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15 *Class Counsel and Counsel for Settling Class Plaintiffs*

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17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA**

19 RYAN RODRIGUEZ, REENA B.
20 FRAILICH, LOREDANA NESCI,
21 JENNIFER BRAZEAL and LISA
22 GINTZ, on behalf of themselves and all
23 others similarly situated,

24 Plaintiffs,

25 vs.

26 WEST PUBLISHING CORPORATION,
27 Minnesota Corporation dba BAR/BRI
28 and KAPLAN, Inc., a Delaware
Corporation.

Defendants.

AND CONSOLIDATED ACTION

Case No. CV 05-3222 R(MC_x)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN FURTHER
SUPPORT OF FINKELSTEIN
THOMPSON LLP'S
AND ZWERLING, SCHACHTER &
ZWERLING, LLP'S MOTION FOR
RECONSIDERATION OF
ORDER ON ATTORNEYS' FEES**

Date: August 9, 2010

Time: 10:00 a.m.

Place: Courtroom 8

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1 **I. Introduction**

2 Finkelstein Thompson LLP (“Finkelstein”) and Zwerling, Schachter &
3 Zwerling, LLP’s (“Zwerling”) initial motion for reconsideration (“Motion”)
4 showed that this Court should reconsider its initial fee ruling, which (1) denied
5 Finkelstein and Zwerling a risk multiplier on their lodestars, and (2) reduced
6 Finkelstein’s and Zwerling’s lodestars by 10%.

7 The responses to that Motion filed by the objectors represented by Robert
8 Gaudet (“Gaudet Objectors”) and by the law firm of Kendrick & Nutley (“Nutley
9 Objectors”) fail to rebut that showing.

10 **II. Finkelstein and Zwerling Do Not Offer New Interpretations of the Time**
11 **Records at Issue**

12 In an attempt to prevent this Court from reconsidering its determination, the
13 Gaudet Objectors mischaracterize the Motion as offering “new interpretations” of
14 the time records at issue. Gaudet Opp. at 2. They then declare that the Motion is
15 really being brought pursuant to Local Rule 7-18(a) rather than Local Rule 7-18(c).
16 *Id.* However, neither Finkelstein nor Zwerling have offered any “new
17 interpretations” of their time records. Instead, the Motion establishes that there
18 was “a failure to consider material facts presented to the Court before such
19 decision.” L.R. 7-18(c).

20 In supporting their argument, the Gaudet Objectors invent a set of facts
21 completely at odds with reality. They argue that Finkelstein and Zwerling should
22 not be allowed to discuss their time records because the “new interpretations of
23 time sheets were not included in the reply brief filed on October 26, 2009.” Gaudet
24 Opp. at 3. However, the Court did not order Finkelstein and Zwerling to submit
25 their detailed time records until **November 2, 2009**. (Dkt. 601). The reply brief in
26 question addressed arguments made by objectors concerning the award of
27 attorneys’ fees in connection with the conflict issue and other general objections
28 regarding fees and expenses. In fact, at that time, the Gaudet Objectors

1 acknowledged that “the proper starting point for an attorney’s fee award” to
2 Finkelstein and Zwerling was 1.75 times their total lodestar. (Dkt. 597 at 11).

3 In response to the Court’s November 2, 2009 Order, all Class Counsel
4 submitted their time and expense detail on November 13, 2009. The Court
5 afforded the Objectors the opportunity to submit additional papers in connection
6 with the pending motion for final distribution of the Net Settlement Fund and
7 award of attorneys’ fees within five days of Class Counsels’ submission of those
8 records. (Dkt. 601) Three sets of Objectors timely filed additional papers on
9 November 20, 2009. (Dkts. 606-09).¹ Class Counsel was not afforded the
10 opportunity to submit any additional papers prior to the hearing on December 7,
11 2009 and, accordingly, no new interpretation is required to establish the basis for
12 reconsideration.

13 **III. There is No Basis to Deny a Risk Multiplier**

14 The Gaudet Objectors baselessly argue that “the Court acted within its
15 discretion by eliminating the lodestar multiplier due to excessive rates.” Gaudet
16 Opp. at 4. First, as explained below, the Finkelstein and Zwerling firms’ rates are
17 reasonable in light of the nature of this matter and the skill, experience and
18 reputation of the attorneys involved. Moreover, the Gaudet Objectors do not even
19 attempt to dispute the fact that a multiplier is justified here by the risk undertaken
20 by counsel and their contributions to this action.

