
23 was necessary and the fees billed and for which recovery is sought are reasonable under the
24 circumstances of this case.

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1 7. The monthly attorneys' fees incurred by McKool Smith during this matter are as
2 follows:

3	6-Dec	\$22,650.00
4	7-Jan	\$31,167.00
5	7-Feb	\$50,603.50
6	7-Mar	\$64,333.50
7	7-Apr	\$91,765.00
8	7-May	\$107,458.50
9	7-Jun	\$104,090.50
10	7-Jul	\$61,508.50
11	7-Aug	\$69,690.50
12	7-Sep	\$126,181.50
13	7-Oct	\$51,525.50
14	7-Nov	\$12,140.50
15	7-Dec	\$40,550.50
16	8-Jan	\$134,296.00
17	8-Feb	\$123,557.00
18	8-Mar	\$176,054.00
19	8-Apr	\$143,509.00
20	8-May	\$185,782.50
21	8-Jun	\$307,131.00
22	8-Jul	\$225,937.00
23	8-Aug	\$329,759.00
24	8-Sep	\$240,019.00
25	8-Oct	\$631,092.00
26	8-Nov	\$293,308.00
27	8-Dec	\$66,828.00
28	9-Jan	\$65,565.00
	9-Feb	\$40,310.00
	9-Mar	\$22,815.00
	9-Apr	\$7,764.00
	9-May	\$20,650.00
	9-Jun	\$71,921.00
	9-Jul	\$69,702.50
	9-Aug	\$6,090.00
	TOTAL	\$3,995,755.00

6. The hourly rates for each timekeeper for whom we seek to recover fees are summarized in the following chart:

Attorney Name	Position/Years of Attorney Experience	2006	2007	2008	2009
Anthony Garza		\$275	\$275	\$375	\$400
Betty E. Sanders			\$85	\$85	\$85
Brett M. Charhon			\$350	\$400	\$425
Chris Martin			\$185	\$185	\$185
Cynthia Alaniz			\$85	\$85	\$85
Don Gaiser			\$110	\$115	\$115
Donald Y. Forbes			\$120	\$125	\$125
Hector Nava			\$125	\$125	\$125
J. David Smith			\$125	\$125	\$125
Jill Adler Naylor			\$425	\$450	\$450
Karen Sherrill			\$110	\$180	\$180
Lewis T. LeClair		\$625	\$660	\$700	\$700
Marry Ferrari			\$150	\$150	\$150
Omar Moreno			\$105	\$105	\$105
Suzie Bovine			\$180	\$180	\$180

7. The experience and qualifications of each McKool Smith timekeeper for whom we seek to recover fees in excess of \$2,500 is summarized below in paragraphs 8 - 23. The work done by McKool Smith and the hours billed by each timekeeper on a monthly basis are summarized in paragraphs 18 - 48 below.

Experience and Qualifications of McKool Smith Timekeepers

8. I was the lead trial lawyer for McKool Smith in this matter. I graduated from the University of Texas School of Law in 1976 and then clerked for the United States Court of Appeals for the Ninth Circuit. I have been licensed in Texas since 1976 and in California since 1977. I worked in California for three years prior to returning to Texas. I have been a trial lawyer in Dallas, Texas for 28 years specializing in commercial, class and derivative litigation. I am currently a shareholder in McKool Smith, P.C., a litigation firm devoted to complex commercial and intellectual property litigation. I have been recognized by Best Lawyers in

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1 America for commercial litigation, by Chambers, and by Texas SuperLawyers. I have handled
2 class litigation in the courts of California, Texas and New York. I handled various hearings in
3 this matter, put on witnesses at trial, and worked on the jury instructions and objections to the
4 jury instructions. In addition, I worked extensively on Plaintiffs' post-trial filings and settlement
5 efforts.
6

7 9. Jill Adler Naylor is a senior counsel with McKool Smith, P.C. She has been
8 licensed to practice law in the State of California since 1990, in the State of Texas since 1992,
9 the United States Supreme Court and various federal courts. Her practice consists of commercial
10 litigation, including class actions and derivative actions, professional liability and malpractice,
11 patent litigation, and arbitrations. Ms. Naylor is peer-reviewed as an AV rated lawyer by
12 Martindale Hubbell. She participated in this litigation since its inception and performed
13 research, briefing, document review, deposition preparation, witness interviews, witness
14 preparation, drafting of pleadings, motions, and issues and participated in the trial. In addition,
15 she worked extensively on Plaintiffs' post-trial filings.
16

