

EXHIBIT 7

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11 *Cynthia Navarro, Shelly Henderson, Owen Chapman,*
12 *Robert Trader and Michael Brein*

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

IN RE: HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

Declaration of James Hail In Support Of
Request For Attorneys' Fees And
Expenses

Date: February 26, 2014

Submitted on behalf of **Doyle Lowther LLP**, counsel for plaintiffs in:

Jeremy Wilton, et al. v. KIA Motors America, Inc., et al.
U.S. District Court Case No.: SACV 12-01917-JVS (ANx)

1 I, James Hail, declare as follows:

2 1. I am a partner with Doyle Lowther LLP, counsel for Plaintiffs Jeremy
3 Wilton, Sean Goldsberry, Cynthia Navarro, Shelly Henderson, Owen Chapman, Robert
4 Trader and Michael Brein (“Wilton Plaintiffs”). This declaration is submitted in support
5 of the fees and expenses request for work performed by Doyle Lowther LLP in
6 connection with this litigation. I have personal knowledge of the facts below and, if
7 called upon to do so, could and would testify competently thereto. This declaration is
8 submitted after a review of the billing records of Doyle Lowther LLP.
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12 **I. OVERVIEW**

13 **A. Overview of Work Performed**

14 2. Doyle Lowther was involved in numerous material aspects of this litigation,
15 from inception to settlement. Along with our co-counsel Whatley Kallas, our firm was
16 one of the first to file, and the first to serve and engage counsel for Defendant Kia
17 Motors America, Inc., with our clients’ complaint against Kia Motors America, Inc. in
18 federal court.
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22 3. A significant portion of Doyle Lowther’s time included communicating
23 with clients and class members, as Doyle Lowther responded to myriad client contacts
24 and inquires concerning the litigation. Further, an online communication from Doyle
25 Lowther received a significant class member response; instead of responding with a
26 boilerplate form letter or canned email response, Doyle Lowther undertook the effort to
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1 personally and individually respond to every contact and inquiry, personally engaging
2 with potential class representatives and class members concerning the litigation and its
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4 eventual settlement.

5 4. Further, Doyle Lowther played a significant role in helping to organize the
6 non-settling plaintiffs' counsel to support the court-appointed Liaison Counsel Girard
7 Gibbs LLP and coordinating the efforts of several co-counsel for Plaintiffs, including
8 Whatley Kallas, Crowley Norman LLP and the Law Office of Thomas D. Mauriello,
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10 with whom we worked closely over the course of this litigation. During the litigation we
11 focused our efforts on developing Kia's role in this particular controversy. We addressed
12 Kia-specific issues at status conferences. At the direction of the Court-appointed Liaison
13 Counsel, we conducted interviews of Kia's representatives in the United States. We also
14 reviewed and identified key documents produced by Kia and by its sister company
15 Hyundai.
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19 5. The settlement makes available several hundred million dollars to pay class
20 member claims, and other class relief. *See* Amended Settlement Agreement (ECF No.
21 354-1); Court's Minutes Regarding Preliminary Approval, at p. 2 (ECF No. 317). "If all
22 class members submit claims under the settlement, the class will recover \$392M in cash
23 before deductions for compensation already paid through the lifetime reimbursement
24 program are made." Settling Parties' Supplemental Brief in Support of Preliminary
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1 Approval of Class Settlement and Certification of Settlement Class at p. 15 (ECF No.
2 271).

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4 6. Even when there is “no contractual or statutory basis to award attorneys’
5 fees in a class action case, a court may rely on the ‘common fund doctrine’” to award
6 attorneys’ fees. *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012), *quoting Vincent*
7 *v. Hughes Air West, Inc.*, 557 F.2d 759, 770 (9th Cir. 1977). “Federal courts award
8 attorneys’ fees under the common fund doctrine as a matter of federal common law,
9 based on ‘the historic equity jurisdiction of the federal courts.’” *Id.*, *quoting Sprague v.*
10 *Ticonic Nat’l Bank*, 307 U.S. 161, 164 (1939). Under the common fund doctrine, “a
11 litigant or a lawyer who recovers a common fund for the benefit of persons other than
12 himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”
13 *Id.*, *quoting Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The guiding
14 principle is that attorneys’ fees ‘be reasonable under the circumstances.’” *Id.*, *quoting*
15 *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990).

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21 7. The equitable power to award such fees is not limited to formally-appointed
22 “class counsel,” but extends to an “attorney who confers a benefit on the class.”
23 *Rodriguez*, 688 F.3d at 660 n.11 (“an attorney who confers a benefit on the class is
24 entitled to fees based on equitable principles of unjust enrichment, and has standing to
25 challenge the denial of such fees, regardless whether the attorney’s client will receive
26 any of the savings”). *Accord In re Ampicillin Antitrust Litig.*, 81 F.R.D. 395, 405-07
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1 (D.D.C. 1978) (the Court “has power to award fees from this settlement ... consistent
2 with the general equitable power of the courts to require parties to contribute to the fee
3 of an attorney whose efforts have benefited those parties ... without regard to the fact
4 that the attorneys are not the formal representatives of those classes.”); *Sprague*, 307
5 U.S. at 166–67 (“formalities of the litigation” do not override “the power of equity in
6 doing justice” by awarding fees to those helping to create a fund benefiting others).
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10 **B. Requested Lodestar**