21 “It is an established practice in the private legal market to reward attorneys
22 for taking the risk of non-payment by paying them a premium over their normal
23 hourly rates for winning contingency cases.” *In re Washington Public Power*
24 *Supply System Sec. Litig.* (“WPPSS”), 19 F.3d 1291, 1299 (9th Cir. 1994). This
25 Circuit has explained that “[c]ontingent fees that may far exceed the market value
26 of the services if rendered on a non-contingent basis are accepted in the legal
27

28 ¹ The Juranek Objectors filed papers after the Court’s deadline. (Dkt. 610).

1 profession as a legitimate way of assuring competent representation for plaintiffs
2 who could not afford to pay on an hourly basis regardless whether they win or
3 lose.” *Id.*; *see also Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997,
4 1008 (9th Cir. 2002) (“This provides the ‘necessary incentive’ for attorneys to
5 bring actions to protect individual rights and to enforce public policies.”). Thus,
6 “courts have routinely enhanced the lodestar to reflect the risk of non-payment in
7 common fund cases.” *WPPSS*, 19 F.3d at 1300.

8 It is error to deny a risk multiplier where a case is fraught with risk and there
9 is no guarantee of payment. *See id.* at 1301-02 (abuse of discretion for district
10 court to deny a risk multiplier after acknowledging risk in pursuing action on
11 contingent basis); *Fischel*, 307 F.3d at 1008 (same); *Matter of Continental Illinois*
12 *Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992) (same); *see also Vizcaino v.*
13 *Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (approving risk multiplier of
14 3.65 times current rates).

15 In *Fischel*, the Ninth Circuit explained that “[i]t is an abuse of discretion to
16 fail to apply a risk multiplier . . . when (1) attorneys take a case with the
17 expectation that they will receive a risk enhancement if they prevail, (2) their
18 hourly rate does not reflect that risk, and (3) there is evidence that the case was
19 risky.” *Fischel*, 307 F.3d at 1008. The Court also noted that it is an abuse of
20 discretion to fail “to apply a risk multiplier when the fee applicant establishes that
21 the prevailing party would have faced ‘substantial difficulties’ in finding counsel
22 without an adjustment for risk and that it is difficult to find counsel for this class of
23 contingency fee cases.” *Id.* at 1008 n.8. Likewise, in reversing the denial of a risk
24 multiplier in *WPPSS*, the Ninth Circuit found that the record did not support the
25 conclusion that class counsel “was not driven, at least in part, by expectancy that
26 their fee would be enhanced if they were successful” or “that law firms showed no
27 reluctance to take the case and that the firms' high hourly rates already reflected
28 some of the risk in the case” 19 F.3d at 1301; *see also id.* at 1302 (noting the

1 district court's prior acknowledgements of the "riskiness" of the case in support of
2 reversal).

3 Thus, it is well-settled that a risk multiplier should not be denied where, as
4 here, there is an expectation of a fee enhancement, a risk of non-payment and a
5 showing that counsel's hourly rates did not reflect any such risk. The fact remains
6 that the Finkelstein and Zwerling firms undertook to prosecute this complex case
7 with no guarantee of payment and at reasonable hourly rates which did not reflect
8 the significant risk of nonpayment. As such, this Court's original fee award, which
9 enhanced the Finkelstein and Zwerling firms' lodestars by a multiplier of 1.75 up
10 to a cap of 25% of the Gross Settlement Fund, should be reinstated.

11 Importantly, this Court initially awarded class counsel a fee multiplier. *See*
12 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967 (9th Cir. 2009); Sep. 10,
13 2007 Order Granting Class Counsel Attorneys' Fees and Reimbursement of
14 Expenses ("September 2007 Fee Order"). In arriving at its decision, the Court
15 found that:

16 Class Counsel faced a substantial amount of risk in the
17 prosecution of this action. Unlike other antitrust cases, Class Counsel
18 here did not benefit from the fruits of any underlying government
19 actions. There were no controlling precedents regarding Plaintiffs'
20 claims, especially with regard to the Section 7 claim under the
21 Clayton Act. Class Counsel's risk was even greater, and their work
22 more difficult, because Defendants are resourceful and formidable,
23 and were represented by skilled counsel.