17 10. Brett Charhon is a sixth year associate with McKool Smith. Mr. Charhon
18 received his J.D. degree from Southern Methodist University in 2003 and his undergraduate
19 degree from Tulane University in 1999. Mr. Charhon devoted substantial time in this case to
20 fact discovery including (i) drafting and responding to interrogatories, requests for production
21 and requests for admission; (ii) document review; (iii) witness interviews; (iv) preparing
22 witnesses for deposition; and (v) organizing Plaintiff's evidence for trial. In addition, Mr.
23 Charhon performed legal research, prepared motions and was heavily involved in pre-trial
24 preparation.
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11. Anthony Garza is a third-year associate with McKool Smith. Mr. Garza received his J.D. degree from Columbia Law School in 2005 and his B.S. degree, in Chemical Engineering, from Texas A&M University in 2002. Prior to joining McKool Smith, Mr. Garza served as a law clerk to the Honorable Barbara M.G. Lynn, in the U.S. District Court for the Northern District of Texas. Mr. Garza devoted substantial time in this case to various tasks, including (i) reviewing production of Defendants and third-party witnesses; (ii) drafting and responding to motions; (iii) drafting witness examination outlines; and (iv) various tasks for pre-trial preparation and trial.

12. Suzie Bovine is a senior paralegal at McKool Smith. She received her B.S. degree from the University of Tennessee in 1981 and a certificate from the National Center for Paralegal Training, also in 1981. She has worked as a litigation paralegal in law firms for over 27 years. She has extensive experience in all phases of litigation including preparing cases for filing, handling multi-million page document productions, overseeing teams of attorneys reviewing documents, fact research, locating witnesses, managing cases, creating witness packets for depositions, preparing for and assisting at hearings, arbitrations, mediations, and trials, setting up off-site trial offices, and most any other paralegal tasks. She has worked on a variety of types of litigation including asbestos defense, insurance defense, contract cases, medical malpractice, legal malpractice, antitrust, securities, SEC investigations, construction cases, class actions, and patent infringement.

13. Karen Sherrill is a senior paralegal with McKool Smith, P.C. She has been a paralegal since 1986. During her career she has assisted attorneys with complex commercial litigation, including class actions and derivative actions, products liability, insurance defense, and patent litigation. Ms. Sherrill participated in this litigation since April 2007 by working

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1 closely with the attorneys on briefing, subpoenas, document review, deposition preparation,
2 witness interview preparation, document production, and preparation for trial.

3 14. Betty Sanders is a paralegal with McKool Smith, P.C. She holds a Bachelor of
4 Business Administration and has been employed as a paralegal for over 15 years working
5 primarily in litigation and mass tort. Her work on this case included assistance with document
6 management, deposition preparation, research, trial preparation and trial support.
7

8 15. Mary Ferrari is a paralegal with McKool Smith, P.C. She holds a Bachelor
9 of Science Degree in Legal Studies and has been employed as a paralegal for over 12 years
10 working primarily in civil litigation. Her work on this case included assistance with document
11 management, deposition preparation, research, trial preparation and trial support
12

13 16. Cynthia Alaniz is a paralegal with Mckool Smith, having worked as a paralegal
14 since 2000. She works closely with various teams of paralegals and attorneys assisting in
15 document management, research, deposition and trial preparation in commercial litigation,
16 intellectual property and patent infringement. Her work on this case included assistance with
17 document management, deposition preparation, trial preparation and trial support.

18 17. Omar Moreno is a member of McKool Smith’s IT group and works as a member
19 of the trial team in cases preparing graphics for presentation and handling technology
20 presentation during the trial. His work on this case involved joining the trial team in San
21 Francisco in order to create and edit graphics and to coordinate with the lawyers on the trial team
22 to insure a smooth and seamless presentation at trial.
23

24 18. Chris Martin is a member of McKool Smith’s IT group that prepares graphics.
25 Mr. Martin’s work on this case involved preparation of the trial graphics for Plaintiff’s opening
26 statement.
27

1 19. David Smith is a member of McKool Smith's litigation support department. Mr.
2 Smith's work on this case involved preparation of document databases used in connection with
3 both Plaintiff's and Defendants' document productions.