11 8. The Wilton Plaintiffs request a total lodestar of \$195,311.50, which is based
12 on 500.4 hours, as compensation for their counsel Doyle Lowther LLP. A true and
13 correct copy of our firm resume is attached as Exhibit A.
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15 9. There is a strong presumption the “lodestar” figure represents a reasonable
16 fee award. *See Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994); *United Steelworkers*
17 *of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 406-407 (9th Cir. 1990); *Perdue v. Kenny*
18 *A. ex rel. Winn*, 559 U.S. 542, 554, 130 S. Ct. 1662, 1673, 176 L. Ed. 2d 494 (2010).
19 “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party
20 reasonably expended on the litigation by a reasonable hourly rate.” *Camacho v.*
21 *Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008), quoting *Ferland v. Conrad*
22 *Credit Corp.*, 244 F.3d 1145, 1194 n.4 (9th Cir. 2001).
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26 10. Below is a summary of all of the individuals who worked on this matter,
27 their role (Partner, Associate, Sr. Paralegal, Paralegal), the total number of hours they
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1 worked on this matter for which compensation is requested, their hourly billing rate, and
2 their total lodestar.
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4 Attorney	Role	Total Hours	Rate	Lodestar
5 Aleah C. Werner	Paralegal	13.4	\$185	\$2,479.00
6 Brandy M. Roberts	Sr. Paralegal	15.9	\$260	\$4,134.00
7 Kristina L. Davis	Sr. Paralegal	11.5	\$260	\$2,990.00
8 Katherine S. DiDonato	Associate	271.5	\$300	\$81,450.00
9 Chris W. Cantrell	Associate	35.3	\$395	\$13,943.50
10 James R. Hail	Partner	100.1	\$575	\$57,557.50
11 John A. Lowther IV	Partner	3.6	\$575	\$2,070.00
12 William J. Doyle II	Partner	49.1	\$625	\$30,687.50
13 Total		500.4		195,311.50

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17 11. Within Doyle Lowther, I was the attorney who had primary responsibility
18 for this matter. To minimize duplication of effort, Ms. Kate DiDonato was assigned to
19 undertake the first review of the database of documents the Court and Liaison Counsel
20 requested the parties review to determine the strengths and weaknesses of the litigation,
21 and also to assist in identifying documents for the Kia witness interviews in which we
22 participated.
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25 12. The majority of time Doyle Lowther litigation staff expended was in
26 communications and correspondence with clients and absent class members, coordinating
27 efforts and organizing materials in connection with the Kia interviews, performing tasks
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1 assigned by Liaison Counsel, and litigating in and outside the MDL. In my dealings with
2 the co-counsel listed above, when we were given a particular assignment by Liaison
3 Counsel such as document review, we would assign individual attorneys to review and
4 analyze a specific segment of documents or review witness interview transcripts, and
5 then provide summaries to each other in an effort to avoid unnecessary duplication.
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8 13. The lodestar calculations for my firm set forth below are based on the
9 standard, current, usual and customary hourly rates of our firm, and are in line with
10 prevailing billing rates for like legal work by similarly experienced counsel in San Diego.
11 Our rates have been approved around the United States, and have been approved by
12 federal courts in Los Angeles and San Diego, considering the prevailing hourly rates for
13 those locations. Most recently, Doyle Lowther's hourly rates were approved as
14 reasonable in a litigated fee submission before the Hon. Marylin L. Huff of the Southern
15 District of California in *Horvath et al. v. LG Electronics Mobilecomm U.S.A., Inc.*, U.S.
16 District Court, Southern District of California, Case No. 3:11-cv-01576-H-RBB, Order
17 dated January 13, 2014 (ECF No. 101). The *Horvath* case was a consumer class action.
18 Doyle Lowther's rates are also consistent with or lower than the rates used by other
19 counsel in this action of which I am aware, both located in this District and elsewhere.
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25 **II. Lodestar By Type Of Work**

26 14. Below are detailed breakdowns of Doyle Lowther LLP's total lodestar. "An
27 attorney's sworn testimony that, in fact, it took the time claimed ... 'is evidence of
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1 considerable weight on the issue of the time required” *Blackwell v. Foley*, 724 F.
2 Supp. 2d 1068, 1081 (N.D. Cal. July 1, 2010). “To deny compensation, “it must appear
3 that the time claimed is obviously and convincingly excessive under the circumstances.”
4 *Id.* “Plaintiff’s counsel, of course, is not required to record in great detail how each
5 minute of his time was expended. But at least counsel should identify the general subject
6 matter of his time expenditures.” *Hensley*, 461 U.S. at 437 n.12; *California Ass’n of*
7 *Rural Health Clinics v. Douglas*, No. 2:10-CV-00759-TLN, 2014 U.S. Dist. LEXIS
8 157309, at *3 (E.D. Cal. Nov. 5, 2014) (“Counsel is not required to record this time in
9 great detail but must provide the general subject matter for the task performed.”).

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14 **A. Time Spent Attending Hearings in MDL 2424, Preparing Complaints,**
15 **Litigating Actions Outside the MDL, Appearing Before the Judicial**
16 **Panel of Multidistrict Litigation, and similar matters**

17 15. This category of time includes time spent on preparing for hearings and
18 attending hearings (either in person or telephonically) in MDL 2424, appearing before the
19 Judicial Panel on Multidistrict Litigation, the initial status conference, as well as time
20 spent preparing and filing complaints, and litigating those cases outside of the MDL
21 proceedings.

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24 16. Below is a list of the attorneys who worked on this portion of the litigation,
25 along with the number of hours each spent, their billing rates, the lodestar attributable to
26 them, and the total lodestar for this portion of the litigation.
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Attorney	Total Hours	Rate	Lodestar
Aleah C. Werner	9.8	\$185	\$1,813.00
Brandy M. Roberts	6.6	\$260	\$1,716.00
Kristina L. Davis	11.5	\$260	\$2,990.00
Katherine S. DiDonato	37	\$300	\$11,100.00
Chris W. Cantrell	35.3	\$395	\$13,943.50
James R. Hail	32.5	\$575	\$18,687.50
William J. Doyle II	36	\$625	\$22,500.00
Total	168.7		\$72,750.00

Approximately 25.5 hours or 15% of these hours include calls and direct interaction with plaintiffs and class members, as well as responding to myriad contacts about the litigation's scope. Approximately 37.5 hours were spent on drafting the complaints in this case, and of that, only five hours were spent on the amended complaint in this matter. In total, 25% of this time was spent on the pleadings.

