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9 GALLISDORFER, individually and on behalf of all other persons similarly situated,  
10 behalf of the general public

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 TRAVIS ROBINSON, KEVIN )  
14 BLAGG, MICHAEL GALLISDORFER, )  
15 Individually and on behalf of all other )  
16 persons similarly situated, and on behalf )  
17 of the general public, )  
18 Plaintiffs, )  
19 v. )  
20 MJM INVESTIGATIONS, INC., a )  
21 North Carolina corporation; and DOES )  
22 1 through 10, inclusive, )  
23 Defendants. )

CASE NO. SACV08-496 JVS (RNBx)

Judge: James V. Selna  
Courtroom: 10-C

**REPORT IN SUPPORT OF FINAL  
APPROVAL OF CLASS  
SETTLEMENT AND AWARD OF  
ATTORNEY'S FEES AND COSTS  
[UNOPPOSED]**

**HEARING SCHEDULE:**

**Date: September 22, 2008**  
**Time: 1:30 p.m.**  
**Place: 10-C**

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

With the assistance the Hon. Luis A. Cardenas (Ret.), an independent mediator, Plaintiffs Travis Robinson, Kevin Blagg and Michael Gallisdorfer, individually and on behalf of all other persons similarly situated (collectively “Class Representatives”), reached a settlement with Defendant MJM Investigations, Inc. (“MJM”). The Settlement Agreement provides that MJM will pay up to \$2.5 million to settle the class claims for unpaid wages, overtime, meal and rest period violations and any penalties that relate to the claims that could have been asserted in the current action.

The following sums will be paid out of the Maximum Settlement Amount under the terms of the Settlement Agreement:

- Attorney’s fees and costs for Class Counsel in the amount of \$833,333.33 (approximate lodestar), or 33% of the Maximum Settlement Amount;<sup>1</sup>
- Litigation enhancement awards for Class Representatives, Robinson, Blagg and Gallisdorfer in the amount of \$7,500.00, \$5,000.00 and \$5,000.00, respectively;

///

///

<sup>1</sup> MJM will pay the attorney’s fees in 12 equal installments with a 10% per annum interest, beginning 30 days after final approval. MJM also agrees to pay Class Counsel 20% of the attorney’s fees upfront immediately after final approval.

- 1 • Any and all costs and fees incurred by the Claims Administrator, not to  
2 exceed \$30,000.00 of the Settlement Fund in connection with the  
3 administration process; and
- 4
- 5 • After these amounts are paid, the remainder, approximately  
6 \$1,666,666.87 will be distributed to class members who signed and  
7 timely returned a Claim form to the Claims Administrator on a pro rata  
8 basis upon the number of weeks the class member worked during the  
9 liability period.

10

11 This settlement was preliminarily approved by the Court.<sup>2</sup> Notice of this  
12 Settlement and the Claims forms were transmitted to all class members from the  
13 records provided by Defendant MJM. As of this date, roughly 77.74% of the total  
14 work weeks have been claimed, with an estimated dollar amount claimed of  
15 \$1,029,349.20. No objection has been filed to either the settlement or the request  
16 for attorney's fees and costs. The Court should, therefore, issue final approval,  
17 enter judgment and dismiss this case.

18

19 **II. THE SETTLEMENT MEETS THE CRITERIA FOR APPROVAL OF**  
20 **A CLASS ACTION SETTLEMENT**

21

22 **A. Final Class Certification**

23

24 This Court preliminarily granted Plaintiffs' Motion for Conditional Class  
25 Certification and Approval of the Settlement. The Court's analysis applies equally  
26 to the parties' request for final approval, and the Court should certify the proposed

27

---

28 <sup>2</sup> A true and correct copy of the Court's Order Granting the Motion for Preliminary Approval of Class Action Settlement ("Order") is attached as Exhibit A to the Declaration of Aashish Y. Desai ("Desai Decl.").

1 class pursuant to the collective action requirement of 29 U.S.C. § 216(b) and Rule  
2 23 of the Fed. R. Civ. P.

3

4 The Class Representatives move to certify the following class for settlement  
5 purposes only:

6

7 “All individuals who worked in any of the Defendants’  
8 California offices as claims or surveillance investigators  
9 from October 27, 2002 up through and including the date  
10 of final approval of this settlement. A sub-class has been  
11 defined for all non-California investigators who  
12 previously opted-in to the federal *Dehaan* action, the  
13 “opt-in” Plaintiffs who previously filed opt-in forms with  
14 the Court, subject to the three year limitation period under  
15 FLSA.”

16 (Order at 2.)

17

18 **B. Final Settlement Approval**

19

20 As discussed in the papers associated with the Motion for Preliminary  
21 Approval, this Settlement is highly advantageous to the class members and merits  
22 final approval by the Court. Rather than repeat all of the factual and legal  
23 arguments which were provided to this Court, and to conserve judicial resources,  
24 we merely attach and incorporate the Motion for Preliminary Approval of this Class  
25 Action Settlement.<sup>3</sup>

26

27 ///

28

---

<sup>3</sup> This Motion is attached as Exhibit B to Desai Decl.