4 20. Donald Forbes a member of McKool Smith's litigation support department. Mr.
5 Smith's work on this case involved preparation of document databases used in connection with
6 both Plaintiff's and Defendants' document productions.
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8 **CALCULATION OF THE LODESTAR--ATTORNEY FEES**

9 21. I am familiar with each of the McKool Smith attorneys and paralegals who
10 worked on this matter. Based upon my knowledge and experience, the billing rates for the
11 paralegals and attorneys who worked on this matter are commensurate with their years of
12 experience and skills, and my firm is paid these rates by clients on a regular basis.
13

14 22. The lodestar amount for attorney and paralegal time billed by McKool Smith
15 during the litigation is \$3,253,630.63. According to the declaration of Ron Katz filed
16 concurrently herewith, the lodestar amount for attorney and paralegal time billed by Manatt
17 during the litigation is \$4,531,237.50. The combined lodestar amount for both Mckool Smith PC
18 and Manatt (collectively "Petitioners") at each firms' hourly rates during the litigation is
19 \$7,784,868.13.
20

21 23. Petitioners' requested fee award of 30% of the settlement amount minus expenses,
22 or \$ 7,369,648.90, is less than Petitioners' lodestar amount. Petitioners' request for 30% of the
23 settlement amount minus expenses is lower than typical contingency agreements in commercial
24 cases of the magnitude of this case, which typically range from 33% to 40%. McKool Smith
25 devotes a large portion of its legal practice to contingency litigation. Customary fees in such
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1 contingency cases are typically a percentage of the amounts recovered, typically between 33%
2 and 40%.

3 24. Our engagement letter with class representative, Herbert Adderley, acknowledged
4 that we would seek a portion of any recovery for expenses and fees. See McKool's fee
5 agreement letter attached hereto as Exhibit A. The class notice that was mailed to each
6 prospective member of the class in June 2008 explained that counsel for Plaintiffs would seek a
7 percentage of funds as attorneys' fees in the event that Plaintiffs prevailed. In the final version
8 of the class notice that was sent to each of the Class Members by Plaintiffs' Counsel on or before
9 September 8, 2009, Plaintiffs' Counsel indicated that the amount they would be seeking was
10 30% of the common fund as a fee award and expenses. The final version of the class notice also
11 indicated that each member of the class has the right to object to the fee application.
12

13 25. Plaintiffs' Counsel expended significant time and resources in connection with
14 this matter. Had Plaintiffs' Counsel not prevailed in this matter, they risked losing the millions
15 of dollars they incurred in legal fees and the hundreds of thousands of dollars they incurred as
16 costs and expenses.
17

18 26. This action was fraught with novel and complex issues related to liability,
19 damages and class certification and involved factual and legal issues that were complex and
20 highly contested. Plaintiffs counsel vigorously litigated this dispute in the following ways:
21

- 22 • Preparation of multiple drafts of each of the four complaints in this action along with
23 motions for leave to amend;
- 24 • Review of documents produced by Plaintiffs' class representative and party witnesses;
- 25 • Preparation of requests for production to Defendants;
- 26 • Preparation of requests for production to non-parties and preparation of non-party
27 subpoenas in connection with same;

- 1 • Review of Defendants' document production;
- 2 • Review of non-party document productions;
- 3 • Preparation of indexes and analysis of documents in preparation for depositions, motions
- 4 and trial;
- 5 • Extensive consultation with experts including (i) review and organization of thousands of
- 6 pages of financial documents produced by the Defendants and their representatives; (ii)
- 7 identification of additional materials to request; (iii) preparation for financial-related
- 8 depositions; (iv) analysis of relevant literature; and (v) review of the expert reports
- 9 submitted on behalf of Defendants;
- 10 • Numerous interviews of class members;
- 11 • Identification of witnesses to be deposed;
- 12 • Depositions, including those of the named Defendants, their current and former
- 13 employees and non-parties;
- 14 • Defending depositions of class witnesses and experts;
- 15 • Legal research under California Law, Virginia Law and the District of Columbia law;
- 16 • Preparation of numerous motions and responses to motions including, but not limited to:
- 17 (i) Opposition to Motion for Sanctions, filed April 4, 2007 (Dkt. No. 60-62); (ii)
- 18 Opposition to Motion for Judgment on the Pleadings, filed April 4, 2007 (Dkt. No. 55-
- 19 56); (iii) Opposition to Motion to Change Venue, filed April 4, 2007 (Dkt. No. 57-59);
- 20 (iv) Opposition to Motion to Dismiss Second Amended Complaint, filed July 6, 2007
- 21 (Dkt. No. 110-11); (v) letter filings re: production of Defendants' financial statements,
- 22 filed August 10, 2007 (Dkt. Nos. 112, 122); (vi) Letter filings re: Plaintiffs' payments of
- 23 NFLPA Dues, filed September 4, 2007 (Dkt. Nos. 130-132); (vii) Motion for Leave to
- 24 File a Third Amended Complaint, filed September 27, 2007 (Dkt. Nos. 139, 141, 147,
- 25 169-170); (viii) Motion to Certify Class, filed March 14, 2008 (Dkt. Nos. 217-223, 253-
- 26 54); (ix) Opposition to Motion to Strike the Declaration of Marvin Miller, filed March 28,
- 27 2008 (Dkt. No. 229). Opposition filing is found at Dkt. No. 246); (x) Letter filings re:
- 28