B. Calls With Non-Settling Plaintiffs, Review and Discussion of Settlement Terms and Revisions

17. This category includes time participating in calls and discussions with Non-Settling Plaintiffs who were organized by Liaison Counsel. It also includes time spent reviewing and discussing the terms of the proposed settlement, including the following tasks:

- a. review of the initial Term Sheet, distributed in February 2013.

- 1 b. review of Liaison Counsel’s December 20, 2013 memo, which
2 described how the discovery related to the strengths and
3 weaknesses of plaintiffs’ claims.
- 4 c. review of the proposed settlement filed December 23, 2013 and the
5 two Addendums, filed January 16, 2014, and May 2, 2014. This
6 includes discussions and correspondence with Non-Settling
7 Plaintiffs regarding the settlement, the settlement negotiations
8 conducted by Liaison Counsel, and the revisions to the settlement.
9 It also includes the review of settlement-related memos and
10 summaries distributed to Non-Settling Plaintiffs after the
11 settlement was filed on December 23, 2013.
- 12 d. time spent preparing position statements for Liaison Counsel’s
13 January 30 and May 30 Reports.

14 18. Below is a list of the attorneys who worked on this portion of the litigation,
15 along with the number of hours each spent, their billing rates, the lodestar attributable to
16 them, and the total lodestar for this portion of the litigation.

Attorney	Total Hours	Rate	Lodestar
Brandy M. Roberts	9.3	\$260	\$2,418.00
Katherine S. DiDonato	98.2	\$300	\$29,460.00
James R. Hail	35.7	\$575	\$20,527.50
John A. Lowther IV	2.6	\$575	\$1,495.00
William J. Doyle II	7.8	\$625	\$4,875.00
Total	153.6		\$58,775.50

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25 Out of the 153.6 hours billed, 64%, were recorded by a relatively modest per-hour junior
26 associate, not its higher per hour rate partners. In addition, Doyle Lowther had
27 significantly more client contacts and inquiries, as well as more class representatives, to
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1 respond to and advise concerning the litigation and the then-proposed settlement.
2 Accordingly, Doyle Lowther expended significant effort to assist class representatives
3 and absent class members, including explaining the terms of the settlement, which were
4 complex, as well as advising clients and absent class members on how to obtain relief, as
5 well as explaining the risks and rewards of opting out of the settlement or pursuing
6 individual action. These were important efforts on behalf of the class, and
7 contemporaneous time records indicate this time was spent responding to many client and
8 class member contacts and inquiries.
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12 **C. Preparation of Document Requests, Review of Document Production**
13 **Summaries, Participating via Phone and Chatroom in Confirmatory**
14 **Discovery Interviews, and Review of “Hot Document” Databases**
15 **Provided by Liaison Counsel**

16 19. This category includes time spent preparing, reviewing, and submitting
17 revisions to plaintiffs’ document requests served on May 22, 2013. It includes review of
18 document production summaries distributed by Liaison Counsel throughout the course of
19 the litigation, as well as documents contained in the online document database
20 accompanying Liaison Counsel’s summaries in October and December 2013. It also
21 includes time spent participating in the confirmatory discovery interviews via telephone
22 and chatroom.
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1 20. Below is a list of the attorneys who worked on this portion of the litigation,
2 along with the number of hours each spent, their billing rates, the lodestar attributable to
3 them, and the total lodestar for this portion of the litigation.
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Attorney	Total Hours	Rate	Lodestar
Katherine S. DiDonato	4.0	\$300	\$1200.00
James R. Hail	0.3	\$575	\$172.50
Total	4.3		\$1372.50

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10 **D. Document Review and Confirmatory Discovery Interviews Assigned by**
11 **Liaison Counsel**

12 21. This category includes time spent on review and coding of documents posted
13 to the online EasyESI database that was specifically assigned by Liaison Counsel. It does
14 not include time spent performing other types of document review, such as reviewing
15 document summaries or compilations of “hot documents” Liaison Counsel distributed to
16 Non-Settling Plaintiffs, which is captured in section C, above.
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19 22. This category also includes time spent personally participating in the
20 confirmatory discovery interviews of Hyundai and Kia personnel for the purpose of
21 asking questions on behalf on Non-Settling Plaintiffs.
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24 23. This category also includes time spent on smaller group calls and
25 correspondence specifically regarding the document review. For example, it includes the
26 time document reviewers spent providing information to the counsel conducting the
27 interviews or to Liaison Counsel for the preparation of document summary reports.
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1 24. Below is a list of the attorneys who worked on this portion of the litigation,
2 along with the number of hours each spent, their billing rates, the lodestar attributable to
3 them, and the total lodestar for this portion of the litigation.
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Attorney	Total Hours	Rate	Lodestar
Aleah C. Werner	3.6	\$185	\$666.00
Katherine S. DiDonato	127.3	\$300	\$38,190.00
James R. Hail	31.6	\$575	\$18,170.00
John A. Lowther IV	1.0	\$575	\$575.00
William J. Doyle II	5.3	\$625	\$3,312.50
Total	168.8		\$60,913.50

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13 Out of the 168.8 hours billed, 75%, were recorded by a junior associate, and only 22%
14 were recorded by partners.
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16 **E. Discovery-Related Motion Practice and Meet and Confer**

