

Gene J. Stonebarger, State Bar No. 209461
gstonebarger@stonebargerlaw.com
Richard D. Lambert, State Bar No. 251148
rlambert@stonebargerlaw.com
STONEBARGER LAW
A Professional Corporation
75 Iron Point Circle, Ste. 145
Folsom, CA 95630
Telephone: (916) 235-7140
Facsimile: (916) 235-7141

Attorneys for Representative Plaintiffs and the Class

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JAMES WILSON, an individual, and JACK)
WHITE, an individual, on behalf of themselves)
and all others similarly situated,)
)
Representative)
Plaintiffs,)
)
vs.)
METALS USA, INC., a Delaware Corporation;)
and DOES 1-100, inclusive,)
)
Defendants.)
)
)

CASE NO. 2:12-CV-00568-KJM-DB
**DECLARATION OF RICHARD D.
LAMBERT IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS AND
INCENTIVE AWARDS**

**Date: September 6, 2019
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller**

STONEBARGER LAW
A Professional Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 I, Richard D. Lambert, declare:

2 1. I am an attorney duly admitted to practice law before all courts of the State of
3 California, I am a partner in the law firm of Stonebarger Law, A Professional Corporation, and I
4 am appointed Class Counsel in this matter. I make this declaration in support of Plaintiffs'
5 Motion for an Award of Attorneys' Fees, Costs, and Incentive Award in this action. If called as
6 a witness, I would and could testify to the following.

7 2. Here, the requested attorneys' fees, costs, and incentive Awards, will not diminish
8 the monetary relief obtained for the Class. Indeed, any amounts, as approved by the Court, will
9 be paid separate and apart from the amount made available to the Class.

10 3. This Court certified a Class in July of 2016 and denied MUSA's motion for
11 summary judgement approximately one (1) year later.

12 4. When the Parties opted to explore resolution, such discussions were performed
13 following numerous arms-length negotiations before a neutral mediator. And, more specifically,
14 the Parties zealously negotiated the terms of the Settlement and, only following an agreement as
15 to the Class terms, did the Parties discuss attorneys' fees and costs. Importantly, the Parties did
16 not discuss an award of attorneys' fees, costs, or incentive awards *until after* the Class benefit of
17 \$2,800,000 had been agreed upon.

18 5. At preliminary approval, Class Counsel submitted a lodestar of \$1,400,000. This
19 lodestar, at the time, was accurate based upon rates approved for Class Counsel in the Southern
20 District of California, Central District of California, Northern District of California, the Superior
21 Court for the County of San Diego, the Superior Court for the County of Los Angeles, the
22 Superior Court for the County of Ventura, the Superior Court for the County of San Francisco
23 and the Superior Court for the County of Sacramento, as well the total number of hours
24 expended by Class Counsel at that time.

25 6. Following preliminary approval, however, Class Counsel has reviewed previous
26 orders issued by the Eastern District of California with regard to hourly rates and, as a result, has
27 decreased its hourly rates to coincide with those previously approved by this Court.

28 ///

1 7. In addition, Class Counsel has reduced its hours in an effort to eliminate: (i)
2 unnecessary work; (ii) duplicative work; or (iii) time spent by an attorney that could have been
3 performed by a paralegal. As a result, Class Counsel has decreased the hours included in its
4 previously submitted lodestar.

5 8. Class Counsel has spent a total of 3,771.5, in prosecuting this case on behalf of
6 the Class through the date of this declaration. Based on the rate of \$475.00/hour for Mr.
7 Stonebarger, \$400.00/hour for Mr. Lambert, \$250.00/hour for Ms. Yan, and \$100.00/hour for
8 paralegals, Class Counsel’s lodestar is \$1,040,810.

9 9. This was not a case where discovery and the information critical to prevail at class
10 certification, defeat summary judgment, and prepare for trial was readily available from MUSA.
11 To the contrary, very few documents, reports, and data was in the possession of MUSA which
12 required Class Counsel to spend a substantial amount of time seeking discovery and information
13 regarding the Tiles from third parties and absent Class members. Such information was critical
14 for the success of this Action and, absent such monumental efforts, there is little doubt the
15 Action would have progressed as it did.