24 Further, as detailed in Class Counsel's submission in
25 connection with the Motion, Class Counsel faced a number of hurdles
26 in proving both damages and liability at trial. Class Counsel also
27 faced a number of risks, including the risk that the Class would be
28 decertified during trial or certification reversed on appeal; the risk of

1 proving conspiracy; and the risk of proving damages, among other
2 things. Also, Defendants raised numerous defenses that, if successful,
3 would have foreclosed or, at a minimum, diminished any recovery.
4 Despite these obstacles, Class Counsel obtained \$49 million in cash
5 for the benefit of the Class and non-monetary relief designed to
6 promote competition in the bar review market.

7 September 10, 2007 Fee Order at 4-5; *see also Rodriguez*, 563 F.3d at 967.

8 Indeed, the Finkelstein and Zwerling firms played a critical role in bringing
9 about and protecting the \$49 million Settlement for the benefit of Class members.
10 Both firms have been centrally involved in the action from the start. Further, as
11 this Court has already found, their services were performed with no guarantee of
12 payment and at prevailing market rates. *See* September 2007 Fee Order at 4-5; *see*
13 *also Fischel*, 307 F.3d at 1009 (finding that counsel's hourly rates, set at prevailing
14 market rates, did not reflect risk of nonpayment). The firms were also motivated to
15 undertake these significant risks with the expectation of a fee enhancement; the
16 record reveals no reason to infer otherwise. *See WPPSS*, 19 F.3d at 1301
17 (reversing denial of fee multiplier where there is no basis in the record to establish
18 that class counsel was not, at least partially, driven by the prospect of a fee
19 enhancement).

20 No new circumstances or facts have come to light since the September 2007
21 Fee Order to warrant the elimination of either firm's entitlement to a risk
22 multiplier. If anything, a multiplier is now particularly warranted. The Ninth
23 Circuit upheld the approval of the Settlement based precisely on the Finkelstein
24 and Zwerling firms' participation and advocacy in the action, finding that the
25 "impropriety [concerning the Incentive Award Agreements] did not require the
26 district court to reject the settlement negotiated in this case *because two non-*
27 *conflicted class representatives with non-conflicted counsel participated.*"
28 *Rodriguez*, 563 F.3d at 967 (emphasis supplied). In particular, the Ninth Circuit

1 found that “Class counsel vigorously prosecuted the case through to a fair
2 settlement with the participation of two nonconflicted law firms assuag[ing]
3 any additional concerns that a conflict created by the incentive agreements may
4 have adversely affected the adequacy of representation.” *Rodriguez*, 563 F.3d at
5 961. Absent the participation and hard work of the Finkelstein and Zwerling firms,
6 this \$49 million Settlement – deemed, “[b]y any measure, to be “fair adequate and
7 reasonable,” *id.* at 968 – would have been in serious jeopardy.

8 In short, the record easily establishes that the Finkelstein and Zwerling firms
9 are entitled to a fee enhancement, particularly in light of the fact that the current
10 fee award constitutes less than seven percent of the Gross Settlement Fund.
11 *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990) (requiring “fee awards in
12 common fund cases be reasonable under the circumstances.”); *Paul, Johnson,*
13 *Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989) (holding that 25
14 percent of a common fund is the “benchmark”). Accordingly, the Court’s
15 February 3, 2010 decision to eliminate the multiplier should be reconsidered, and
16 the prior enhancement to the Finkelstein and Zwerling firms’ lodestars (*i.e.*,
17 awarding a multiplier of 1.75 up to a cap of 25% of the Gross Settlement Fund)
18 should be reinstated.