1 document requests and discovery responses, filed April 7, 2008 (Dkt. No. 258) (xi)
2 Opposition to Motion for Leave to File a Supplemental Memorandum on Plaintiffs' Class
3 Certification Motion, filed April 8, 2008 (Dkt. No. 268); (xii) letter filings re: documents
4 related to Gene Upshaw, filed June 4, 2008 (Dkt. No. 285); (xiii) Opposition to Motion
5 for Summary Judgment, filed June 13, 2008 (Dkt. No. 310-11) (xiv) Motion to Strike the
6 Declarations of Linda Castillon, Adam Sullins, Jason Brenner, Christine Finch, and Steve
7 Byrd Filed in Support of Defendants' Motion for Summary Judgment, filed July 1, 2008
8 (Dkt. Nos. 308-309, 326-327); (xv) letter filings re: scrambling of player images by EA,
9 as related to Defendants' summary judgment motion, filed July 30, 2008 (Dkt. Nos. 340-
10 342, 347-348); (xvi) Motion to Dismiss Bernard Parrish's individual claim, filed August
11 12, 2008 (Dkt. Nos. 358, 360); (xvii) Opposition to Motion to Decertify class, filed
12 August 15, 2008 (Dkt. No. 371-372); (xviii) letter filings re: summary judgment
13 arguments, filed August 22, 2008 (Dkt. Nos. 374-375); (ixx) motions in limine and
14 oppositions thereto (Dkt. Nos. 409, 411-414, 417-419, 423, 427-429, 433-434, 437-442,
15 444, 446-448, 453, 455, 457, 474, 476); (xx) various trial briefs and oppositions thereto
16 (Dkt. Nos. 483-485, 502, 517, 520, 532, 534, 536, 539-540, 545, 548); (xxi) oppositions
17 and replies in connection with various post-trial motions (Dkt. Nos. 596-97, 599, 602).

- 18 • Preparation of scheduling orders;
- 19 • Preparation of interrogatories, requests for admissions and responses to same; and
- 20 • Preparation of countless letters to opposing counsel regarding (i) deposition scheduling,
21 (ii) document discovery, and (iii) settlement.

22
23 27. Plaintiffs' Counsel devoted thousands of hours of attorney and paralegal time and
24 effort pursuing, reviewing and utilizing the party and non-party documents produced in this
25 lawsuit. Plaintiffs were forced to wade through thousands of complex and often arcane
26 accounting materials in order to identify the critical documents that substantiated Plaintiffs'
27

1 claims. In addition, Plaintiffs were aggressive in pushing for additional documents in the face of
2 repeated resistance from Defendants and third parties aligned with Defendants. Plaintiffs'
3 preparation for trial required various members of Plaintiffs' team to devote nearly all of their
4 time to this litigation for extended durations.

5
6 28. The deposition phase of the lawsuit was also time-consuming, hard-fought and
7 intensive. The preparation required for these depositions was substantial. Databases were
8 reviewed by paralegals to identify and pull the specific documents associated with each
9 particular witness. Attorneys would then review those documents for relevance and usefulness.
10 Furthermore, while Plaintiffs tried to be efficient and combine travel whenever possible,
11 Plaintiffs were required to travel significant distances to conduct depositions in this matter, and
12 often needed to work in combination because of the specialized knowledge possessed by
13 different members of the team. Given the enormous amount of information and documents that
14 needed to be reviewed and understood, it was necessary to have different attorneys specialize in
15 various aspects of the case. But certain witnesses were integrally involved in multiple areas and
16 counsel needed more than one attorney in order to take a comprehensive deposition. Depositions
17 were held in California, New York, Maryland, Philadelphia, Texas and Washington D.C.