16 10. Moreover, this Action was vigorously litigated for nearly eight (8) years during
17 which the Parties engaged in substantial law and motion practice including two (2) motions to
18 dismiss, a contested motion for class certification, and a contested motion for summary
19 judgment. Each of these motions involved complex legal and factual issues.

20 11. Pursuant to this Court’s Order Granting Preliminary Approval, Class Counsel will
21 submit, for *in camera* review, a copy of its detailed billing records, a general summary of Class
22 Counsel’s time is as follows:

No.	General Description	Hours	Rate	Lodestar
24	1. Pre-Filing Tasks: Client meetings; Perform Research and Analysis; Review Client Documents; Draft Complaint	(RDL) 123.9	\$400	\$49,560.00
25		(EWY) 33.1	\$250	\$8,275.00
26	2. Case Management: Draft Status Conference	(GJS) 8.4	\$475	\$3,990.00
27		(RDL) 177.9	\$400	\$71,160.00
28		(EWY) 62.2	\$250	\$15,550.00

STONEBARGER LAW
A Professional Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Statements; Attend Status Conferences; Prepare Stipulations; Draft Second Amended Complaint and Request to Seal; Client and Class Member Communications			
3.	<i>Law & Motion:</i> Draft Motion to Vacate Status Conference; Draft Opposition to Motion to Dismiss; Research re same; Draft Supplemental Briefing ISO Opposition to Motion to Dismiss; Attend Hearing on Motion to Dismiss; Draft Motion for Leave to Amend; Draft Motion for Class Certification; Research re same; Attend Hearing on Motion to Dismiss; Draft Opposition to Motion for Summary Judgment; Research re same; Attend Hearing on Motion for Summary Judgment	(GJS) 20.2 (RDL) 478.7 (EWY) 12.3 (Paralegals) 90.1	\$475 \$400 \$250 \$100	\$9,595.00 \$191,480.00 \$3,075.00 \$9,010.00
4.	<i>Discovery:</i> Draft initial Discovery to Defendant; Draft Stipulated Protective Order; Conferences with Counsel re Document Production; Document Review; Draft Notice of Deposition of Defendant's PMK with Production of Documents; Attend Deposition of Defendant's PMK; Draft Rule 26(f) Report; Draft Third Party Subpoena for Documents from ICC Evaluation Ser., Inc., UL, LLC, and Triangle Coatings, Inc.; Draft Plaintiffs' Discovery Responses; Meetings with Clients re Discovery Responses; Research and Meetings with Experts; Attend Plaintiffs', Class Members, and Experts Depositions; Meetings with Clients and Class Members re Depositions;	(GJS) 9.9 (RDL) 493.9 (EWY) 134.8 (Paralegals) 4	\$475 \$400 \$250 \$100	\$4,702.50 \$197,560.00 \$33,700.00 \$400.00

STONEBARGER LAW
A Professional Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5.	<i>Class Member Interviews and Site Inspections</i> Research re Site Inspections; Travel to and Inspect Potential Class Member Homes; Attend Meeting with Roofing Contractors re Metal Roofing; Class Member Interview; Compiling Class Member Documents	(GJS) 10 (RDL) 337.6 (Paralegals) 1323	\$475 \$400 \$100	\$4,750.00 \$135,040.00 \$132,300.00
6.	<i>Settlement Negotiations, Mediation, and Settlement Administration:</i> Research re Settlement Structures; Draft Mediation Briefs; Meet and Confer with Defense Counsel; Travel and Attend multiple Mediations; Confer with Mediator-up after Mediation; Draft Settlement Agreement	(GJS) 70.3 (RDL) 206.4 (EWY) 29	\$475 \$400 \$250	\$33,392.50 \$82,560.00 \$7,250.00
7.	<i>Preliminary Approval Motion:</i> Draft Notice of Settlement; Draft Motion for Preliminary Approval; Review Court Ruling; Draft Proposed Order for Preliminary Approval; Travel to and Attend Hearing on Preliminary Approval Motion	(RDL) 50.7	\$400	\$20,280.00
8.	<i>Claims Administration:</i> Communications with Class Members re Claim Form questions; Conferences with Claims Administrator re Status of Notices to Class and Settlement Website; Revise Post Card Notice; Conference calls with counsel regarding Settlement Website; Review weekly Status Report from Claims Administration	(RDL) 3.4 (Paralegals) 41	\$400 \$100	\$1,360.00 \$4,100.00
9.	<i>Motion for Attorneys' Fees:</i> Draft Motion for Attorneys' Fees and Costs; Conferences with Co-Counsel	(RDL) 54.3	\$400	\$21,720.00

