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STEPHEN THUNBERG  
Clerk of the Superior Court

JUN 18 2002

By: C. LUNT, Deputy

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16 Charles Ervin and UNITE

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 FOR THE COUNTY OF LOS ANGELES

19 CHARLES ERVIN, SHEARWOOD EDDIE  
20 FLEMING, JR., AND THE UNION OF  
21 NEEDLETRADES, INDUSTRIAL &  
22 TEXTILE EMPLOYEES, AFL-CIO,

23 Plaintiffs,

24 v.

25 JOHN M. RATELLE, individually and in his  
26 official capacity; TIMOTHY MARSH,  
27 individually and in his official capacity; R.  
28 ESTES, individually and in his official  
capacity; JAMES GOMEZ, individually and  
in his official capacity; PIERRE SLEIMAN,  
individually and in his official capacity;  
C.M.T. BLUES, INC.; NO FEAR, INC.;  
MECCA, USA, INC.; NEWPORT BLUES,  
Inc.; TRINIDAD TEES; and DOES 1  
through 50, inclusive

Defendants.

CASE NO. GIC 740832

STIPULATION RE: PROPOSED  
SETTLEMENT OF ATTORNEY'S  
FEES AND COSTS; PROPOSED  
ORDER GRANTING TENTATIVE  
APPROVAL OF SETTLEMENT  
PENDING CLASS NOTICE

Honorable William C. Pate

STIPULATION RE: PROPOSED SETTLEMENT OF ATTORNEY'S FEES AND COSTS; PROPOSED ORDER  
GRANTING TENTATIVE APPROVAL OF SETTLEMENT CLASS PENDING CLASS NOTICE  
[EXHIBIT A]

I.

**INTRODUCTION**

On January 14 through January 16, 2002, the Honorable William C. Pate (hereinafter, "the Court") heard evidence and argument. On March 11, 2002, the Court entered judgment and ordered Defendant CMT Blues to pay the Plaintiff inmate class \$841,188.44 in minimum wages liquidated damages, waiting time and civil penalties, prevailing wages, and interest, a portion of which involved settlement of Plaintiffs' late pay claims. On May 9, 2002, following notice to the class, the Court approved the settlement of the late pay claims.

By this stipulation, Defendant CMT Blues and Plaintiffs (hereinafter, "the Parties") have agreed to settle Plaintiffs' claims for attorney's fees for the amount of \$435,000 and costs for the amount of \$65,000, subject to the approval of the Court.<sup>1</sup> The Parties request that the Court grant tentative approval of the settlement, subject to the Court's final approval once the class has been given notice of the proposed settlement.

II.

**FINDINGS AND RULINGS OF THE COURT**

On March 11, 2002, the Court found that the California Labor Code applied to CMT Blues and the Plaintiff inmate class. (See Judgment, hereinafter "JMT," at 2:15-17.) The Court also found that Proposition 139, which established the Joint Venture Program, required CMT Blues to pay the inmate class the "prevailing wage," as set forth in Penal Code section 2717.8 et seq. (Id. at 2:22-28.)

With respect to the first and second causes of action, the Court ruled that CMT Blues violated provisions of the California Labor Code. Specifically, the Court ruled that CMT Blues failed to compensate the inmate class members during their initial period of employment, commonly referred to as the "training period." (Id. at 3:2-7.) The Court also ruled that CMT Blues failed to pay its inmate employees within the time periods set forth by law (Id. at 4:6) and that CMT Blues failed

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<sup>1</sup> Notwithstanding this settlement agreement, Plaintiffs have reserved the right to seek the balance of outstanding attorney's fees and costs against other defendants in this matter.

1 to keep full and accurate payroll records of its inmate employees. (Id. at 6:16-18.) The Court also  
2 found that CMT Blues failed to cure the underpayment of inmate wages prior to the end of the  
3 employment of the inmate workers. (Id. at 5:11-18.) For these Labor Code violations, and including  
4 settlement of the late pay claims, the Court awarded Plaintiffs \$709,303.74. (Id. at 9:7-10.) As the  
5 prevailing party, the Court also awarded Plaintiffs attorney's fees and costs. (Id. at 3:28-4:4; 5:4-9;  
6 5:26-6:2.)