17 25. We identified specific issues relative to Kia's document production and
18 assertion of privilege over certain documents in October and November 2013. This
19 section includes time spent meeting and conferring on those issues and preparing portions
20 of the joint discovery stipulation filed in November 2013. Below is a list of the attorneys
21 who worked on this portion of the litigation, along with the number of hours each spent,
22 their billing rates, the lodestar attributable to them, and the total lodestar for this portion
23 of the litigation.
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Attorney	Total Hours	Rate	Lodestar
Katherine S. DiDonato	5.0	\$300	\$1,500.00
Total	5.0		\$1,500.00

III. Litigation Expenses

Expense Category	Amount
Filing Fees and Service	\$125.20
Legal Research/Online databases	\$793.20
Postage, telephone, fax	\$21.59
Hotel and Meals (for Kia interviews)	\$376.09
Total	\$1,316.08

26. Doyle Lowther LLP maintains contemporaneous records for the expenditure of all expenses associated with any particular case, including this case. These records are kept and maintained in the course of the regularly conducted business activity of Doyle Lowther, and it was the regular practice of Doyle Lowther to make, keep and maintain expense records from receipts of the underlying transactions and then entering them into Doyle Lowther's time and billing system accounting database.

27. Specifically, as it relates to expenses of a case, any lawyer or paralegal incurring expenses for a case provides the accounting department with receipts or additional back up or invoices for the expense incurred. The receipts set out the name of the case to be charged, the amount of the expense and the purpose of the expense. Upon

1 receipt, the accounting department will input the information into the time and billing
2 system for Doyle Lowther, pay the expense, and file the receipts within physical files
3 maintained for said case.
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5 **IV. The Requested Hourly Rates Are Reasonable**

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7 28. The hourly rates used in this Declaration are the current, usual and
8 customary rates charged by Doyle Lowther LLP in cases of this nature. I believe these
9 rates are reasonable based upon my experience with litigation in San Diego (as well as in
10 the Central District of California). They are rates which have been approved in fee
11 applications submitted to courts nationwide by Doyle Lowther LLP; they were approved
12 by a San Diego Federal Court in early 2014 (¶ 13, *supra*); are the rates generally paid by
13 our private hourly rate clients; and are rates I believe are in line with rates prevailing
14 used by attorneys and paralegals in San Diego (and this District) with comparable
15 experience engaging in comparable complex consumer litigation. *See* ¶ 13, *supra*. The
16 Ninth Circuit holds in “determining a reasonable hourly rate, the district court should be
17 guided by the rate prevailing in the community for similar work performed by attorneys
18 of comparable skill, experience, and reputation.” *Ingram v. Oroudjian*, 647 F.3d 925,
19 928 (9th Cir. 2011); *see Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th
20 Cir. 1986). “Affidavits of the plaintiffs’ attorney and other attorneys regarding
21 prevailing fees in the community, and rate determinations in other cases, particularly
22 those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing
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1 market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th
2 Cir. 1990), citing *Chalmers*, 796 F.2d at 1214.

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4 29. Doyle Lowther LLP maintains contemporaneous billing records associated
5 with any particular case, including this case. These records are kept and maintained in
6 the course of the regularly conducted business activity of Doyle Lowther, and it was the
7 regular practice of Doyle Lowther and its attorneys and paralegals to make, keep and
8 maintain time records for the underlying activities and then enter them into Doyle
9 Lowther’s time and billing system accounting database.
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12 30. The bulk of hours billed by Doyle Lowther were by a lower-billed associate
13 charging \$300 per hour, comprising 54% of all Doyle Lowther hours billed, or 271.5
14 hours out of 500.4 total hours. Further, only 9.8% of hours were billed by Doyle
15 Lowther’s highest-billing partner.
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18 31. In addition, Doyle Lowther’s blended hourly rate is among the lowest of
19 any counsel submitting time in this matter: \$390 per hour, based on a \$195,311.50
20 lodestar divided by 500.4 hours of billed time.
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22 32. Doyle Lowther’s total lodestar does not include the time for preparing this
23 fee application or any estimate of future work in this case. We undertook this litigation
24 as a contingent representation.
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EXHIBIT A



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SAN DIEGO, CALIFORNIA 92131

Doyle Lowther LLP represents consumers and investors across the United States in class action and other complex litigations. The firm's lawyers have decades of complex litigation experience and have represented consumers and investors in securities fraud class actions, derivative and merger litigation, antitrust litigation, product defect and false advertising class actions, consumer fraud class actions, and mass tort litigation. The firm's partners have worked on some of the largest, high profile frauds in the United States, including the *Enron* and *Dynegy* securities litigations. The work of Doyle Lowther lawyers has helped to recover billions of dollars on behalf of injured consumers and investors.

Our lawyers aggressively prosecute corporate wrongdoing and other unlawful activity. We efficiently and effectively prosecute complex cases from inception and investigation through trial. Doyle Lowther believes in being readily available to clients, and responding quickly to our clients' needs and concerns. Our clients are kept informed about their legal matters, from beginning to end.

Complex Litigation

Doyle Lowther attorneys have substantial complex litigation track records. Our attorneys are skilled in representing clients in complex disputes that involve multiple parties, sophisticated subject matters, extensive discovery and complicated testimony. We have extensive experience litigating complex cases in federal and state courts throughout the country and are familiar with the procedural complexities associated with class certification, multi-district litigation, and representing clients where parallel litigation is underway in state and federal court.

Doyle Lowther has experience in a wide range of complex litigation such as derivative litigation on behalf of nominal defendant corporations, security

class actions on behalf of aggrieved security purchasers and sellers, antitrust and investment fraud, mergers and acquisitions, breaches of fiduciary duty by corporate officers and directors, products liability and consumer protection litigation, and mass torts.