18
19 29. While preparing for trial, Plaintiffs also made efforts to settle the case including
20 participation in a settlement conference with Magistrate Judge James Larson of the Northern
21 District of California. Despite Plaintiffs' settlement efforts, Defendants refused all such
22 overtures and Plaintiffs were left with no choice but to proceed to trial.

23
24 30. Trial of this matter, which is extremely rare in class action cases, lasted three
25 weeks during which witnesses were examined and dozens of documents were received into
26 evidence. Even after the verdict in Plaintiffs favor, Plaintiffs faced additional resistance by
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1 Defendants through their motions for JMOL and heavily-contested jury instruction briefing and
2 argument. Plaintiffs received additional resistance from Defendants in the form of another
3 JMOL motion and appeal. Plaintiffs also engaged in protracted settlement negotiations this year
4 in an effort to resolve this matter.
5

6 31. Based upon my knowledge and experience, given the nature and complexity of
7 the case, the skill of the attorneys on both sides of the case, and the result obtained, it is my
8 opinion that the time expended by McKool Smith was necessary and the fees billed are
9 reasonable under the circumstances of this case.

10 **PLAINTIFFS' COUNSEL'S FEES ON A "PER-PROJECT" BASIS**

11 32. The Court's Order of September 2, 2009 requires that time in this matter be
12 organized by discrete project. As instructed by the Court, attached hereto as **Exhibit C** are a
13 series of tables detailing the time and amounts incurred for each project performed by McKool
14 Smith, and, where indicated, by both of Plaintiffs' Counsel's law firms. McKool Smith
15 timekeepers are required to keep track of their time on a contemporaneous basis and fill out time
16 sheets daily, weekly or monthly with all such time. It is important to note that the tables in
17 Exhibit C are not organized the way that McKool Smith attorneys record their time
18 contemporaneously. Rather they represent our best efforts to create such tables from our
19 contemporaneous time records. I have supervised these efforts to the best of my ability
20 consistent with my other professional responsibilities.
21

22 33. The tables in Exhibit C were created from a spreadsheet showing the amount of
23 time recorded by each McKool Smith timekeeper who billed time to this case on a per-entry
24 basis. Each entry, which was recorded contemporaneously, included, *inter alia*, a description of
25 the task(s) performed and the date of performance. However, McKool Smith timekeepers often
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1 recorded their time entries in blocks of time that were not limited to a single project, but rather
2 reflecting block billing, with each entry showing the total amount of time billed on a particular
3 date, regardless of the number or nature of the tasks performed.

4
5 34. Using the billing materials available, McKool Smith created a list of projects to
6 which each of these tasks could potentially be allocated, recognizing that some tasks did not
7 neatly fit under a particular project and that some tasks could fit under more than one project.
8 This list of projects was then shared with Manatt and Manatt's attorneys adopted most of the
9 project categories, with certain additions for specific projects or tasks in addition to or separate
10 from the tasks engaged in by McKool Smith. Although McKool Smith has made a major effort
11 to comply with the Court's order for identification of detailed time by individual projects, and we
12 have coordinated that effort with Manatt, the scope and complexity of the project and number of
13 tasks means that Plaintiffs' Counsel cannot not guarantee complete uniformity of the results.

14
15 35. After creating a list of projects, McKool Smith lawyers then engaged in a good
16 faith effort to allocate each of the tasks in a timekeeper's entry to a corresponding project. To
17 the extent there was a block billed time entry that contained multiple tasks, McKool Smith
18 personnel also engaged in a good faith effort to apportion the time between the various projects.
19 To the extent a single, contemporaneously-recorded task was divided among projects, individual
20 timekeepers occasionally amended the description for a task based on their recollection, given
21 the renewed effort to allocate time to projects.