7 With respect to Plaintiffs' unfair business practices claim, the Court found that Defendant's  
8 failure to pay the minimum wage, failure to pay wages promptly, and failure to keep and maintain  
9 accurate payroll records constituted a violation of Business and Professions Code section 17200.  
10 (Id. at 7:24-28.) The Court further found that Defendant's failure to pay the inmate worker class the  
11 prevailing wage, as required by state law and the Joint Venture Contract, also constituted an unfair  
12 business practice. (Id. at 9:3-5.) For this claim and including settlement of the late pay claims, the  
13 Court awarded Plaintiffs \$841,188.44.<sup>2</sup> (Id. at 9:7-10.)

14 With respect to Plaintiffs' breach of contract claim, the Court found that the inmate class  
15 members were third-party beneficiaries of the Joint Venture Contract between CMT Blues and the  
16 State of California. (Id. at 6:26-28.) The Court ruled, however, that CMT Blues did not violate the  
17 terms of the agreement, since the contract specifically authorized an unpaid training period and did  
18 not impose a duty on CMT Blues to ascertain the prevailing wage. (Id. at 7:8-17.)

19 Finally, the Court granted Plaintiffs' request for an injunction and ordered CMT Blues to  
20 comply with the provisions of the California Labor Code. (Id. at 9:23-10:1)

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27 <sup>2</sup> With respect to this claim, the Court suspended enforcement of \$709,303.74, which duplicates Plaintiffs'  
28 Labor Code damages.

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III.

**PLAINTIFFS ARE ENTITLED TO ATTORNEY'S FEES AND COSTS**

As the prevailing party, the Parties acknowledge that Plaintiffs are entitled to statutory attorney's fees and costs pursuant to Labor Code sections 218.5 and 1194.<sup>3</sup> In addition, the Parties acknowledge that Plaintiffs would have contended that Code of Civil Procedure section 1021.5 constitutes an additional basis for attorneys fees and costs, since this statute provides for the award of attorney's fees and costs to a successful party where the underlying litigation has enforced a right affecting other members of the public or has conferred a significant benefit on the general public or a large class of persons.<sup>4</sup> (c.f. Baggett v. Gates (1982) 32 Cal.3d 128, 142, 185 Cal.Rptr. 232; Serrano v. Priest (1977) 20 Cal.3d 25, 141 Cal.Rptr. 315.)

IV.

**A LODESTAR MULTIPLIER WOULD HAVE SIGNIFICANTLY INCREASED  
PLAINTIFF'S RECOVERY OF ATTORNEY'S FEES**

By this stipulation, Defendant agrees to resolve Plaintiffs' claims for attorney's fees for the amount of \$435,000, subject to full approval by the Court, following notice of the proposed settlement to the Plaintiff class. The Parties acknowledge that Plaintiffs would have contended that their actual base attorney's fees, known as the "lodestar" amount, totaled \$882,115.<sup>5</sup> The parties further acknowledge that the actual "lodestar" amount could have been increased by the application of a "multiplier" after the Court considered a variety of factors, including the results

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<sup>3</sup> Labor Code Section 218.5 provides, in relevant part, that "In any action for the nonpayment of wages . . . the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon initiation of the action." (emphasis added.)

Labor Code Section 1194 provides, in relevant part, . . . "Any employee receiving less than the legal minimum wage . . . is entitled to recover . . . reasonable attorney's fees, and costs of suit."

<sup>4</sup> In its Trial Brief, Defendant CMT Blues stated that the results of this case would have a "widespread impact throughout the State of California, and perhaps the nation . . ." (Defendant's Trial Brief at 2:6-7.)

<sup>5</sup> During settlement discussions, the Parties acknowledge that Plaintiffs provided Defendant CMT Blues with the hours, calculated to the tenth of an hour, worked by Plaintiffs' counsel in the prosecution of its successful claims against Defendant.