Doyle Lowther uses technology to streamline our complex cases. The firm uses proven technologies and processes in the areas of electronic document coding and imaging, database design, computerized presentations, investigative databases, and real-time data and analytics.

Representative Consumer, Antitrust, Security, and Investor Litigation

Honda Civic Hybrid MPG Litigation

Doyle Lowther and its co-counsel represented California consumers in a false advertising and product defect class action regarding Honda Civic hybrid vehicles. Doyle Lowther alleged Honda misrepresented the fuel economy estimates of its model year 2003 through 2009 Honda Civic Hybrid vehicles and charged the vehicles' IMA battery underperformed. The litigation concluded successfully with class members receiving compensation for the alleged misrepresentation in fuel economy estimates and extended warranty protection on the expensive hybrid battery. Approximately 60,000 class members claimed benefits in a settlement conservatively valued at \$87.5 million.

NVIDIA GPU Products Liability Litigation

Doyle Lowther and its co-counsel represented purchasers of Dell, Hewlett-Packard, Compaq and Apple computers containing defective graphics processing chips manufactured by NVIDIA. For years, notebook and desktop computers sold to consumers contained defective NVIDIA chips, resulting in video and graphics problems, distorted video, peripheral component malfunctions, overheating, and other problems. Doyle Lowther filed a class action complaint alleging NVIDIA and the computer manufacturers failed to remedy the defective components. The firm further alleged defendants used a temporary "fix" that failed to remedy the problem, and instead delayed the defects from manifesting until the affected computers were out of warranty. In late 2010, after years of hard-

fought litigation, Doyle Lowther and co-counsel obtained a settlement for consumers that repaired or replaced their defective computers at no cost. As part of the settlement, consumer could also seek reimbursement for out of pocket repair costs. Ultimately, NVIDIA took an accounting reserve of more than \$500 million to remedy the defect and resolve the litigation.

San Diego Wildfire Litigation

Doyle Lowther represents multiple litigants whose homes and business were destroyed during the October 2007 San Diego fires. *In re 2007 Wildfire Individual Litigation – Witch Creek/Guejito Fires*, Case No. 2008-00093080 (San Diego Sup. Ct. 2008). The fires destroyed thousands of homes and forced half a million San Diego residents to flee in the largest mass evacuation in California history. For over a week, the fires scorched hundreds of thousands of acres causing the deaths of two residents and injuring forty-five firefighters.

The *2007 Wildfire* litigation is a highly complex mass tort action, with hundreds of parties, including sureties, individuals, and corporations on both sides. This litigation requires complex case expertise to manage the factual, procedural, and resource complexities in advancing the litigation. Doyle Lowther serves on several litigation committees and has taken a leading role, working cooperatively with co-counsel, to advance the litigation. To date Doyle Lowther has recovered millions of dollars on behalf of devastated homeowners.

Pelvic Mesh Products Liability Litigation

Doyle Lowther attorneys are currently serving as Co-Chairs of the Science and Expert and Law and Briefing Committees in the *Cook Medical Inc. Pelvic Repair System Product Liability Litigation* MDL. The firm also represents scores of women who received defective medical products used in the treatment of pelvic organ prolapse and stress urinary incontinence. The defective products, frequently called “pelvic mesh” or “vaginal mesh,” are the subject of thousands of lawsuits and an investigation by the U.S. Food and Drug Administration investigation into their safety and efficacy. In 2011, after receiving over 3,800 serious adverse event reports, the FDA issued a Public Health Advisory announcing that serious complications associated with these devices were not rare occurrences, as previously

believed. The FDA recommended that all surgeons cease the transvaginal implantation of pelvic mesh and only implant these products abdominally or laparoscopically. The FDA also ordered the manufacturers to conduct studies into the safety and efficacy of these products. The vast majority of pelvic mesh products were introduced into the market via the FDA's controversial 510(k) process, which does not require pre-market testing on the efficacy or safety of a product if the product is "substantially similar" to a product already on the market. After the FDA's announcement several pelvic mesh products were voluntarily removed from the market. Currently, there are over 10,000 lawsuits pending against the largest manufacturers of pelvic mesh. The majority of these lawsuits are pending in the U.S. District Court for the Southern District of West Virginia and the New Jersey Superior Court for Atlantic County.

In re Sony VAIO Computer Notebook Trackpad Litigation

Doyle Lowther has been appointed co-lead counsel in the certified class action litigation against Sony Electronics. Doyle Lowther represents thousands of Class Members who own defective Sony VAIO laptops. Currently pending in the Southern District of California, plaintiffs allege Sony sold its premium VAIO computer line knowing the laptops contain a trackpad defect. The trackpad defect renders consumers' computers inoperable. For example, the Sony VAIO trackpad will move the computer's cursor in a direction opposite to a user's input. The trackpad defect also results in the VAIO randomly opening and closing files and programs on the laptop. And the trackpad defect causes certain Sony VAIO notebooks to freeze or lock up. The VAIO trackpad defect makes it impossible to use Sony's VAIO notebooks as warranted and as advertised.

Platinum and Palladium Commodities Antitrust Litigation

Doyle Lowther serves as lead counsel for a physical purchaser class in hedge fund platinum and palladium market manipulation litigation and has been actively prosecuting the matter. *In re: Platinum and Palladium Commodities Litig.*, No. 10-civ-3617 (WHP) (S.D.N.Y.). The complaint alleges that certain hedge funds conspired with other entities to manipulate the price of the platinum and palladium futures and physical market by systemically engaging in "market on close" orders (commonly called "banging the close") that artificially drove up the closing price of platinum

and palladium during the 2007 and 2008 time period. The daily NYMEX platinum and palladium closing price is based on the volume-weighted average price of the last two minutes of trades on that date. The complaint alleges the Defendants “banged the close” by making large, uneconomic purchases of platinum and palladium in the seconds prior to close, skewing the volume-weighted average and artificially driving up the closing price. The court was recently asked to preliminarily approve a settlement in excess of \$9 million.

