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6 *Attorneys for the Plaintiffs*

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

9 AARON VAN FLEET, PAUL
10 OVBORG, and JAMES LONGFIELD,
individually and on behalf of all others
similarly situated,

11 Plaintiffs,

12 v.

13 TRION WORLDS, INC.,

14 Defendant.

NO. CIV 535304

**DECLARATION OF TOBY J.
MARSHALL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF
COSTS, AND SERVICE
AWARDS**

Complaint Filed:
September 8, 2015

CLASS ACTION

Assigned for All Purposes to:
Honorable Marie S. Weiner,
Department 2

DEPARTMENT: 2
DATE: April 17, 2020
TIME: 3:00 p.m.

21 DECLARATION OF TOBY J. MARSHALL IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF COSTS, AND SERVICE AWARDS - 1

1 I, Toby J. Marshall, declare as follows:

2 1. I am a member of Terrell Marshall Law Group PLLC (“TMLG”),
3 and co-counsel for Plaintiffs’ in this action.

4 2. For purposes of a lodestar cross-check, TMLG attorneys and staff
5 have dedicated more than 900 hours to prosecuting the case. At the hourly rates
6 we charge for similar cases, TMLG has a lodestar of \$471,470. This lodestar does
7 not include duplicative time, hours worked by attorneys and staff who billed
8 minimum time to the case, and administrative time, all of which we deleted after
9 a careful review of contemporaneously maintained time records.

10 3. TMLG anticipates it will expend additional hours seeing this case
11 through to final resolution, including briefing final approval and managing the
12 administration of the settlement.

13 4. Our lodestar calculations are based on reasonable hourly rates. We
14 set these rates for attorneys and staff members based on a variety of factors,
15 including among others: the experience, skill and sophistication required for the
16 types of legal services typically performed; the rates customarily charged in the
17 markets where the legal services are typically performed; and the experience,
18 reputation and ability of the attorneys and staff members.

19 5. I am the lead attorney from TMLG in this case. I graduated from the
20 University of Washington School of Law in 2002 and concentrate my practice on

1 complex civil litigation. I have represented clients in a wide variety of class
2 actions, including wage and hour, product defect, civil rights, and consumer
3 protection cases. I have been actively involved in every aspect of numerous class
4 actions, including many employment cases. I was the chair of the Washington
5 State Bar Association's Labor & Employment Law Section, and I previously
6 served as the Section's treasurer for two years. I am currently a member of the
7 Washington Employment Lawyers Association and serve on the Association's
8 amicus and legislative committees. I have been named several times to the annual
9 *Super Lawyers* list in Washington Law & Politics.

10 6. Blythe Chandler is a member of TMLG. She graduated from the
11 University of Washington School of Law in 2010. Ms. Chandler concentrates her
12 practice in complex litigation, including consumer class actions. Prior to joining
13 TMLG, Ms. Chandler served as a law clerk to the Honorable Betty B. Fletcher,
14 Senior United States Circuit Judge for the Ninth Circuit Court of Appeals and to
15 the Honorable John C. Coughenour, Senior United States District Judge for the
16 Western District of Washington.

17 7. Elizabeth Adams has been an associate at TMLG since 2015. She
18 concentrates her practice on complex civil litigation including consumer
19 protection and civil rights class actions. Ms. Adams is a 2012 graduate of the
20 UCLA School of Law, where she received the Order of the Coif and served as a

1 Comments Editor for the UCLA Law Review. Before joining TMLG, Ms. Adams
 2 served as a law clerk to the Honorable Dean D. Pregerson, the Honorable George
 3 Wu, and the Honorable John A. Kronstadt, all of the United States District Court
 4 for the Central District of California.

5 8. The following table identifies the attorneys and staff members from
 6 my firm who worked on this case, a general description of the work performed,
 7 the hourly rate charged for each individual, the number of hours worked by
 8 individual, the amount of fees for each individual, and the total hours and fees for
 9 the firm:

Name and position	Description of work performed	Rate	Hours Billed	Total
Attorneys				
Toby J. Marshall Partner J.D. from University of Washington School of Law, 2002	Investigated potential claims; worked on pleadings, memoranda, and appellate brief; analyzed various legal and factual issues; worked on discovery matters; worked on case strategy; negotiated and worked on the settlement agreement and supporting documents; worked settlement administration issues.	\$750	84.8	\$63,600
Blythe Chandler Partner	Worked on complaint and researched potential claims; drafted oppositions	\$600	506.8	\$304,080

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Name and position	Description of work performed	Rate	Hours Billed	Total
J.D. from Univ. of Washington School of Law, 2010	to motions to compel arbitration; drafted motion to remand; prepared for and attended hearings; drafted discovery; worked on discovery issues; drafted appellate brief and argued appeal; drafted first amended complaint; worked on case management statements; worked on ESI and data issues; worked on response to demurrer; reviewed documents and data produced by Trion and third parties; analyzed applicable insurance policies; participated in settlement negotiations; documented settlement; worked on data issues related to class notice; drafted motion for preliminary approval of settlement; worked with claims administrator on settlement issues.			