1 obtained. the quality of representation, whether the case was prosecuted on a contingent fee  
2 basis. and the difficulty of the case. (See Serrano, *supra*. 20 Cal.3d at 49.)<sup>6</sup>

3 The Parties acknowledge that, had they not reached this stipulation and proposed  
4 settlement, a lodestar "multiplier" had the potential to significantly increase the attorney's fees  
5 award. (See PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095, 95 Cal.Rptr.2d 198.  
6 See also Serrano v. Priest ["Serrano III"] (1977) 20 Cal.3d 25, 48-49, 141 Cal.Rptr. 315  
7 [multiplier increased \$571,000 lodestar to \$800,000], City of Oakland v. Oakland Raiders (1988,  
8 203 Cal.App.3d 78, 82, 249 Cal.Rptr. 606 [multiplier increased \$853,756 lodestar to \$2 million]  
9 Downey Cares v. Downey Community Development Com. (1987) 196 Cal.App.3d 983, 994-  
10 995, 242 Cal.Rptr. 272 [1.5 multiplier in litigation invalidating redevelopment plan].)

11 The Parties acknowledge that Plaintiffs would have contended that the factual and legal  
12 issues presented in this case were difficult and complex.<sup>7</sup> The applicability of the California  
13 Labor Code to prison inmates was a matter of first impression, disputed throughout this  
14 litigation.

15 Plaintiffs would also have contended that considerable effort was required in order to  
16 obtain discovery from the State concerning inmate wage and hour records and that CMT Blues  
17 failed to produce requested wage and hour documents, due, in part, to the State's seizure of  
18 documents during searches conducted by State employees at the CMT Blues factory. The  
19 State of California, the repository of the majority of the relevant wage and hour documents,  
20 refused to produce documents in multiple responses to Plaintiffs' written requests for  
21 production. Plaintiffs were not provided the relevant inmate wage and hour records until July  
22  
23

24  
25 <sup>6</sup> In Ketchum v. Moses (2001) 24 Cal.4th 1122, 1138, 104 Cal.Rptr.2d 377, the California Supreme Court  
26 endorsed the use of contingency multipliers "which typically includes a premium for the risk of nonpayment or  
27 delay in payment of attorney fees."

28 <sup>7</sup> Defendants have acknowledged that this case is "extremely complex." (CMT Blues Case Management  
Questionnaires, dated August 4 and October 20, 2000; See also State of California Case Management  
Questionnaire, dated October 24, 2000 ["This is a very complex case."].)

1 2001, more than eighteen months after the documents were initially requested.<sup>8</sup>

2 Plaintiffs were similarly required to make multiple motions to obtain Internal Affairs  
3 interviews of individuals involved in this case, including Mr. Sleiman. Plaintiffs' motion for class  
4 certification of the wage and hour causes of action was vigorously opposed by Defendants CMT  
5 Blues and the State of California and was ultimately granted on April 20, 2001. The Parties  
6 acknowledge that these, and the motions to compel filed against the State, are only a few  
7 examples that Plaintiffs would have contended illustrate the difficulty of the litigation.

8 The Parties acknowledge that another factor the Court may have considered in  
9 determining whether to award a multiplier would have been Plaintiffs' attempt to resolve this  
10 litigation expeditiously, an attempt the Parties acknowledge was rejected by the defense.  
11 Plaintiffs would have contended that they were amenable to resolving this case prior to trial. To  
12 this end, in May, 2001, the Parties agreed to mediation with the Honorable Herbert B. Hoffman,  
13 to be conducted on September 24, 2001. In early September, however, CMT Blues canceled  
14 the mediation in response to the State of California's refusal to participate in settlement  
15 discussions. As a result, Plaintiffs were forced to incur significant additional fees and costs to  
16 prepare for trial.

17 The Parties acknowledge that courts have recognized two situations in which a multiplier  
18 might be denied, neither of which, Plaintiffs would have maintained, applies here. First, a  
19 multiplier will not be awarded where victory is guaranteed. (Ketchum, supra, 24 Cal.4th at  
20 1138.) Here, Plaintiffs would have argued that they were not guaranteed victory on the merits.  
21 The legal and factual issues were contested throughout this litigation, and matters of first  
22 impression were decided.

23 Second, courts have considered whether the risk of non-payment may have been  
24 mitigated by the client's agreement to pay some of the fees. (Ketchum, supra, 24 Cal.4th at  
25

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26 <sup>8</sup> Plaintiffs initially requested these documents in January, 2000 and did not receive any responsive  
27 documents until July, 2001, when they received the documents from DHS & Associates. These records ultimately  
28 provided the basis for the wage and hour calculations, essential to the Court's ruling of March 11, 2002.