		(GJS) 118.8	\$475	\$56,430.00
		(RDL) 1,926.8	\$400	\$770,720.00
		(EWY) 271.4	\$250	\$67,850.00
		(Paralegals)	\$100	\$145,810.00
		1,458.1		
	TOTAL	3,775.1		\$1,040,810.00

12. All of these tasks were performed for the benefit of the Class, and the time spent was reasonable. Class Counsel took care to prevent the duplication and inefficiencies that might otherwise have occurred and, to the extent there was any duplication or inefficiencies, Class Counsel has eliminated all such hours

13. Attached hereto as Exhibit ‘A’ is a true and correct copy of Class Counsel’s firm resume.

14. Attached hereto as Exhibit ‘B’ is a true and correct copy of the Court’s Final Judgement Order Approving Class Settlement in *Burdewick v. Leslie’s Poolmart, Inc.*, Eastern District of California Case No. 2:11-cv-01085-JAM-EFB (2012) (Mendez, J.).

15. Here, there is no doubt that Class Counsel qualifies for an upward multiplier, given that Class Counsel has pursued this Action for nearly eight (8) years on a purely contingent basis and has expended nearly \$128,000 out of its own pocket. Despite years of uncompensated time, unreimbursed expenses, and uncertain results, Class Counsel continued to litigate the Action to the point of an imminent trial. Given the time, complexities, and risks involved, an upward multiplier is appropriate.

16. This Action was sharply contested and included two (2) motions to dismiss, the production of more than seven (7,000) thousand pages of documents, PMK depositions, third-party discovery, expert discovery, absent class member discovery in the form of request for production of documents and depositions, a contested motion for class certification, a contested motion for summary judgement, and an imminent trial.

17. Throughout this Action, the opposition faced by Plaintiffs was among the best. Indeed, MUSA was, and has always been, represented by some of finest attorneys in the country. As one would expect, MUSA’s attorneys, represented its position aggressively and vigorously. Indeed, it was not until after nearly eight (8) years of litigation, two (2) motions to dismiss, a

1 contested motion for class certification, and a contested motion for summary judgment, did
2 MUSA ultimately desire to resolve this action. Even then, it took two (2) arduous mediation
3 sessions before John Bates, Esq. of JAMS in order to resolve this Action. These mediation
4 sessions are in addition to the two (2) mediation sessions held before the Hon. Edward Infante
5 (Ret.) of JAMS early on in the Action.

6 18. In this Action, the potential recovery must be viewed against the reality that the
7 Class stood to receive nothing had Class Counsel not undertaken to represent it in this Action.
8 Had Class Counsel refused to accept representation, on a purely contingent basis, of an
9 extremely risky case, not a single Class Member would have a remote chance at relief given the
10 substantiated record of Dura-Loc's defective product and its corresponding refusal or failure to
11 honor legitimate warranty claims. Indeed, were it not for the skill, fortitude, and zeal of Class
12 Counsel in pursuing this Action, in the face of substantial risk, the Class would have recovered
13 nothing.

14 19. The extraordinary outlay of time and costs by a small firm, like Class Counsel,
15 should be rewarded. Class Counsel has advanced thousands of hours of time and nearly \$128,000
16 in costs solely because it believed in the merits of the case and the Class they represented.

17 20. In other words, were this Court not award an appropriate fee the following
18 message would be sent: a defendant can vigorously litigate for years without concern of being
19 liable for plaintiffs' fees. This is a dangerous message to send. Indeed, it will serve to embolden
20 defendants to litigate while simultaneously chilling the decision of other counsel to undertake
21 similar representation which would be counter to the purposes of the statutes at issue here.

22 21. As Judge Karlton remarked: "the fact pattern presented in Plaintiffs' complaint is
23 admittedly "unique." [Doc. 31] at 21:06-07. This statement leaves no doubt that, when Plaintiffs
24 and Class Counsel began this case, they were in uncharted waters. As such, there can be no
25 doubt that the claims, defenses, and issues in this Action were not only novel but were, in fact,
26 "unique." As such, when Class Counsel undertook this Action, the outcome was far from certain
27 and the risks were substantial; nevertheless, Class Counsel continued to litigate this Action as it
28 believed in the merits of the Action.