19 **IV. The Fees and Rates of Finkelstein and Zwerling Are Not Excessive**

20 The Gaudet Objectors assert that this Court was justified in reducing
21 Finkelstein’s and Zwerling’s lodestars because of purportedly excessive billing
22 rates by those firms. *See* Gaudet Opp. at 4. As an initial matter, the Gaudet
23 Objectors do not support this point by citing to this Court’s order on attorneys’
24 fees, but rather by citing to their own brief. *See* Gaudet Opp. at 4, 5 (citing Dkt.
25 607, at 8-11). As such, it seems likely that this argument is not meant to respond
26 to the Motion for Reconsideration, but is rather an attempt to buttress their
27 application for fees before this Court. *See* Dkt. 627 at 12 (arguing Gaudet
28 Objectors entitled to fees for claiming that Finkelstein and Zwerling’s rates were

1 “excessive.”).

2 In any event, the Gaudet Objectors’ argument is wrong.² Reasonable hourly
3 rates are determined by looking to rates “prevailing in the community for similar
4 services by lawyers of reasonably comparable skill, experience and reputation.”
5 *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984). Finkelstein’s and Zwerling’s
6 hourly rates are the rates both firms customarily submit to courts, are the 2009
7 market-based rates reflecting the years of experience possessed by the attorneys in
8 these firms, and are perfectly appropriate. *See WPPSS*, 19 F.3d at 1305. Indeed, a
9 2007 study in the National Law Journal noted some law firms had rates as high as
10 \$1000 per hour three years ago. *See Large Firm’s Billing Rates Continue to*
11 *Climb*, National Law Journal Dec. 11, 2007, available at
12 <http://www.law.com/jsp/article.jsp?id=1197281080646>. Finkelstein and Zwerling
13 provided full explanations of these hourly rates in the declarations submitted with
14 their initial Distribution Motion and with their Reply to the same in the form of fee
15 declarations, and no more is required. *See* Dkt. 585, Ex. 9 & 10; Dkt. 598-3; Dkt.
16 598-4; *see also United Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d
17 403, 407 (9th Cir. 1990) (“Affidavits of the plaintiffs’ attorney and other
18 attorneys regarding prevailing fees in the community, and rate determinations in
19 other cases, particularly those setting a rate for the plaintiffs’ attorney, are
20 satisfactory evidence of the prevailing market rate.”).

21 In any event, the Gaudet Objectors make no serious attempt to assess the
22 skill, ability, or reputation of Finkelstein and Zwerling’s attorneys. Rather, they
23 simply purport to calculate an “average” billing rate for partners and associates in a
24 given locale. Even assuming these purported average rates are correct (and they

25 _____
26 ² The cases the Gaudet Objectors rely on involve statutory fee shifting cases, not
27 “common fund” cases like this one. *See Hensley v. Eckerhart*, 461 U.S. 424
28 *(1983)*; *Moreno v. Sacramento*, 534 F.3d 1002 (9th Cir. 2008); *Schaeffer v. San*
Diego Yellow Cabs, 462 F.2d 1002 (9th Cir. 1972); and *Galzamez v. Potter*, 2007
WL 845914 (D. Or. Mar. 15, 2007)

1 provide no evidence that they are), the Gaudet Objectors’ analysis nevertheless
2 fails to assess the pertinent factors used to calculate hourly rates for the attorneys
3 whose hourly rates they attack, *i.e.* those attorneys’ respective experience and
4 ability. *Blum*, 465 U.S. at 896. As such, the Gaudet Objectors’ challenge to
5 Finkelstein’s and Zwerling’s hourly rates should be rejected.

6 **V. Finkelstein and Zwerling Are Entitled to Compensation at Current**
7 **Hourly Rates and for Time Expended on Appeal**

8 The Nutley Objectors’ opposition to the Motion primarily rests on two
9 assertions: first, that those firms’ lodestar should be computed using historical,
10 rather than current rates, *see* Nutley Opp. at 9 (arguing reduction justified because
11 “hourly rates of the ZSZ and FT firms increased dramatically between the initial
12 judgment and the latest fee request”)³ and, second, that the fee awarded “exceed[s]
13 the amount that either firm was awarded prior to the appeal.” *Id.* at 10. Neither
14 argument holds water.