1 1138.) Here, the Parties acknowledge that the Plaintiff class members were incarcerated and  
2 unable to pay any portion of the fees and costs in this case. Plaintiffs' counsel represented the  
3 inmate class members on a contingent fee basis. This exception would not apply.

4 By entering into this proposed settlement, Plaintiffs' counsel thus forego the multiplier.  
5 despite the possible entitlement to a multiplier, and settles for attorney fees of less than 50  
6 percent of the lodestar amount.

7 V.

8 **PLAINTIFFS' COUNSEL IS ENTITLED TO REASONABLE HOURLY FEES**

9 In reaching this stipulation and proposed settlement, the Parties acknowledge that  
10 Plaintiffs' counsel is entitled to reasonable hourly fees which reflect the prevailing rates charged  
11 by attorneys of similar skills and experience in the community.<sup>9</sup> (See PLCM Group, Inc. v.  
12 Drexler (2000) 22 Cal.4th 1084, 1095, 95 Cal.Rptr.2d 198.) Here, the Parties acknowledge that  
13 Plaintiffs' counsel would have contended that their billing rates reflect the rates for counsel of  
14 equivalent experience and expertise.

15 Plaintiff's counsel would have presented the following evidence concerning hourly rates:

16 Della Bahan, an attorney for twenty-two years, has practiced primarily in the areas of  
17 labor, employment, civil rights and public interest law. Ms. Bahan is the former Vice-chair of the  
18 California State Bar Labor and Employment Law Executive Committee and served on the  
19 Editorial Board of the Labor & Employment Law Quarterly. Ms. Bahan has served as managing  
20 counsel on several class action lawsuits alleging violations of the California Labor Code. Her  
21 hourly rate is calculated at \$400, an amount she has received in the past in cases involving  
22 court-awarded fees.

23 Janet Herold, a graduate of Harvard Law School, also practices in the areas of labor,  
24 employment, human rights, civil rights and public interest law. In 1996, Ms. Herold, appointed  
25

26  
27 <sup>9</sup> Consistent with the Court's pre-trial rulings, Plaintiffs only included time for attorneys fees incurred with  
28 respect to Plaintiffs' treatment by Pierre Sleiman and CDC employees prior to the placement of Plaintiffs Fleming  
and Ervin in administrative segregation on June 4, 1997.

1 by President Clinton, served as legal counsel to the Commission of Labor Management  
2 Relations, where she was responsible for surveying and formulating reforms in federal  
3 discrimination and labor statutes. Ms. Herold also serves as an adjunct professor at Loyola  
4 Law School, where she teaches advanced labor and employment law. Her hourly rate is  
5 calculated at \$275, an amount she has received in the past in cases involving court-awarded  
6 fees.

7 Robert Berke, an attorney for the past twenty-eight years, is a former staff attorney with  
8 the Center for Law in the Public Interest, where he litigated complex civil and class action  
9 matters. He has represented former Governor Edmond G. Brown, Sr., the California League of  
10 Women Voters, and the Democratic and Republican Parties of Orange County, all in civil, public  
11 interest litigation. Mr. Berke is the past president of the California Attorneys for Criminal Justice.  
12 His hourly rate is calculated at \$300, an amount comparable to fees received by attorneys with  
13 similar skills and experience.

14 Joseph Pertel, an attorney for seven years, is a former deputy public defender with the  
15 San Diego and Los Angeles Public Defender's Offices. Mr. Pertel practices in the areas of civil  
16 and criminal litigation. His hourly rate is calculated at \$180, an amount comparable to fees  
17 received by attorneys with similar skills and experience.

18 In arriving at the lodestar amount, Plaintiffs would have contended that they used a  
19 conservative approach in calculating their time. Plaintiffs would have contended they deducted  
20 time where counsel considered the work to be redundant, on client representation issues not  
21 related to the litigation of the CMT Blues portion of the case, and on issues where motions in  
22 limine were sustained, such as conditions of confinement after the placement of the named  
23 Plaintiffs in administrative segregation.