1           “The Court must approve any settlement . . . of the claims . . . of a certified  
2 class.” Fed. R. Civ. P. 23(e)(1)(A). Such approval may be granted “only after a  
3 hearing and on finding that the settlement . . . is fair, reasonable and adequate.”  
4 Fed. R. Civ. P. 23(e)(1)(C). The parties’ consensual agreement is entitled to  
5 deference, and the Court’s role “is limited to the extent necessary to reach a  
6 reasoned judgment that the agreement is not the product of fraud or over-reaching  
7 by, or collusion between, negotiating parties, and that the settlement, taken as a  
8 whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v.*  
9 *Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).

10  
11           The settlement as a whole, rather than its component parts, is the proper level  
12 of inquiry. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).  
13 “Settlement is the offspring of compromise; the question . . . is not whether the final  
14 product could be prettier, smarter, or snazzier, but whether it is fair, adequate and  
15 free from collusion.” *Id.* at 1026.

16  
17           Under the proposed Settlement, MJM will pay up to \$1,666,666.87 in a  
18 Settlement Fund and will pay the employer’s share of payroll taxes on that portion  
19 of the Settlement attributable to back wages. The Settlement authorizes  
20 \$833,333.33 in attorney’s fees to be paid out in 12 equal installments with a 10%  
21 per annum interest.<sup>4</sup> Each individual class member will receive on average a total  
22 recovery of \$4,352.59, which is only slightly less than the potential individual  
23 damages which range between \$5,376.00 to \$10,752.00 with a 50% chance of a  
24 defense verdict. (Desai Decl. ¶ 17.)<sup>5</sup>

25  
26  
27 <sup>4</sup> MJM also agrees to pay Class Counsel 20% of the attorney’s fees upfront  
immediately after final approval.

28 <sup>5</sup> This Declaration was previously provided to the Court and attached as Exhibit C  
to the current Declaration of Mr. Desai for the Court’s convenience.



1           The Class Representatives have acknowledged the inherent risk and expense  
2 associated with prolonging the litigation, particularly given that MJM claims it had  
3 executed valid releases with many of the class members and would challenge class  
4 certification and attempt to substantially limit damages on that basis. Furthermore,  
5 MJM disputes the accuracy of the Class Representatives' calculation as to the  
6 number of overtime hours worked and also contends that the business realities of  
7 investigations exempted it from providing meal breaks to the class members.

8  
9           The parties have thoroughly investigated the facts and the scope of the class  
10 claims. They have exchanged discovery regarding liability and damages, including  
11 expert reports on hourly and regular overtime rates, weekly overtime compensation  
12 and the total settlement value for the class. (Cardenas Decl. ¶ 3.)<sup>6</sup> Through three  
13 years of litigation, the Class Representatives have deposed and interviewed MJM  
14 employees and reviewed payroll and timekeeping records.

15  
16           The Court has previously determined that counsel is experienced and  
17 well-versed in the area of class action litigation. Additionally, the Class  
18 Representatives have sent a letter to the Labor & Workforce Development Agency  
19 on June 6, 2008, to inform it of the PAGA settlement. The LWDA has submitted  
20 no opposition to this Settlement. In fact, the LWDA will receive approximately  
21 \$154,402.38 on the PAGA claims. Simply put, there is no evidence that the  
22 agreement is the result of fraud or collusion.

23  
24           The Court should also look to the reaction of the class members in  
25 determining whether a settlement is fair, adequate and reasonable. *Class Plaintiffs*  
26 *v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1991). Out of 369 Notice packets  
27 mailed to the class members, **not a single person has objected to this Settlement.**

28 <sup>6</sup> This Declaration was previously filed with the Court, and Plaintiffs again provide this Declaration as Exhibit D to the current Declaration of Mr. Desai.

1 (Desai Decl. ¶ 8.) Only one class member has chosen to opt-out of the Settlement,  
2 and the global reaction is that of gratitude and complete satisfaction to the terms of  
3 the Settlement. (*Id.* at ¶ 8.)  
4

5 Under the factors as set forth in *Boeing* and *Hanlon*, the Court should find  
6 that their proposed Settlement is fair, adequate and reasonable.  
7

8 **C. Notice**  
9

10 Plaintiffs submit the Declaration from the Class Administrator at Rust  
11 Consulting to show that they have complied with the notification requirements as  
12 laid out in this Court's Order Granting Preliminary Approval.<sup>7</sup>  
13

14 **D. Attorney's Fees**  
15

16 Class Counsel seek final approval of their request for \$833,333.33 (an  
17 amount that is roughly equal to Class Counsel's lodestar), which is equivalent to  
18 33% of the gross Maximum Settlement Amount. No class member has objected to  
19 this request. Class Counsel has previously submitted detailed time records that  
20 establish that over 1,800 attorney and paralegal hours have been spent on this  
21 litigation.<sup>8</sup> Class Counsel has also advanced over \$43,200.00 in costs to fund this  
22 litigation, and this too has been supported with detailed records. Thus, Class  
23 Counsel's lodestar in this case is approximately \$740,000.00.  
24

25 ///

26 <sup>7</sup> This Declaration has been filed separately.