22
23 36. I have exercised billing judgment on fees in the following ways: (1) I have
24 deleted and/or reduced entries to account for inefficiency; and (2) I have deleted entries relating
25 solely to travel time. In addition, I have reduced the percentage of recovery sought for certain
26 projects based on an allocation of time related to claims or theories that were not ultimately
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1 pursued or for which recovery was not obtained. However, I have not treated such time as
2 valueless to the Class nor unworthy of any recovery. In my opinion, class counsels' entitlement
3 to a percentage of a common fund fee recovery is quite different from a recovery in a "fee
4 shifting" recovery where the defendant(s) should not be asked to pay for anything other than
5 theories pursued to ultimate recovery. Here, the Class was greatly benefited by the evolution of
6 this case and the creative and aggressive assertion of theories by Class Counsel. The point was to
7 succeed in obtaining recovery for the Class on any viable theory, even if not all theories were
8 successful. Similarly, I treated as valuable and recoverable time spent by counsel in
9 brainstorming and working with jury consultants to find the most effective presentation to the
10 jury. That kind of time is invaluable because it often can be the difference between victory and
11 defeat. Efficiency is important, but effectiveness is much more important because victory is the
12 ultimate goal. Taking into consideration all of these factors, I am requesting 100%
13 reimbursement for those items that are directly related to our successful prosecution of the case, I
14 have sought 0% reimbursement for those items that are directly and solely related to classes that
15 were not certified or if I determined that the amount should not be billable. Where a particular
16 task included work on both the successful class recovery and also related to other matters, such
17 as the claims of Bernard Parrish, I request reimbursement at a rate of 75% as shown in the
18 attached chart. That percentage reflects the fact that, as set forth above, my view is that such time
19 pursuing alternative theories of recovery added value ultimately to the class recovery and
20 involved work that is often difficult to segregate from work on matters clearly related to the
21 successful class recovery.

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25 37. The total amount of time billed to this matter by each timekeeper (prior to any
26 write-offs) is set forth in the following chart.
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Timekeeper	Time	Fees Billed
Aaron Boals	0.5	\$ 32.50
Anthony Garza	541.6	\$ 202,062.50
Betty Sanders	597.9	\$ 50,821.50
Brett Charhon	1396.2	\$ 558,150.00
Chris Martin	14.5	\$ 2,682.50
Cynthia Alaniz	401.9	\$ 34,161.50
David Bamberger	3.3	\$1,485.00
Diane Page	13.9	\$ 1,529.00
Don Gaiser	75.6	\$ 8,460.00
Donald Forbes	67.9	\$ 8,409.00
Hector Nava	28.3	\$ 3,537.50
Heidi L. Peterson	4.8	\$ 384.00
J. David Smith	58.5	\$ 7,312.50
Jill Adler Naylor	2813.8	\$1,243,425.00
Jodie L. Mow	2.1	\$ 378.00
Joel L. Thollander	23.4	\$ 10,530.00
Joel M. Leach	25.5	\$ 2,932.50
John R. Johnson	51.5	\$ 4,635.00
Jonathan Yim	5.5	\$ 495.00
Karen K. Sherrill	461	\$ 76,400.00
Kristina R. Collins	3	\$ 540.00
Laura Phelan	42.8	\$ 3,852.00
Lewis T. LeClair	2354.3	\$ 1,622,727.00
Mary Ferrari	182	\$ 27,300.00
Omar Moreno	379	\$ 39,795.00
Rosemary T. Snider	10.1	\$ 5,517.50
Stefano J. Milito	1.9	\$ 161.500
Steven C. Callahan	3	\$ 1,125.00
Suzie Bovine	333.5	\$ 60,030.00
Tom Graves	26.8	\$ 16,884.00
Grand Total	9924.1	\$ 3,995,755.00

38. The total amount of time that McKool Smith seeks to recover for each timekeeper after my application of billing judgment and the application of the percentages in Exhibit C is set forth in the chart below:

Timekeeper	Fee Sought
Aaron Boals	\$ 0.00
Anthony Garza	\$ 164,707.50
Betty Sanders	\$ 50,062.88
Brett Charhon	\$ 481,878.75
Chris Martin	\$ 1,232.50
Cynthia Alaniz	\$ 21,607.00