24 However, Plaintiffs' counsel would have contended that such deductions may not have  
25 been required. Although Plaintiffs' counsel contend that they reduced their hours for purposes  
26 of this settlement proposal, such reductions have been held not to be necessary where  
27 discovery is common and involves a common set of facts. In Wallace v. Consumers  
28



1 Cooperative of Berkeley, Inc. (1985) 170 Cal.App.3d 836, 850, 216 Cal.Rptr. 649, the Court of  
2 Appeal held that:

3 "Where a plaintiff's claims for relief involve a common core of facts or are based on  
4 related legal theories, the court should focus on the significance of the overall relief  
5 obtained in relation to the hours reasonably expended: where plaintiff has obtained  
6 'excellent results,' his or her attorney should recover a fully compensatory fee. [citation  
7 omitted]"

8 Similarly, in Downey Cares v. Downey Community Dev. Comm'n (1987) 196 Cal.App.3d 983,  
9 997, the court stated that "[w]here a lawsuit consists of related claims, and the plaintiff has won  
10 substantial relief, a trial court has discretion to award all or substantially all of the plaintiff's fees  
11 even if the court did not adopt each contention raised."

12 Here, Plaintiffs would have contended that they alleged various causes of action arising  
13 from the same violations of the California Labor Code which, to a large degree, involved a  
14 common set of facts. Accordingly, Plaintiffs would have contended that they were entitled to all  
15 time spent on related claims arising from the same course of conduct.

16  
17 VI.

18 **THE PROPOSED SETTLEMENT PRECLUDES APPLICATION OF A LODESTAR**  
19 **MULTIPLIER AND ADDITIONAL ATTORNEY'S FEES LITIGATION**

20 By this stipulation and proposed settlement agreement, the Parties acknowledge that  
21 Plaintiffs contend they would have sought a 2.0 lodestar multiplier to take into consideration the  
22 factors discussed earlier. A 2.0 multiplier would have increased Plaintiffs' attorney's fees  
23 award, even with the discounted hours reflected herein, to \$1,764,230. A 1.5 multiplier would  
24 have increased the attorney's fees award to \$1,323,172.

25 In addition, the Parties acknowledge that Plaintiffs would have requested additional fees  
26 and costs related to responding to continuing inquiries from class members and incurred in the  
27 fee litigation.

VII.

SETTLEMENT OF COSTS

By this stipulation, Defendant agrees to reimburse Plaintiffs for costs in the total amount of \$65,000, subject to full approval by the Court, once the Plaintiff class has been given notice of the proposed settlement. The Parties acknowledge that Plaintiffs would have contended that they incurred actual costs of \$103,937.05.<sup>10</sup> By agreement, the cost amount of \$65,000 is approximately \$39,000 less than the actual costs, which include recoverable expenses, including deposition costs, service of process, and reimbursable travel expenses not recoverable in a bill of costs but recoverable pursuant to Code of Civil Procedure section 1021.5.

Specifically, the Parties acknowledge that Plaintiffs would have contended that they would have been entitled to recover the expenses for Richard Drogin, who analyzed the wage and hour data for the Plaintiff inmate class.<sup>11</sup> Mr. Drogin testified at deposition and was prepared to testify at trial. The Parties used his findings as a common database at trial. In Beasley v. Wells Fargo Bank (1991) 235 Cal.App.3d 1407, 1419, 1 Cal.Rptr. 2d 459, the court held that fees awardable under Code of Civil Procedure section 1021.5 may include out-of-pocket expenses normally billed to fee-paying clients, but not recoverable as statutory costs, including such items as expert witness fees and costs and costs of travel, photocopying and postage.

VIII.

PAYMENT OF ATTORNEY'S FEES AND COSTS AND CLASS NOTICE

As set forth in the Court's Judgement of March 11, 2002, Plaintiffs' counsel will first be reimbursed for the costs incurred in prosecuting these claims on behalf of the Plaintiff class, as determined by the Court, after review of this stipulation and proposed settlement. (Judgment at \_\_\_\_\_)

<sup>10</sup> Plaintiffs have previously submitted a cost bill for \$36,975.79. These costs are itemized therein.

<sup>11</sup> The Parties acknowledge that Plaintiffs would have presented evidence that the bill for Mr. Drogin's services in this matter is \$34,500.