27 <sup>8</sup> Class Counsel has spent at least another 50 hours responding to requests from  
28 class members and coordinating with the Claims Administrator through the  
settlement process, bringing the total time to, at least, 1,850 hours. (Desai Decl.  
¶ 9.)

1 As discussed, Class Counsel has agreed to accept the payment of attorney's  
2 fees in 12 equal installments with 10% per annum interest beginning 30 days final  
3 approval.<sup>9</sup> Thus, the present value of the attorney's fees is roughly equivalent to  
4 Class Counsel's lodestar without any multiplier enhancement. *Thayer v. Wells*  
5 *Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) ("there is no . . . rule limiting the  
6 factors that may justify an exercise of judicial discretion to [adjust the] lodestar").  
7 As such, the uncontested attorney's fees and costs award is fair and reasonable.

8  
9 The award of attorney's fees and costs is also reasonable if calculated as a  
10 percentage of the Common Fund. As the Court observed in its Order Granting  
11 Preliminary Approval, Plaintiffs' request is also reasonable in light of federal  
12 precedence. *Hanlon*, 150 F.3d at 1029 (observing that 25% of the Common Fund is  
13 a "benchmark" fee award), *compare with In Re Mego Financial Corp. Securities*  
14 *Litig.*, 213 F.3d 454, 457 and 463 (9th Cir. 2000) (affirming a fee award up to 33%  
15 of the Common Fund); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d  
16 1301, 1311 (9th Cir. 1990) (holding that the benchmark percentage should be  
17 adjusted or replaced with a lodestar calculation when special circumstances are  
18 present).<sup>10</sup>

19  
20 Under the Common Fund Doctrine, a litigant or lawyer who recovers a  
21 Common Fund for the benefit of persons other than himself or his client is entitled  
22 to a reasonable attorney's fees of the Fund as a whole. *Boeing Co. v. Van Gemert*,

23 <sup>9</sup> The first 20% of the attorney's fees will be paid upfront immediately after final  
24 approval.

25 <sup>10</sup> See also *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027  
26 (9th Cir. 1997) (awarding 33% of total fund amount); *In Re Activision Sec.*  
27 *Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989) (noting that fee awards  
28 "almost always hover [] around 30% of the fund created by the settlement"); *Big*  
*Lots Overtime Cases*, San Bernardino Superior Court, JCCP No. 4283 (February 4,  
2004) (approving award of attorney's fees of one-third of the class recovery);  
*Cassaro v. Spaghetti Factory*, Orange County Superior Court, Case No.  
01CC02500 (January 5, 2004) (awarding 33% of settlement as attorney's fees in  
overtime class action).

1 444 U.S. 472, 478 (1980). It is appropriate to calculate the percentage from the  
2 entire fund recovered rather than the actual distribution. *MGM-Pathe*  
3 *Communications*, 129 F.3d at 1027.

4  
5 No objections have been made regarding Class Counsel's fee request.  
6 Defendant MJM has agreed to pay these fees, which are easily supported by either a  
7 lodestar calculation or a Common Fund analysis. Thus, the Court should approve  
8 of the fee request.

9  
10 **E. Litigation and Administration Costs**

11  
12 Counsel seek \$43,200.00 in total litigation costs. Additionally, we request  
13 \$29,762.75 in claims administration costs. Both of these amounts were previously  
14 approved and the claims administration costs are below the "capped" amount  
15 (\$30,000.00) provided for in the Settlement Agreement. The expenses for Class  
16 Counsel were well documented and the administration costs have now been  
17 documented by Rust Consulting, Inc.<sup>11</sup> Accordingly, the Court should find that  
18 these amounts are appropriate.

19  
20 **F. Litigation Enhancement**

21  
22 The Settlement contemplates that Robinson, Blagg and Gallisdorfer will each  
23 be awarded a litigation enhancement in the amount of \$7,500.00, \$5,000.00 and  
24 \$5,000.00, respectively. Each Class Representative has submitted a Declaration to  
25 support this modest request, which has been preliminarily approved by the Court.<sup>12</sup>

26  
27 <sup>11</sup> The final bill is attached as Exhibit B to Caryn Donly's (Rust Consulting)  
Declaration.

28 <sup>12</sup> The Class Representatives' Declarations are attached as Exhibits E, F and G,  
respectively, to the Desai Decl.

1 The requested enhancements, totaling \$17,500.00, are appropriate and should be  
2 approved.

3

4 **III. CONCLUSION**

5

6 As the Settlement is fair, reasonable and adequate, the parties respectfully  
7 request final approval of the Settlement and entry of a final judgment.

8

9 Dated: September 16, 2008

Respectfully submitted,

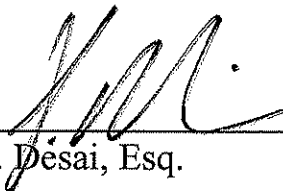
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**MOWER, CARREON & DESAI, LLP**

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\_\_\_\_\_  
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16

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and on behalf of the general public

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