LG G2x Class Action Litigation

Doyle Lowther successfully represented consumers who purchased defective smartphone handsets from LG, resulting in a \$7.7 million settlement on behalf of affected consumers in one matter, and continues to prosecute claims in another matter. Plaintiffs alleged a defect with the cell phones caused the phones to repeatedly and randomly freeze, crash, reset or power-off completely, rendering the phones inoperable and unfit for their intended use and purpose. Worse, to restart the phones, users must remove and replace the phones’ battery, as often as ten times per day, infuriating consumers. Despite having received thousands of complaints, LG refused to issue a recall or provide any remedy, other than to replace the defective phones with the same model of defective phone. Doyle Lowther defeated defense motions to dismiss and to arbitrate, vigorously pursued discovery in multiple states, and achieved an excellent resolution for consumers.

Sequenom Shareholder Derivative Litigation

Doyle Lowther served as co-lead counsel, representing nominal defendant Sequenom, Inc. and actively prosecuted breach of fiduciary claims against Sequenom’s Board. *Turnock v. Stylli, et al.*, Case No. 37-2009-00089975-CU-BTCTL (San Diego Sup. Ct. May 2009). Doyle Lowther prosecuted claims alleging Sequenom’s directors and senior officers breached their fiduciary obligations to the company by making false statements and by concealing material information from consumers, including falsifying test results from clinical medical trials, which Sequenom has since admitted. The case was favorably resolved in 2010, resulting in a settlement which included no payoffs or “golden parachutes” to managers and directors who engaged in wrongdoing and were terminated, saving Sequenom and its

shareholders millions of dollars, a \$14 million cash payment to the company funded by director and officer insurance carrier proceeds, and significant revisions to Sequenom's corporate governance practices, including mandated independent directors, board and committee governance practices, and internal control compliance procedures to avoid a repeat of the wrongful conduct.

ev3 Shareholder Merger Litigation

Doyle Lowther served as co-lead counsel in representing ev3 shareholders in Minnesota litigation arising from the ev3 board of directors' attempt to sell the company to an interested party, Covidien, at an alleged unfair price using transaction devices to forcibly divest shareholders of their share ownership. Doyle Lowther spearheaded the litigation, including filing the first complaint, conducting discovery, working with valuation experts, and deposing the company's CEO concerning the transaction. The matter settled favorably in Summer 2010, which included pending actions in both Delaware and Minnesota, resulting in changes to the unfair transaction provisions, disclosure of additional material information to shareholders, and revised statutory appraisal procedures for shareholders who sought to exercise their appraisal rights.

Citigroup Hedge Fund Litigation

Doyle Lowther sued Citigroup and related entities and individuals for misrepresenting the investment risk associated with its MAT hedge funds and investments. In July 2010 Doyle Lowther successfully negotiated resolution of its client's claims in a confidential settlement. Citigroup promoted its MAT funds as conservative investments, appropriate for high-end clients who wanted to place their money in a safe investment. Plaintiff alleged the MAT funds were never the safe, conservative investment Citigroup represented. Instead, Citigroup's MAT funds, it was charged, were predicated on risky investment strategies, and the funds eventually imploded, forcing Citigroup to infuse \$660 million into the MAT funds to keep them afloat, as public attention increased regarding the manner in which the risky hedge funds were promoted to conservative investors. MAT investors lost as much as 90% of the value of their investments.

LG Optimus M Smartphone Class Action Litigation

Doyle Lowther represents consumers who purchased defective smartphone handsets from LG. Plaintiffs allege a defect with the expensive cell phones causes the phones to randomly freeze, crash, reset or power-off completely, rendering the phones inoperable and unfit for their intended use and purpose. To date, Doyle Lowther has successfully defeated a motion to arbitrate in state court and prevailed at the California Court of Appeal on LG's appeal.

Other Complex Class Action Litigation

Before founding Doyle Lowther, two of the firm's partners were principal litigators for seven years in *In re Enron Corp. Securities Litigation*, Civ. No. H-01-3624 (S.D. Tex. 2001), and directly participated in recovering \$7.2 billion on behalf of thousands of individual and institutional investors hurt in the massive Enron securities fraud. The \$7.2 billion recovery is the single largest recovery ever in a securities fraud class action. The firm's partners also litigated *In re Dynegy Inc. Securities Litigation*, File No. H-02-1571 (S.D. Tex.), resulting in a \$474 million recovery for investors.

MEMBERS

William J. Doyle II

William Doyle is a founding partner of Doyle Lowther LLP. Since 1998 Mr. Doyle has focused his practice on representing individuals, institutional investors and consumers as plaintiffs in complex litigation involving securities fraud, mergers and acquisitions, ERISA, consumer fraud, Internet privacy and defective products. Mr. Doyle successfully represented consumers in recent class action litigations against *Honda* and *Nvidia*. He serves as lead counsel in the *Midland Annuities*, *LG smartphone*, and *Platinum and Palladium Antitrust* litigations. Mr. Doyle also oversees hundreds of cases in the firm's mass tort department, including the *Pelvic Repair System products liability litigation* and the *Bayer IUD* litigation.

Prior to founding Doyle Lowther, Mr. Doyle was a partner in the national class action law firm of Lerach Coughlin Stoia Geller Rudman & Robbins LLP. While at Lerach Coughlin and its predecessor firm Milberg Weiss, he represented clients in complex class action litigations and investigated and initiated new cases. Mr. Doyle also played a lead role in developing the firm's first portfolio monitoring program for institutional investors.