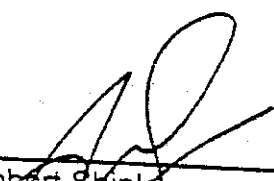
1 12:14-16.) As set forth in the Judgment, after the costs are paid, the remaining payments will  
2 be allocated as follows: Seventy-Five Percent (75%) of each payment will be allocated to pay  
3 the wages, damages, and penalties due to the Plaintiff class; and Twenty-Five Percent (25%)  
4 will be allocated to pay the attorney fees owed to counsel for the Plaintiffs for all services  
5 rendered to the Plaintiff Class in pursuing this litigation. (Id.)

6 The Parties stipulate and agree that Plaintiffs' counsel will accept payment of the  
7 proposed settlement of attorney's fees and costs in the form of monthly payments and full  
8 payment, on the same terms and conditions set forth in the Court's judgment of March 11,  
9 2002. The Parties stipulate and agree that this proposed settlement will not increase the  
10 monthly payments from Defendant CMT Blues. The Parties further stipulate that Plaintiffs's  
11 counsel will apportion the amount of the fees and costs between them in a manner which has  
12 been agreed upon and which does not affect the aggregate proposed settlement amount.

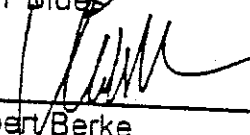
13 The Parties further stipulate and agree that the Claims Administrator, Rosenthal &  
14 Company, will provide Court-approved notice of this stipulation and proposed settlement of  
15 attorney's fees and costs. Defendant stipulates and agrees to bear the costs incurred by the  
16 Claims Administrator in connection with this proposed settlement of attorney's fees and costs.

18 **IT IS SO STIPULATED:**

19 DATED: June 14, 2002

  
\_\_\_\_\_  
Robert Shipley  
Attorney for Defendant  
CMT Blues

22 DATED: June 14, 2002

  
\_\_\_\_\_  
Robert Berke  
Attorney for Plaintiffs

25 ////  
26 ////  
27 ////

1 **GOOD CAUSE APPEARING,**

2       The Court hereby accepts the foregoing stipulation and grants tentative approval of the  
3 settlement of attorney's fees and costs, subject to full approval upon proper notice to the  
4 Plaintiff class members.

5  
6 **IT IS SO ORDERED.**

7           JUN 18 2002

8 DATED: June \_\_\_\_, 2002

**WILLIAM C. PATE**

Honorable William C. Pate, Jr.  
Judge of the Superior Court

PROOF OF SERVICE BY MAIL

F I E D  
STEPHEN THUNBERG  
Clerk of the Superior Court

JUN 18 2002

By: C. LUNT, Deputy

1  
2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES } ss:  
4

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
6 years and not a party to the within action. My business address is: Law Offices of Robert  
Berke, 1717 Fourth Street, Third Floor, Santa Monica, California, 90401.

7 On June 7, 2002, I served the foregoing document described a STIPULATION RE:  
8 **PROPOSED SETTLEMENT OF ATTORNEY'S FEES AND COSTS; PROPOSED ORDER**  
9 **GRANTING TENTATIVE APPROVAL OF SETTLEMENT CLASS PENDING CLASS NOTICE**  
on the interested Parties in this action by mail:

0 Robert L. Shipley, Esq.  
1 Law Offices of Robert L. Shipley  
2 5857 Owens Avenue, Suite 200  
3 Carlsbad, California 92008  
4 (Attorney for Pierre Sleiman and C.M.T.  
5 Blues)

Jon Mosher  
Rosenthal and Company  
35 Levering Court, #150  
Novato, California 94949

6 X VIA U.S. MAIL

7 X I deposited such envelope(s) in the mail at Santa Monica, California. The  
8 envelope(s) was mailed with postage thereon fully prepaid.

9 X As follows: I am "readily familiar" with the firm's practice of collection and  
processing correspondence for mailing. Under that practice it would be deposited with express  
mail service on that same day with postage thereon fully prepaid at Santa Monica, California, in  
the ordinary course of business. I am aware that on motion of the party served, service is  
presumed invalid if postal cancellation date or postage meter date is more than one day after  
date of deposit for mailing in affidavit.

10 X STATE I declare under penalty of perjury under the laws of the State of California  
11 that the above is true and correct.

12 Executed on June 14, 2002, at Santa Monica, California.

13   
Joseph A. Pertel