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11 *Attorneys for Plaintiff*

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 IN RE: INDYMAC ERISA
16 LITIGATION

) Case No.: CV 08-04579 DDP (VBKX)
) Judge: Dean D. Pregerson
) Courtroom: 3

) **DECLARATION OF AASHISH Y.
DESAI**

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1 1. I, Aashish Y. Desai, am a partner in the law firm of Mower, Carreon &
2 Desai, LLP, counsel for the Plaintiffs in the above-captioned action.

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4 2. I am admitted to practice before all state courts throughout
5 California and Texas. I am also admitted to practice before numerous federal
6 courts throughout the nation, including the Central District of California, the Ninth
7 Circuit Court of Appeals, and the United States Supreme Court. If called as a
8 witness, I could, and would, testify to the following matters which are based upon
9 my personal knowledge.

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11 3. My records reflect that I have worked 92.8 billable hours on this case
12 at an hourly rate of \$600 for a total lodestar of \$55,607. My firm has also spent
13 \$885.00 in out-of-pocket costs on attorney services to file and serve the complaint
14 and summons and other court documents. My rate of \$600.00 per hour is
15 reasonable and customary for attorneys of my level of skill and experience and
16 below the rates that I have been awarded in other cases. For example, Judge James
17 V. Selna in approving a class settlement and awarding my firm fees approved my
18 hourly rate at \$500.00 per hour in 2008. Judge Selna noted that I have “substantial
19 class action experience” and that the Court has “no reason to doubt [my]
20 competence.” He then awarded fees of \$833,333.00 based upon my hourly rate of
21 \$500.00 per hour. Of course, this was back in September of 2008, almost two years
22 ago. More recently, the Hon. Gale A. Andler of the Orange County Superior Court,
23 Complex Litigation Department granted a class settlement, awarding fees based
24 upon my hourly rate of \$695.00 per hour. This was awarded in June of 2010, and
25 therefore provides this Court with ample justification for my billing rate at \$600.00
26 per hour. I can provide the Court with both Orders upon request.

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1 LODESTAR METHODOLOGY

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3 4. My firm maintains a practice of keeping detailed contemporaneous
4 time records. These records can be provided to the Court upon request. My firm
5 has used -- and will continue to use -- considerable billing judgment throughout our
6 litigation against the Defendants, and particularly with the request for fees.

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8 5. For example, I did not record time for many conversations that I had
9 with class members asking for "status reports." Nor did I record each and every
10 email and phone call I had with lead counsel trying to finalize the settlement and
11 settlement agreement.

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13 QUALIFICATION OF COUNSEL

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15 6. I have litigated numerous class and collective actions throughout the
16 years on wage and hour issues. The following select list of cases is included for the
17 Court's review:

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- 19 • *Ellmore v. DiTech Funding*, case number SACV-01-93. This was a
20 class and collective action in federal court on behalf of loan officers
21 and processors who were denied overtime wages under both the UCL
22 and FLSA. We were co-lead counsel in this prosecution with
23 Saperstein, Goldstein, Demchak & Baller. After a year of litigation,
24 during which the case split into two parts, a global, combined
25 settlement was reached for approximately \$9.65 million. Judge David
26 O Carter of the U.S. District Court of California issued final approval
27 and the case is now over.
 - 28 • *Toothman v. Pre-Paid Cellular*, District Court, City and County of
Denver Colorado, case number 01-CA-1142. This was a nationwide
securities fraud class action on behalf of approximately 5,000 investors
who were separated from \$53 million as a result of a sophisticated con
game involving a major, silk-stocking Chicago firm. The case was

1 resolved and finally approved in Colorado District Court after the
2 Denver Court of Appeals reversed a ruling denying class certification.

- 3 • *Slater v. City National Bank of West Virginia*, case number SACV-00-
4 719. This was a collective class action under the FLSA. This
5 overtime case was filed in the United States District Court and was
6 resolved after approximately one and one-half years of vigorous
7 litigation. A confidential settlement was reached and my firm served
8 as lead counsel for the class members.
- 9 • *Parks v. Eastwood Insurance Services, Inc.*, Case No. SACV 02-0507.
10 This was a collective class action under the FLSA for unpaid overtime
11 wages on behalf of sales agents who were employed by Eastwood
12 Insurance. After three and one-half years of vigorous litigation, this
13 action resolved for \$1.2 million for the class members. The
14 defendants, however, would not agree to our fee application, thereby
15 forcing comprehensive law and motion work on this issue. On July
16 2005, the Honorable Gary L. Taylor (Ret.) issued a ruling awarding
17 my firm approximately \$2.1 million in attorneys' fees, in addition to
18 the \$1.2 million obtained on behalf of the class members. The Ninth
19 Circuit Court of Appeals affirmed this ruling. *Parks v. Eastwood*
20 *Insurance, Inc.*, 240 Fed. Appx. 172 (9th Cir. 2007).
- 21 • *Dzierlatka v. Bristol-Meyer Squibb*, case number BC076039. This was
22 a nationwide antitrust action charging Bristol-Meyer Squibb of illegal
23 efforts to block generic rivals to its cancer treatment drug Taxol. This
24 case resulted in a nationwide settlement for third-party payors of
25 approximately \$115 million. I served as coordinating counsel for the
26 California class members. The case was given final approval several
27 years ago.
- 28 • *Arroyo v. E*Trade Financial*, case number 02CC05565. This was a
California class action for unpaid overtime wages on behalf of a group
of loan officers and processors. After approximately one year of
litigation, the case was resolved for \$6.25 million and the court issued
final approval.