In 2003 Mr. Doyle filed the first case against the New York Stock Exchange and its seven specialist trading firms for illegal trading and market manipulation practices. While at his prior firm, Mr. Doyle had the privilege of representing the California Public Employees' Retirement System (CalPERS) as lead counsel in the *NYSE securities* litigation.

In the *Trans Union Corp.* privacy litigation Mr. Doyle served as co-lead counsel, representing millions of consumers whose private credit information was unlawfully disclosed to third parties. Mr. Doyle successfully certified a statutory damages class action of approximately 9 million Illinois consumers and helped negotiate a nationwide settlement for consumers valued at over \$109 million.

Mr. Doyle has been appointed by federal judges to be lead or co-lead counsel in numerous multidistrict litigation proceedings, including, MDL-1329 *In re RealNetworks, Inc. Privacy Litigation*; MDL-1341, *America Online, Inc. Version 5.0 Software*; MDL-1346, *In re Amazon.com Privacy Litigation*; MDL-1350, *In re Trans Union Corp. Privacy Litigation*; MDL-

1352, *In re DoubleClick Inc. Privacy Litigation*; MDL-1381 *Toys R Us, Inc. Privacy Litigation*; and MDL-1400, *In re Pharmatrak Privacy Litigation*.

Mr. Doyle served as lead or co-lead counsel for plaintiffs in a series of landmark Internet privacy cases. Applying unique and untested legal theories, Mr. Doyle and his co-counsel achieved important new privacy protections for online consumers. For example, in the *In re Pharmatrak Privacy Litigation*, Mr. Doyle took the lead in writing a successful First Circuit appellate brief that overturned summary judgment and applied, for the first time, federal wiretap statutes to Internet technology. In the *Amazon.com* case, a federal court certified the first nationwide class for Internet privacy claims and a settlement in the *DoubleClick* litigation provided important online privacy protections for nearly every user of the Internet in the United States.

Mr. Doyle has also served as co-lead counsel in complex product defect class actions, including a lawsuit against Apple for defects in the DVD player of its iMac personal computer (\$47 million settlement); a class action against SBC Communications for defective DSL Internet service (\$55 million settlement); and a class action against America Online, Inc. for software defects. (\$15.5 million settlement).

A native of San Diego, California, Mr. Doyle graduated from the University of San Diego with an undergraduate degree in economics. After working in the legal field, Mr. Doyle earned his law degree in 1996 from the California Western School of Law on an accelerated, two-year program. Mr. Doyle is admitted to practice in state and federal courts throughout California, the United States District Court for the Western District of Washington, and the United States Court of Appeals for the First and Second Circuits. Mr. Doyle is a member of the American Bar Association, the American Association for Justice, The State Bar of California, the San Diego County Bar Association, the Consumer Attorneys of San Diego, and the National Trial Lawyers Association. Mr. Doyle also served on the board of directors for the Association of Business Trial Lawyers and as a director of the San Diego County Bar Foundation.

John A. Lowther

John Lowther is a founding partner of Doyle Lowther. Since 2000 Mr. Lowther has participated in large and complex litigations on behalf of

individuals, investors, consumers and financial institutions, helping them to recover billions of dollars in damages due to fraud and malfeasance. Mr. Lowther has been appointed lead counsel and litigated myriad security, derivative, consumer, and class action litigations on behalf of aggrieved consumers and investors, including the *Sequenom* litigation, *Platinum and Palladium* Antitrust litigation, as well as *In re NVIDIA Corp. GPU Products Liability Litigation*, No. 08-04312-JW (N.D. Cal. 2008).

Before founding Doyle Lowther, Mr. Lowther and his prior firm were appointed lead counsel, and Mr. Lowther was a principal litigator, in *In re Enron Corp. Securities Litigation*, Civ. No. H-01-3624 (S.D. Tex. 2001). Mr. Lowther and the litigation team pursued Enron, its Board, and its financial enablers following Enron's implosion in December 2001. He participated directly in the Enron litigation for over seven years, helping to recover \$7.2 billion on behalf of thousands of individual and institutional investors hurt in the massive Enron securities fraud. The \$7.2 billion recovery is the single largest recovery ever in a securities fraud class action.

Mr. Lowther and his prior firm also were appointed lead counsel and litigated *In re Dynegy Inc. Securities Litigation*, File No. H-02-1571 (S.D. Tex. 2003), in which individual investors and institutions pursued Dynegy and its executives for fraud. Dynegy investors suffered massive losses after discovering Dynegy had engaged in questionable transactions and misrepresented its financial results. In April 2005 Mr. Lowther helped secure a \$474 million settlement on behalf of defrauded investors, an extremely favorable result for injured investors and a substantial financial recovery.

Mr. Lowther was appointed lead counsel and represented shareholders against Abercrombie & Fitch in securities litigation arising from insider trading, *Ross v. Abercrombie & Fitch Co.*, No. 2:05-cv-00819 (E.D. Ohio 2007). Just before founding his own firm, Mr. Lowther defeated a motion to dismiss in securities fraud litigation against advertising company ADVO arising from failed merger negotiations, investor misrepresentations, and excessive executive payoffs and compensation, *Kelleher v. ADVO et al.*, No. 3:06-cv-01422 (D. Conn. 2007). Mr. Lowther anticipates the ADVO securities litigation will conclude favorably for injured security investors.