15 As to the first, it is settled law that a counsel’s lodestar in class action
16 contingency cases is calculated using current billing rates. *WPPSS*, 19 F.3d at
17 1305. This practice is meant to compensate firms for the delay in payment in such
18 cases. *Id.*; *see also Missouri v. Jenkins*, 491 U.S. 274, 284 (1989) (noting use of
19 current rates appropriate to compensate for delay in payment). Here, Finkelstein
20 and Zwerling have been working in this case since 2005, and have not received a
21 single penny for their services. Accordingly, Finkelstein and Zwerling’s submitted
22 lodestar was premised on their hourly rates at the time of their fee submission, and
23 Nutley’s argument that such use somehow constituted “radically increased” hourly
24 rates is simply incompatible with controlling law. *Id.*; *see also Vizcaino*, 290 F.3d
25 at 1051 (endorsing use of current rates in lodestar calculation). Indeed, the fee
26

27 ³ The Nutley Objectors also state this Court “undoubtedly considered” this when
28 making its initial decision, but cites to no portion of the record to support this bald
assertion.

1 application the Nutley objector’s counsel filed with this Court appears to use
2 current hourly rates, insofar as the hourly rates therein are higher than those used in
3 their pre-appeal fee petition. *Compare* Dkt. 624 at 12 (Kendrick hourly rate of
4 \$575 and Nutley hourly rate of \$550) *with* Dkt. 469 at 2, ¶5 (Kendrick hourly rate
5 of \$500 and Nutley hourly rate of \$475). That aside, the “blended” rates (*i.e.* the
6 average hourly rates of all submitted time) of Finkelstein and Zwerling compare
7 favorably with those of Kendrick and Nutley: the average hourly rate for
8 Finkelstein’s professionals is approximately \$500, while the average hourly rate
9 for Zwerling’s professionals is approximately \$532. *See* Dkt. 585 at 14, ¶ 59.

10 And, as to the Nutley Objectors’ assertion that the fee award was adequate
11 because it purportedly exceeded the amount awarded prior to the appeal: this
12 Court’s initial fee order explicitly contemplated that fees incurred on appeal would
13 be included in the fees awarded by this Court, and the Nutley Objectors’
14 contention to the contrary is objectively false. *See* Dkt. 430 at 5 (noting “Class
15 Counsel will have to perform additional work” in the case of an appeal and holding
16 fee award would be determined by lodestar as of the Effective Date, *i.e.* after all
17 appeals are resolved). To the extent the Nutley Objectors intend to argue that
18 Finkelstein and Zwerling’s appeal-related time should not be included in their
19 lodestar, that argument is flatly wrong. *See Grant v. Martinez*, 973 F.2d 96, 100
20 (2d. Cir. 1992) (noting “time expended defending [a] settlement on appeal”
21 properly included in lodestar and “risk inherent in defending [a] class action on
22 appeal” justifies a risk multiplier on that lodestar).⁴

23
24 ⁴ Nutley’s argument that Finkelstein’s and Zwerling’s contributions on appeal were
25 “comparatively modest,” Nutley Opp. at 10, is made without support, and is flatly
26 wrong. As set forth above, Finkelstein’s and Zwerling’s “contributions” on appeal
27 included successfully defending the settlement against the attacks of a host of
28 objectors, including the Nutley Objectors, and that affirmation was primarily the
result of Finkelstein’s and Zwerling’s participation and advocacy in the action. *See*
Rodriguez, 563 F.3d at 967 (noting Finkelstein’s and Zwerling’s participation
instrumental in affirmation of settlement).

1 The Nutley Objectors also suggest the reduction in Finkelstein's and
2 Zwerling's lodestar is justified because those firms were "aware of the Amended
3 Incentive Agreements." Nutley Opp. at 10. The Nutley Objectors pressed an
4 identical argument before the Ninth Circuit, who expressly rejected it. *Rodriguez*,
5 563 F.3d at 961 (noting knowledge of incentive agreements "did not create a
6 conflict of interest or otherwise interfere with . . . ability or motivation to represent
7 the class"). Their effort to relitigate that issue yet again in this forum is improper,
8 and should be denied.

9 **VI. A Ten Percent Reduction in Lodestar is Not Justified Based Upon the**
10 **Record Before the Court**

11 The Gaudet Objectors' attacks on the Finkelstein's and Zwerling firms' time
12 entries are erroneous, as is their contention that the Court should apply a
13 disproportionate, across-the-board reduction of counsels' fees.