1 22. Needless to say, due to the utter absence of authority, and this Court’s prior
2 rulings, Plaintiffs and Class Counsel were presented a case with uncertain results. In other words,
3 this Action presented novel and complex issues (and matters of first impression) which were
4 anything but clear. The complexity and novelty of the issues faced by Class Counsel were
5 tremendous, and thus, deserve an upward multiplier.

6 23. Class Counsel prosecuted this Action on a purely contingent basis. Indeed, given
7 each and every ruling, beginning with Judge Karlton, Class Counsel was aware that the battle
8 being fought would be uphill and sharply contested. Nevertheless, Class Counsel continued to
9 litigate this matter with the utmost skill and vigor. By way of example, and because MUSA was
10 not in possession of such, in order to garner the necessary evidence, Class Counsel purchased
11 bicycle boxes and corresponding postage, and return postage, so members of the Class could
12 provide sample roof tiles. These roof samples were crucial at certification.

13 24. In addition, Class Counsel had numerous meetings with multiple experts in the
14 roof industry and ultimately utilized two (2) experts in the fields of financial acquisitions and
15 chemical decomposition. All of these costs were advanced by Class Counsel with no guarantee
16 of recovery against a well-capitalized defendant.

17 25. Moreover, and despite the inherent risks given the “unique” facts of the Action,
18 due to the size of Class Counsel’s firm, and the extraordinary outlay of time, this Action
19 precluded work on other matters.

20 26. Here, the Settlement provides for \$2,800,000 to the Class. Critically, the
21 requested amount of \$983,228.20 in attorneys’ fees to Class Counsel, the \$127,771.80 in costs,
22 the \$39,000 in requested Incentive Awards, and the estimated \$65,000 in administration costs,
23 are to be paid separate, and apart, from the Class benefit of \$2,800,000.00.

24 27. As such, the overall value of the Settlement is approximately \$4,015,000
25 (\$2,800,000 to the Class, \$1,150,000 in fees, costs, and incentive awards, and \$65,000 in
26 administration costs). Thus, Class Counsel’s request for \$983,228.20 in fees falls within the
27 benchmark established by the Ninth Circuit as it constitutes approximately 24.4% of the total
28 value provided to the Class in the Settlement (i.e., \$983,228.20 (fees)/\$4,015,000 (total value) =

STONEBARGER LAW
A Professional Corporation

1 24.4%). And while, Class Counsel does not know the exact amount of the settlement
2 administration costs, but submits \$65,000 based upon the average of the three (3) estimates it
3 sought following settlement.

4 28. Here, the Settlement makes available \$2,800,000, and Class Counsel seeks
5 \$983,228.20 in attorneys’ fees; or approximately 35% of the \$2,800,000 Settlement
6 (\$983,228.20/\$2,800,000 = 35.1%).

7 29. Class Counsel seeks to recover costs expended on this litigation in the amount of
8 \$127,771.80. These costs were directly related to the prosecution of this action, were reasonably
9 and necessarily incurred, and are itemized as follows:

10	• Filing Fees, Process Service Fees, Court Reporting Fees, Courtcall Fees	\$ 8,352.48
11	• Postage	\$ 4,873.47
12	• Travel Expenses	\$ 14,917.87
13	• Mediation Fees	\$ 12,725.00
14	• Expert Fees	\$ 69,149.25
15	• Claims Administrator Fees	\$ 17,753.73
16	TOTAL	\$ 127,771.80

17 30. Here, in the event that MUSA prevailed in its defense, Plaintiffs stood to be
18 personally liable for MUSA’s costs – which Class Counsel estimates to be more than \$100,000.

19 31. That each Plaintiff expended numerous hours, rejected personal settlement
20 amounts equal to his respective incentive awards, and faced personally liability in the event of an
21 adverse judgement, justifies the requested incentive awards. Indeed, the delay in payment alone
22 is sufficient to justify the requested amounts.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct, and that this declaration was executed on May 30, 2019 in Folsom,
25 California.

26 /s/ Richard D. Lambert
27 Richard D. Lambert
28