1	David Bamberger	\$ 0.00
2	Diane Page	\$ 1,298.00
3	Don Gaiser	\$ 6,689.00
4	Donald Forbes	\$ 8,409.00
5	Hector Nava	\$ 0.00
6	Heidi L. Peterson	\$ 300.00
7	J. David Smith	\$ 3,125.00
8	Jill Adler Naylor	\$ 1,031,433.75
9	Jodie L. Mow	\$ 378.00
10	Joel L. Thollander	\$ 10,530.00
11	Joel M. Leach	\$ 2,242.50
12	John R. Johnson	\$ 198.00
13	Jonathan Yim	\$ 0.00
14	Karen K. Sherrill	\$ 70,992.00
15	Kristina R. Collins	\$ 540.00
16	Laura Phelan	\$ 1,800.00
17	Lewis T. LeClair	\$ 1,293,662.50
18	Mary Ferrari	\$ 17,550.00
19	Omar Moreno	\$ 30,450.00
20	Rosemary T. Snider	\$ 4,756.25
21	Stefano J. Milito	\$ 0.00
22	Steven C. Callahan	\$ 0.00
23	Suzie Bovine	\$ 49,788.00
24	Tom Graves	\$ 0.00
25	Total Fees Sought	\$ 3,253,630.63

39. The total amount of time that was written-off for each time keeper through my use of billing judgment or through application of the percentages set forth in Exhibit C is set forth in the chart below:

Timekeeper	Write-Off
Aaron Boals	\$ 32.50
Anthony Garza	\$ 37,355.00
Betty Sanders	\$ 758.63
Brett Charhon	\$ 76,271.25
Chris Martin	\$ 1,450.00
Cynthia Alaniz	\$ 12,554.50
David Bamberger	\$ 1,485.00
Diane Page	\$ 231.00
Don Gaiser	\$ 1,771.00
Donald Forbes	\$ 0.00
Hector Nava	\$ 3,537.50
Heidi L. Peterson	\$ 84.00
J. David Smith	\$ 4,187.50

Jill Adler Naylor	\$ 211,991.25
Jodie L. Mow	\$ 0.00
Joel L. Thollander	\$ 0.00
Joel M. Leach	\$ 690.00
John R. Johnson	\$ 4,437.00
Jonathan Yim	\$ 495.00
Karen K. Sherrill	\$ 5,408.00
Kristina R. Collins	\$ 0.00
Laura Phelan	\$ 2,052.00
Lewis T. LeClair	\$ 329,064.50
Mary Ferrari	\$ 9,750.00
Omar Moreno	\$ 9,345.00
Rosemary T. Snider	\$ 761.25
Stefano J. Milito	\$ 161.50
Steven C. Callahan	\$ 1,125.00
Suzie Bovine	\$ 10,242.00
Tom Graves	\$ 16,884.00
Total Write-Off	\$ 742,124.38

OTHER DISBURSEMENTS AND EXPENSES INCURRED IN THIS ACTION

40. On November 26, 2008, Plaintiffs filed a cost bill seeking recovery of \$92,120.10 in ordinary litigation costs under Fed. R. Civ. Pro. 54(d). To date, that cost bill has yet to be addressed by the Court.

41. McKool Smith incurred additional expenses and disbursements in successfully prosecuting the case, other than those items included in the cost bill. The expenses incurred in connection with this case are reflected on McKool's books and records that are maintained in the ordinary course of business. These books and records are prepared from expense vouchers and check records and, although I did not compile the records, they were prepared by accounting personnel of the firm and based on my review of the records, are an accurate compilation of expenses incurred and paid by the firm.

42. Attached as **Exhibit D** is a detailed summary of the expenses by category showing a breakdown of invoices and payments, followed by all of the detailed expense reports