14 In seeking to claim credit for the Court's decision to reduce Finkelstein's
15 and Zwerling's lodestar by ten percent and thus justify their request for fees, the
16 Gaudet Objectors focus on the two areas cited by the Court as a basis for the
17 reduction: (1) time entries in connection with the *Park* litigation; and (2) time
18 entries related to attorneys' fees. *See* Gaudet Opp. at 7 (citing Opposition to Class
19 Counsel's Time Sheets & Expenses, dated November 18, 2009, which states that
20 "Class Counsel's lodestar . . . should be reduced by 10 percent across the board for
21 work performed in the pursuit of fees . . . and on behalf of the *Park* litigation").

22 As detailed in the opening brief, there is no basis for reducing Finkelstein's
23 or Zwerling's fees as a result of these time entries. (Dkt. 642). Nevertheless, even
24 if the Court were to total all of the entries challenged by the Gaudet Objectors in
25 relation to both the *Park* case and attorneys' fees set forth in Zwerling's time
26 records, the total amount would be less than one-half of one percent
27 (approximately .37%). (Dkt. 607 at 4-5, 10, n.3). The same is true when totaling
28 the Finkelstein entries identified by the Gaudet Objectors as devoted to preserving

1 fees (approximately .45%). (Dkt. No. 607 at 9-10, n.4). In fact, if the Court were
2 to arbitrarily disallow all time entries that contain the words “attorneys’ fees” or
3 “counsel fees” or “fees” – an absurd approach since virtually all of those entries
4 refer to Finkelstein’s and Zwerling’s efforts in opposition to Objectors’ application
5 for fees – the total amount of time would still represent less than 3.5% of the total
6 lodestar.⁵

7 Thus, a reduction of 10% of the total lodestar represents a failure to consider
8 the material facts in the record before the Court and cannot satisfy the requirement
9 to provide a “concise but clear explanation” of a court’s reasons for a fee award set
10 forth by the Supreme Court in *Hensley*, 461 U.S. at 437.

11 **VII. Conclusion**

12 For the reasons stated herein, this Court should reconsider the Final
13 Determination Order and reinstate Finkelstein’s and Zwerling’s full lodestar
14 through August 31, 2009 as adjusted herein and award a multiplier of 1.75 up to
15 25% of the Settlement Fund.

16 DATED: July 6, 2010

Respectfully submitted,

FINKELSTEIN THOMPSON LLP

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27
28 ⁵ Obviously, even Objectors do not argue that time devoted to opposing the fee applications of others that would result in a reduction of the Settlement Fund cannot be included in a fee award.

**ZWERLING, SCHACHTER &
ZWERLING, LLP**

By: /s/ Dan Drachler
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*Class Counsel and Counsel for Settling
Class Plaintiffs Kari Brewer and Lorraine
Rimson*

I, Rosemary M. Rivas, am the ECF User whose identification and password are being used to file the Memorandum of Points and Authorities in Further Support of Finkelstein Thompson LLP's and Zwerling, Schachter & Zwerling, LLP's Motion for Reconsideration of Order on Attorneys' Fees. I hereby attest that Dan Drachler has concurred in this filing.

Dated: July 6, 2010

FINKELSTEIN THOMPSON LLP

By: /s/ Rosemary M. Rivas
Rosemary M. Rivas

CERTIFICATE OF SERVICE

I certify that on July 6, 2010, I have electronically filed and served the:

**MEMORANDUM OF POINTS AND AUTHORITIES IN
FURTHER SUPPORT OF FINKELSTEIN THOMPSON LLP'S
AND ZWERLING, SCHACHTER & ZWERLING, LLP'S
MOTION FOR RECONSIDERATION OF ORDER ON
ATTORNEYS' FEES**



BY CM/ECF ELECTRONIC SERVICE: Electronically filing the foregoing with the Clerk of the Court using the CM/ECF system sent notification of such filing to the e-mail addresses of registered participants.



BY U.S. MAIL: I mailed the foregoing via first-class U.S. mail, postage prepaid, to the participants at the addresses listed below.

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1 I declare under penalty of perjury under the laws of the State of California
2 that the above is true and correct. Executed this 6th day of July 2010 at San
3 Francisco, California.

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6 By: /s/ Julia M. Dito

7 Julia M. Dito
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