7. Simply put, my firm and I have successfully prosecuted a host of class
and collective actions, including wage and hour cases against Tuesday Morning,

1 FirstPlus Financial, Platinum Capital Group, Centerpoint Mortgage, IndyMac Bank
2 and Pacific Coast Funding. Currently, we maintain a number of wage and hour
3 cases in both California state and federal court.

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5 8. I have written extensively on the subject of California wage and hour
6 class and collective actions, including Class Clout – Attorneys Should Not
7 Overlook Federal Overtime Law, *Los Angeles Daily Journal* (November 8, 2001);
8 Revenge of the Wage Slave – Class Action Overtime Cases *Orange County Lawyer*
9 *Magazine*, Volume 43, No.11 (November 2001); Wage & Hour Compendium of
10 Overtime Pleadings and Documents (2001); Analysis & Perspective – Class Action
11 Overtime Cases, *Class Action Litigation Report, Bureau of National Affairs, Inc.*,
12 Volume 03, No. 04 (February 22, 2002); Analysis & Perspective – The Discovery
13 Conundrum in Fair Labor Standards Act Collective Actions, *Class Action*
14 *Litigation Report, Bureau of National Affairs, Inc.*, Volume 03, No. 13 (July 12,
15 2002); Discovery in Overtime Class Actions Often is Prevented Before
16 Certification, *Los Angeles Daily Journal* (July 25, 2002); The Discovery Problem,
17 *Orange County Lawyer Magazine*, Volume 44, No. 8 (August 2002); Fee-Shifting
18 in Overtime Wage Statute Trumps Contract’s Attorney-Fee Clause, *Los Angeles*
19 *Daily Journal*, (October 21, 2002); Legislative Attorney’s Fees Under the FLSA –
20 The Trump Card, *Orange County Lawyer Magazine*, Volume 44, No.11 (November
21 2002); Analysis & Perspective – Employment Class and Collective Actions, *Class*
22 *Action Litigation Report, Bureau of National Affairs, Inc.*, Volume 4, No. 1 (Jan.10,
23 2003); Analysis & Perspective – Fees in Class Actions, *Wage Hour & Leave*
24 *Report, Bureau of National Affairs, Inc.*, Volume 2, No.1 (Jan. 17, 2003); Federal
25 Class Action Overtime Cases – Can You Really Get Double Damages?, *Class*
26 *Action Litigation Report, Bureau of National Affairs, Inc.*, Volume 4, No. 17 (Sept.
27 12 2003); Bazzle Confounds Arbitration Agreements and Class Actions, *Los*
28 *Angeles Daily Journal* (Feb. 20, 2004); Master of the Complaint – The Role of

1 Class Counsel, *Orange County Lawyer Magazine*, Volume 46, No. 8 (August
2 2004); A Solution in Search of a Problem – The Class Action Fairness Act of 2005,
3 *Texas Business Litigation*, Business Torts (Spring 2005); Striking the Answer in
4 Class Actions is Easier Than You Think!, *Orange County Lawyer Magazine*,
5 Volume 48, No. 6 (June 2006); Late to Class – What to Do With “Untimely” Opt-
6 In Forms in Collective Class Actions?, *Orange County Lawyer Magazine*, Volume
7 48, No.12 (December 2006); and Defendants Bear A Heavy Burden To Prove The
8 Amount In Controversy Under The Class Action Fairness Act of 2005, *Orange*
9 *County Lawyer Magazine*, Volume 49, No. 11 (Nov. 2007); Class Confirmation –
10 Settlement Issues (MCLE Feature Article), *Los Angeles Lawyer Magazine*
11 (July/August 2008); Class Confusion, *The Los Angeles Daily Journal* (Aug. 25,
12 2009); Pickoff Moves, *Los Angeles Lawyer Magazine* (Cover Story) (Sept. 2009);
13 The Stealth Attack – Pleading Standards, *Consumer Attorneys of California*
14 *FOURM Magazine* (Jan./Feb. 2010).

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16 9. Recently I was asked to, and did, co-author a CEB practice manual
17 entitled California Wage and Hour, Law and Litigation (Regents of University of
18 California 2010). This was a huge honor and I accepted with humility.

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20 10. I served as an Adjunct Professor at Chapman University School of
21 Law, teaching legal research and writing from 2004-2006. Furthermore, I have
22 been invited to, and do, speak at numerous seminars on wage and hour practice,
23 class action litigation, and attorney’s fees for National Institute of Attorney Fee
24 Litigation, National Business Institute, the Orange County Employment Litigation
25 Section Bar, Los Angeles Bar Association, Bridgeport Seminars, National
26 Association of Attorney Fee Litigators, California Employment Lawyers
27 Association, and the California Bar Association.

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