1 and billings supporting the summary. Most of the items listed in the summaries are self-
2 explanatory. The photocopying charges in this case were substantial due to the number of
3 documents produced and number of exhibits used at depositions and trial. Travel included travel
4 and lodging costs incurred by McKool Smith timekeepers to attend court hearings, depositions,
5 meetings, and trial. However, I have now conducted a more detailed review of such expenses in
6 order to eliminate that portion of the expenses that might be considered unrecoverable because of
7 luxury travel, personal items or other reasons. Airfare pricing is no longer a simple division
8 between “first class” or “economy” travel because airline pricing is not static but instead depends
9 on a variety of factors related to the timing of the purchase and date of travel and the advance
10 purchase requirements. In addition, refundable tickets are often more expensive than non-
11 refundable tickets. Most of the McKool Smith airfare was purchased on American Airlines
12 which offers an unusual option called a “Y-up” fare or “P” class fare that automatically upgrades
13 to first class a ticket purchased in coach at one of the more expensive economy rates. For
14 business travel on relatively short notice, the price of a “Y-up” fare is often less than an
15 unrestricted economy fare. For that reason, a number of tickets purchased by McKool Smith
16 show as first class tickets but were in fact coach tickets that were automatically upgraded by
17 American. In order to avoid any issues about such travel, I have now made certain deductions for
18 more expensive tickets and capped ticket charges at \$800 for travel by our attorneys and
19 personnel to California. That cap resulted in a deduction of \$13,974 for airfare costs. I did not
20 apply a similar cap with respect to travel to New York because prices for travel during the
21 business week are notoriously high for coach travel. With respect to hotel charges, I applied a
22 flat reduction of \$4,000 to account for certain charges that I thought constituted luxury hotel
23 rates. I also asked our accounting personnel to eliminate bar charges, personal charges and other
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1 miscellaneous non-billable items from Exhibit D. In order to be sure that all such charges were
 2 removed from our request for reimbursement, I have made an additional deduction of \$1250 over
 3 and above deductions explained above. Collectively, the additional deductions that I have made
 4 reduced the travel expenses by the amount of \$19,224 from the amounts that are set forth as
 5 travel expenses in Exhibit D.
 6

7 43. Computer research is the cost of performing on-line legal research for pre-trial,
 8 trial and post-trial briefs. Expert charges were quite significant, but important to our success on
 9 behalf of the class. Philip Rowley, LECG, and Resolution Economics provided assistance with
 10 damage and accounting issues. OSKR provided sports and marketing expertise. TrialGraphix
 11 provided trial and jury consulting and assistance with graphics and exhibits for the trial. In my
 12 original declaration, I did not include any of the expert costs shown above, because, as I
 13 explained in my prior declaration, “even though McKool Smith advanced approximately half of
 14 such costs . . . the full amount of expert costs are contained within the request for non-taxable
 15 costs submitted by Manatt and supported by the Katz Declaration.” Upon review of the Katz
 16 declaration after it was filed, I discovered that the McKool Smith half of expert fees were not
 17 included. Accordingly, they are now included above as a part of my declaration. There are other
 18 changes to the numbers from the time of my original declaration, most of them minor. However,
 19 the mock trial and trial consulting numbers are higher because of additional bills that were
 20 received for services and paid after the date of my original declaration.
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23 44. The amounts reasonably incurred and for which reimbursement is now being
 24 sought, are as follows¹:

Computer Research	\$ 106,576.81
Copying (Outside Service)	\$ 7,975.03

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 27 ¹ This list reflects changes made to the amounts in Exhibit D for further reductions to travel
 28 charges as explained above.

Courier	\$ 11,941.33
Deposition Services	\$ 1,751.90
Document management Costs	\$ 67,069.45
Expert Fees--OSKR	\$190,311.95
Expert Fees-Rowley	\$ 31,396.81
Expert Fees-Resolution Economics	\$ 87,188.73
Hotel for trial personnel	\$ 53,186.73
Miscellaneous legal costs	\$ 5,846.73
Other Experts/Professionals	\$ 24,743.86
Reproduction (In-House Photocopies)	\$ 3,454.40
Telephone	\$ 1,059.93
Travel	\$ 89,962.07
Trial Equipment Rentals	\$ 3,044.14
Mock Trial and Trial Consulting	\$134,701.93
TOTAL	\$820,211.80

45. In addition, to the extent any costs included in the cost bill are disallowed or deemed not recoverable, Plaintiffs alternatively seeks recovery of any such items by this motion.

SUMMARY

46. McKool Smith seeks recovery of its share of a thirty percent (30%) award of attorneys fees, equal to a total attorneys fee award of \$7,369,648.90, an award that is fully justified by McKool Smith's lodestar of \$3,253,630.63 and Manatt's lodestar of \$4,531,237.50 which total \$7,369,648.90. The total amount sought by McKool Smith is broken down as follows:

Attorneys' Fees	\$ 3,253,630.63
Other Expenses and Disbursements	\$ 820,211.80

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 2, 2009 in Dallas, Texas.

/s/ Lewis T. LeClair

**MCKKOOOL SMITH
A PROFESSIONAL CORPORATION • ATTORNEYS
DALLAS, TEXAS**

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