Currently, Mr. Lowther is Co-Lead Counsel in derivative litigation against San Diego-based Sequenom, Inc., arising from alleged breaches of fiduciary duty by Sequenom's board of directors. *In re Sequenom, Inc., Derivative*

Litigation, No. 37-2009-00089683 (Cal. 2009). Mr. Lowther represents a number of San Diego families and homeowners who lost everything in the October 2007 San Diego wildfires allegedly caused by SDG&E and Cox. *In Re 2007 Wildfire Individual Litig.*, No. 2008-00093080 (Cal. 2008). Mr. Lowther also represents tens of thousands of consumers whose notebook and desktop computers have been rendered defective by faulty graphic processing chips. *Inicom Networks, Inc. v. Nvidia Corp. et al.*, No. Co8 04332 (N.D. Cal. 2008).

Born and raised on Long Island, New York, Mr. Lowther graduated from the State University of New York at Stony Brook, where he was an honors college resident. Mr. Lowther received his law degree from University of San Diego School of Law, where he served as Executive Editor of the *San Diego Law Review*. Before founding Doyle Lowther, Mr. Lowther was a judicial intern for the U.S. District Court for the Southern District of California, and thereafter was an associate with Coughlin Stoia Geller Rudman & Robbins, where he worked on complex securities and derivative litigations on behalf of injured investors. Mr. Lowther is licensed to practice in state and federal courts throughout California.

James R. Hail

James Hail is a partner with Doyle Lowther. Since 1999 Mr. Hail has focused his practice on representing defrauded investors in both individual litigations and class actions. Mr. Hail has extensive experience litigating complex cases under federal and state securities laws, and the laws applicable to corporate governance. He continues to represent individual and institutional investors who are victims of investment fraud. Mr. Hail represented consumers in class action litigations against *Honda* and *Nvidia* and families who lost their homes or businesses during the 2007 wildfires in San Diego County. He is currently representing plaintiffs in the Midland annuity case, the *Platinum and Palladium* Antitrust litigation, and in consumer litigation against LG and Samsung.

At his prior firm, Mr. Hail represented individual and institutional investors in some of the nation's most notorious securities frauds. For more than five years, he was a principal litigator in the securities fraud litigation arising from the collapse of Enron Corp. The *In re Enron Corp. Securities Litigation* recovered over \$7 billion for investors. Mr. Hail also represented the lead plaintiff against Dynegy Inc. and its officers and directors. The *In*

re Dynegy Inc. Securities Litigation recovered over \$470 million for injured investors.

Mr. Hail has represented the lead plaintiff as lead counsel or co-lead counsel in other securities fraud litigations, including a lawsuit against Coca-Cola (\$137.5 million settlement); a class action against Rural/Metro Corp. (\$15 million settlement); and a class action against Secure Computing (\$10 million settlement).

Mr. Hail is representing consumers in product liability litigations against Apple, NVIDIA, and Hewlett-Packard, and families who lost their homes or businesses during the 2007 wildfires in San Diego County. He also represents clients in individual litigations arising from complex business disputes and investment fraud.

Mr. Hail graduated from UCLA with a degree in political science. He received his law degree *cum laude* from Southern Methodist University. During law school, he served as an Articles Editor of *The International Lawyer* law journal. Mr. Hail was admitted to the State Bar of Texas in 1997 and the State Bar of California in 1999. He is also admitted to practice law in the United States District Courts for the Eastern, Northern, and Southern Districts of Texas, and the United States District Courts for the Northern, Central, and Southern Districts of California.

ATTORNEYS

Chris Cantrell

Mr. Cantrell is an attorney with Doyle Lowther. Mr. Cantrell joined Doyle Lowther after relocating to California from Alabama, where he practiced for several years. Mr. Cantrell concentrates his practice on defective pharmaceuticals and medical devices, mass actions, and other complex litigation matters.

Mr. Cantrell has represented thousands of individuals harmed by defective pharmaceuticals and medical devices including Vioxx, Phenylpropranolamine (PPA), Ephedrine, Oxycontin, Fentanyl Time Released Patches, Baycol, Medtronic ICD Batteries, Medtronic Sprint Fidelis Leads, Lipitor, Fen-Phen, Kugel Hernia Mesh Patches, and Prempro.

Mr. Cantrell also worked on one of the largest class actions in United States history, *In re: Managed Care Litigation*, (MDL 1334 S.D. Fla.). In this immense class action, Mr. Cantrell's former firm represented hundreds of thousands of primary care physicians in a RICO class action against the nation's largest health insurance providers who were systematically defrauding doctors of payments owed.

At his prior firm, Mr. Cantrell worked on several antitrust matters including the representation of thousands of independent pharmacists in an antitrust action against the nation's largest pharmacy benefit managers. *In re Pharmacy Benefit Managers Antitrust Litigation* alleges the four largest pharmacy benefit managers conspired to artificially suppress the reimbursement payments to independent pharmacists nationwide.

Litigating these matters has allowed Mr. Cantrell to practice in state and federal courts across the nation including Florida, Georgia, New York, Illinois, Pennsylvania, Minnesota, Missouri, Nevada, Oklahoma, Louisiana and the District of Columbia.

Mr. Cantrell currently represents hundreds of individuals injured by medical device manufacturers. These cases, to be litigated in the Southern District of West Virginia and other federal courts, involve implantation of defective products suffering from various medical ailments, including pelvic organ prolapse and incontinence.

Mr. Cantrell graduated from the University of Alabama at Birmingham in 1999 with Bachelors degrees in criminal justice and chemistry. Mr. Cantrell is a 2003 graduate of the University of Alabama School of Law where he was a Campbell Moot Court Board member. Mr. Cantrell is a member of the State Bar of California and the State Bar of Alabama. Mr. Cantrell is admitted to practice law in the United States District Courts for the Southern, Central and Eastern districts of California, the United States District Courts for the Northern, Southern and Middle districts of Alabama, and the United States Court of Appeals for the Tenth and Eleventh Circuits.

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