Name and position	Description of work performed	Rate	Hours Billed	Total
Elizabeth Adams Associate J.D. from UCLA School of Law, 2012	Researched potential claims and issues; worked on pleadings and memoranda.	\$500	121.5	\$60,750
Samuel Strauss Former associate J.D. from Univ. of Washington School of Law, 2013	Worked on case investigation; communicated with potential class members; worked on pleadings; researched potential claims and related issues.	\$250	60.8	\$15,200
Paralegals/Assistants				
Jodi Nuss Senior Paralegal	Analyzed data produced by defendant and third parties; conducted factual research; worked on settlement documentation; drafted third party discovery documents;	\$295	25.0	\$7,375
Bradford Kinsey Legal Secretary	Prepared and revised pleadings and memoranda; filed and served pleadings; researched court rules and procedures.	\$225	24.0	\$5,400
Holly Rota Legal Secretary	Prepared and revised pleadings, memoranda and discovery documents; filed and served pleadings; researched court rules and procedures.	\$225	39.40	\$8,865

DECLARATION OF TOBY J. MARSHALL IN SUPPORT OF
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REIMBURSEMENT OF COSTS, AND SERVICE AWARDS - 6

Name and position	Description of work performed	Rate	Hours Billed	Total
China Davis Legal Assistant	Worked on initial case investigation; prepared public records requests; communicated with potential class members.	\$100	62.0	\$6,200
TOTAL			924.3	\$471,470

9. Since beginning work on this case in September 2016, TMLG worked with no guarantee of being compensated for its time and efforts. Payment of TMLG’s fees has always been contingent on successfully obtaining relief for the Plaintiff and class members. As a result, there was a substantial risk of non-payment, particularly in light of the legal challenges involved in litigating this case. Work on this case has necessarily been to the exclusion of work on other matters that likely would have generated fees. TMLG has also been denied use of the fees it earned over the course of this case.

10. Our lodestar calculations are based on our current standard hourly rates. Courts around the country have approved fee requests based on TMLG’s standard rates at the time of the application. Here is a sample of the courts that have approved TMLG’s rates as reasonable in class action litigation:

- August 2019, in *Abante Rooter & Plumbing, Inc. v. Alarm.com Inc.*, No. 4:15-cv-06314-YGR (N.D. Cal.);

- 1 • September 2017, in *Melito v. American Eagle Outfitters, Inc.*, No.
- 2 14-CV-2440 (VEC) (S.D.N.Y.);
- 3 • May 2016, in *Lushe v. Verengo, Inc.*, No. CV 13-07632-AB
- 4 (PJWx) (C.D. Cal.);
- 5 • September 2014, in *Chesbro v. Best Buy Stores, L.P.*, No. C10-
- 6 774 RAJ (W.D. Wash.);
- 7 • March 2013, in *Meilleur v. AT&T Corp.*, No. C11-01025 MJP
- 8 (W.D. Wash.);
- 9 • October 2012, in *Khadera v. ABM Industries, Inc.*, No. C08-0417
- 10 RSM (W.D. Wash.);
- 11 • September 2012, in *Arthur v. Sallie Mae, Inc.*, No. C10-00198
- 12 JLR (W.D. Wash.);
- 13 • January 2012, in *Milligan v. Toyota Motor Sales, U.S.A., Inc.*,
- 14 No. C09-05418 RS (N.D. Cal.);
- 15 • August 2011, in *Seraphin v. AT&T Internet Services*, CV-00131-
- 16 REB (D. Idaho); and
- 17 • December 2010, in *Carideo v. Dell Inc.*, No. CV-01772-JLR
- 18 (W.D. Wash.).

19 11. TMLG has also incurred \$7,522.06 in out-of-pocket costs
20 prosecuting this litigation. These costs are customarily charged to and paid by

1 hourly clients. The following chart summarizes the costs my firm has incurred to
2 date in the prosecution of this matter:

Category of Expense	Total
Air Fare	\$1,315.20
FedEx	\$353.59
Filing Fees	\$4,797.34
Hotel	\$615.60
Meals	\$85.27
PACER	\$34.40
Parking	\$136.00
Rental Car	\$48.31
Taxi & Transportation	\$113.55
Transcripts	\$22.80
TOTAL	\$7,522.06

14
15 I declare under penalty of perjury of the laws of the State of Washington
16 and the United States of America that the foregoing is true and correct.

17 Executed in Seattle, Washington this 12th day of February, 2020.

18
19 By: /s/ Toby J. Marshall
Toby J. Marshall, *Admitted Pro Hac Vice*

20
21 DECLARATION OF TOBY J. MARSHALL IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF COSTS, AND SERVICE AWARDS - 9

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in King County,
3 Washington. I am over the age of eighteen (18) years and not a party to this
4 action; my business address is 936 North 34th Street, Suite 300, Seattle,
5 Washington, 98103-8869.

6 On February 12, 2020, I served the preceding document by placing a true
7 copy thereof enclosed in a sealed envelope and served in the manner and/or
8 manners described below to each of the parties herein and addressed as on the
9 attached list.

10
11 **BY MAIL:** I caused such envelope(s) to be deposited in the mail at my
12 business address, addressed to the addressee(s) designated. I am
13 readily familiar with Terrell Marshall Law Group PLLC’s practice for
14 collection and processing of correspondence and pleadings for mailing.
15 It is deposited with the United States Postal Service on that same day in
16 the ordinary course of business.

17 **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand
18 to the addressee(s) designated.

19 **BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be
20 delivered via overnight courier service to the addressee(s) designated.

21 **BY FACSIMILE:** I caused said document to be transmitted to the telephone
number(s) of the addressee(s) designated.

BY ELECTRONIC MAIL: I caused said document to be transmitted to the
email addresses of the addressee(s) designated.

1 I declare under penalty of perjury under the laws of the State of
2 Washington that the foregoing is true and correct.

3 Executed at Seattle, Washington, on the 12th day of February, 2020.

4 By: /s/ Elizabeth A. Adams, CSB #290029
5 Elizabeth A. Adams, CSB #290029

1 **PROOF OF SERVICE LIST**

2 The Honorable Marie S. Weiner
3 Department 2
4 San Mateo County Superior Court
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