

EXHIBIT D

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10

11 LEE SCHAVRIEN, an individual,

12 Plaintiff,

13 v.

14 LORETTA LYNCH, an individual, and DOES 1
through 20, inclusive.

15 Defendants.
16

Case No. CGC-05-439578

**DECLARATION OF JOHN W.
KEKER IN SUPPORT OF
DEFENDANT LORETTA LYNCH'S
MOTION FOR ATTORNEYS FEES**

Date: March 7, 2006

Time: 9:30 a.m.

Dept.: 301

Judge: James L. Warren

Action Filed: November 18, 2004
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19 I, John W. Keker, declare as follows:

20 1. I am a partner at Keker & Van Nest and a member in good standing of the State Bar of
21 California. I have personal knowledge of the matters stated herein and, if called upon to do so, could
22 and would testify competently to them. I make this declaration in support of Defendant Loretta Lynch's
23 Application for Attorneys' Fees Pursuant to C.C.P. §425.16(c).

24 2. I graduated *cum laude* from Woodrow Wilson School of Public & International Affairs of
25 Princeton University in 1965 and graduated from Yale Law School in 1970. Following graduation from
26 Yale Law School, and prior to founding Keker & Van Nest in 1978, I served as a law clerk to Earl
27 Warren, retired Chief Justice of the United States, as a staff attorney at the Natural Resources Defense
28 Council, and as an assistant Federal Public Defender for the Northern District of California.

3. While at Kecker & Van Nest, I have litigated numerous cases in both state and federal courts throughout the country. Some of my notable successes have included winning a jury trial in 2002 for Genentech in a \$300 million patent dispute with Chiron; and, in 2001, successfully representing Cadence Design Systems, Inc., winning the company \$195 million in restitution for trade secret theft. In just the past few years, I have represented the former Chief Financial Officer of Enron in a criminal securities fraud case and in numerous civil securities cases in federal and state courts across the country (*In Re Enron Securities Litigation*, H-01-324 (S.D. Texas) and related cases), and served as lead defense counsel in *United States v. Frank Quattrone* in the Southern District of New York. In 1989, I was appointed chief prosecutor by the Iran/Contra Independent Counsel's Office in *United States v. Oliver North*.

4. I have received a variety of honors for my work as a trial lawyer, including being named by the *San Francisco Chronicle* as the best trial lawyer in the Bay Area in 2003, and being awarded the Significant Contribution to Criminal Justice Award in 1996 from the California Attorneys for Criminal Justice. I am a fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, the American Board of Trial Advocates, and the American Bar Foundation. I served on the San Francisco Police Commission as President from 1996-97 and 1991-92, and as Vice President from 1989-90. I also served as Vice President of the San Francisco Fire Commission from 1988-89, Chairman of the San Francisco Bay Water Quality Control Board from 1981-83, and Chairman of the Mayor's Summit on Crime in 2002. I frequently lecture on litigation strategies and techniques to professional groups, including the State Bar Litigation Section and the American Bar Association's Litigation, White Collar, and Business Law Sections. My resume more fully describing my professional background and experience is attached hereto as Exhibit A.

5. I am familiar with the reputation and work of Stephen P. Berzon and the attorneys at Altshuler Berzon. Although small in size, it is one of the best litigation firms in the country, both at the trial and appellate level, and has an outstanding reputation for its expertise in important First Amendment issues. The firm is known for its attorneys' excellent litigation skills and willingness to tackle novel and difficult legal issues.

6. I have reviewed numerous documents pertinent to this case, including: the Declaration of

1 Stephen P. Berzon in Support of Defendant Lynch's Motion for Attorneys Fees; the First Amended
2 Complaint; Defendant Lynch's Motion to Transfer; the Declaration of Barbara J. Chisholm in Support of
3 Defendant Lynch's Motion to Transfer; Plaintiff's Opposition to the Motion to Transfer; Plaintiff's
4 Motion to Compel Discovery; Defendant Lynch's Opposition to Plaintiff's Motion to Compel
5 Discovery; Plaintiff's Reply in Support of the Motion to Compel Discovery; Defendant Lynch's Anti-
6 SLAPP Motion; Plaintiff's Opposition to the Anti-SLAPP Motion; Defendant Lynch's Reply in Support
7 of the Anti-SLAPP Motion; the Court's August 9, 2005 Order Denying Plaintiff's Motion for Discovery;
8 and the Court's November 15, 2005 Order Granting Defendant Lynch's Anti-SLAPP Motion.

9 7. During the course of my law practice, I have become very familiar with the rates charged
10 by attorneys in the Bay Area with experience and skill similar to that of the attorneys representing Ms.
11 Lynch in this matter.

12 8. I understand that Altshuler Berzon is seeking attorneys' fees in this case based on a
13 billing rate of \$610 per hour for Stephen P. Berzon's time, \$290 per hour for Barbara J. Chisholm's
14 time, and \$155 per hour for time spent by paralegals and litigation assistants on the case. I am aware
15 that Mr. Berzon has over thirty years of litigation experience, and Ms. Chisholm graduated law school in
16 2001.

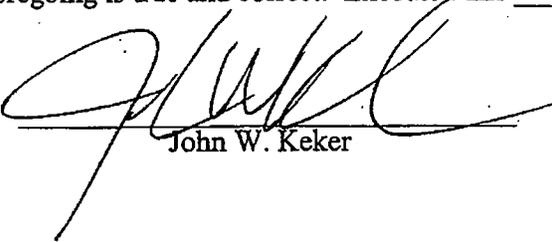
17 9. In my opinion, the hourly rates claimed by Altshuler Berzon are entirely reasonable,
18 especially in light of the firm's stellar reputation, experience and talents. The rates are consistent with
19 the prevailing rates customarily charged by attorneys with comparable experience in the Bay Area. At
20 my firm, for example, attorneys' billing rates currently range from \$290 per hour to \$900 per hour, and
21 paralegals' rates range from \$140 to \$220 per hour. My current hourly billing rate is \$900 per hour.
22 Furthermore, in this particular case, the attorneys of Altshuler Berzon displayed remarkable skill and
23 tenacity, which went beyond what might ordinarily be expected from attorneys with similar experience.

24 10. Based on my review of various documents in this case, as well as my familiarity with the
25 litigation from communications with Altshuler Berzon attorneys, I believe that the total number of hours
26 expended by Altshuler Berzon in defending Ms. Lynch in this case is reasonable in light of the difficulty
27 of the litigation. To prosecute Ms. Lynch's Anti-SLAPP motion effectively, Altshuler Berzon had to
28 perform a substantial amount of work, including transferring the case to San Francisco and opposing a

1 request for extensive discovery, all of which was made more burdensome by Plaintiff's evidently
2 tenacious litigation positions. It also appears that Altshuler Berzon litigated this case efficiently. For
3 example, the vast majority of time spent on Ms. Lynch's defense and on prosecuting the Anti-SLAPP
4 motion was put in by Barbara J. Chisholm, an associate at Altshuler Berzon who bills at a relatively low
5 hourly rate.

6 11. I believe that the 2.0 multiplier being requested by Ms. Lynch is wholly reasonable under
7 the circumstances of this case. In my experience, a multiplier of 2.0 is the minimum necessary to induce
8 competent and qualified counsel to take cases where there is no guarantee that they will receive their fees
9 — especially a case such as this one that involved complex legal issues. Ms. Lynch's requested multiplier
10 is certainly reasonable in light of the burdens of this case, and the extraordinary and entirely successful
11 results achieved by Altshuler Berzon for Ms. Lynch.

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13 I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of
14 January, 2006, at San Francisco, California.

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