

1 and a possible appearance of impropriety. Doc #130, at 1-2.

2 Following the court's initial denial, plaintiffs amended
3 the settlement, Doc #151, and modified the notice sent to class
4 members. Docs ##171,173. The court certified the class and the
5 lead plaintiff, for settlement purposes only, in June 2008. Doc
6 #171. Class counsel also reduced the amount of their fee request,
7 from 25% to 17% of the settlement, or from \$7.5 million to \$5.1
8 million of the \$30 milion settlement. Doc #151. The matter came
9 on for a final approval hearing on December 3, 2008, at which the
10 court indicated it would approve the proposed settlement. Doc
11 #193, Hrg Tr, December 3, 2008 at 41. The court is satisfied with
12 class counsel's resolution of three of the four concerns.

13 Further consideration of applicable standards, however,
14 fails to alleviate the court's councern with class counsel's fee
15 request. As discussed in greater detail below, the court performed
16 a lodestar cross-check and determined that class counsel's reduced
17 fee request implied a multiplier in the range of 4.07-5.15. While
18 the court believes a substantial multiplier is appropriate given
19 the circumstances of this case, a multiplier of four to five
20 exceeds levels courts have accepted as reasonable fees.
21 Accordingly, the court GRANTS final approval of the settlement but
22 finds it necessary to reduce class counsel's fee award to \$4.6
23 million.

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25 I

26 A

27 This case stems from the highly publicized events
28 surrounding the United States influenza vaccine shortage in 2004.

1 Plaintiffs seek recovery for violations of sections 10(b) and 20(a)
2 of the Securities Exchange Act of 1934 on behalf of a class of
3 those who purchased Chiron Corporation stock between July 23, 2003
4 and October 5, 2004, inclusive, on grounds that defendants
5 misrepresented and failed to disclose adverse facts concerning
6 Chiron's ability to produce the Fluvirin influenza vaccine for the
7 United States market.

8 Twelve different law firms appeared on behalf of the
9 various plaintiffs in the six cases that form this litigation.¹ Of
10 the various plaintiffs in these actions, only two initially sought
11 to serve as lead plaintiff and appoint lead counsel pursuant to 15
12 USC § 78u-4(a)(3): (1) International Union of Operating Engineers
13 Local No 825 sought to appoint Milberg Weiss Bershad & Shulman, LLP
14 (counsel originally filing the Nach case) and (2) Pipefitters
15 Locals 522 and 633 Pension Trust Fund sought to appoint Lerach
16 Coughlin Stoia Geller Rudman & Robbins, LLP (counsel originally
17 filing the Gregory case). Five months prior to the commencement of
18 this litigation, the Lerach firm split from Milberg Weiss. On
19 February 4, 2005, counsel in Jaroslawicz sought to dismiss that
20 action. On February 24, 2005, Pipefitters Locals 522 and 633
21 Pension Trust Fund withdrew its application to serve as lead
22 plaintiff, leaving only the Local 825 fund's application. Doc #42.
23 The appointment of the lead plaintiff and its selection of Milberg
24 Weiss as lead counsel were thus made without open competition.
25 Gregory, initiated by the Lerach firm, became the lead case,

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27 ¹Gregory v Chiron Corp, 04-4293; Nach v Chiron Corp, 04-4346;
28 Kramer v Chiron Corp, 04-4416; Jaroslawicz v Bryson, 04-4474; Judith
Fisher v Chiron Corp, 04-5137; and Jerome Fisher v Chiron Corp, 05-
0246.

1 presumably because it was the first filed action. Milberg Weiss
2 subsequently changed its name to Milberg LLP, and Milberg LLP
3 became lead counsel. Doc #149.

4 The amended consolidated complaint, Doc #50, followed on
5 April 14, 2005. About five weeks or so after the amended
6 consolidated complaint, on May 26, 2005, Chiron and the individual
7 defendants separately filed motions to dismiss the complaint. Doc
8 ##57, 60. The motions to dismiss were heard on June 29, 2005. At
9 the hearing, the court expressed concern about the clarity of the
10 factual theory plaintiff had alleged in the consolidated amended
11 complaint. See Doc #82, Hrg Tr, June 29, 2005, at 63-64. After
12 some discussion, plaintiffs' counsel agreed to file either a
13 supplemental brief explaining the allegations of the existing
14 pleading or alternatively a further amended consolidated complaint.
15 See Doc #82, Hrg Tr, June 29, 2005, at 67-72. On July 29, 2005,
16 plaintiff filed a supplemental brief, Doc #84, to which defendants
17 responded on August 19, 2005. Doc #90.

18 While the motions were pending the parties entered into
19 settlement discussions and executed a settlement understanding on
20 June 6, 2006. Doc #103, ¶19 at 5-6. In the meantime, in February
21 2006, the Securities and Exchange Commission informed Chiron that
22 it was terminating its investigation of Chiron with respect to
23 potential violations of federal securities laws. Doc #103, ¶22.
24 In addition, although investigations of Chiron had been announced
25 by the United States Attorney's Office for the Southern District of
26 New York and the United States House of Representatives, Energy and
27 Commerce Committee, Subcommittee on Oversight and Investigations,
28 neither entity took any action against Chiron. Doc #103, ¶22.

1 Chiroscience in January 2000 only to be resold to England-based
2 PowderJect Pharmaceuticals in October 2000. Doc #50, ¶¶56, 58.

3 On March 9, 2001, FDA inspectors visited the Liverpool
4 plant and once again found the production of Fluvirin to be
5 deficient in several respects. At the conclusion of the
6 inspection, the FDA issued a Form FDA 483 noting "significant
7 objectionable conditions." Doc #50, ¶58. In June 2003, the FDA
8 conducted another inspection of the Liverpool plant. Once again,
9 inspectors discovered pervasive quality-control problems and
10 symptoms thereof, including (1) "potentially lethal bacteria" after
11 "ultrafiltration" and "sterile filtration," points in the process
12 by which all bacteria should have been eliminated, (2) poor
13 sanitation practices, including improper maintenance of "curtains"
14 separating sterile areas from non-sterile areas and (3) a
15 susceptibility to contamination in the aseptic connections between
16 tanks of vaccine in the "formulation area" of the plant. Doc #50,
17 ¶¶72-73. As in 2001, the FDA inspectors issued a Form FDA 483 and,
18 according to the CAC, although the inspectors initially recommended
19 that official enforcement action be taken due to the "pervasiveness
20 and severity" of the GMP deficiencies at the Liverpool plant, this
21 recommendation was later downgraded to a request that PowderJect
22 take voluntary corrective action. Doc #50, ¶¶78-79.

23 Chiron entered on July 8, 2003 when it acquired
24 PowderJect and the Liverpool plant for \$878 million, giving Chiron
25 immediate access to the lucrative flu vaccine market in the United
26 States. Doc #50, ¶¶43, 45. In 2003, Chiron realized \$219 million
27 in revenues from the sale of 40 million Fluvirin doses worldwide.

28 In October 2003, Chiron began publicly forecasting that

1 (1) it would top its 2003 Fluvirin production by manufacturing
2 approximately 50 million Fluvirin doses for the 2004-2005 flu
3 season and (2) its 2004 pro forma earnings per share (EPS) would be
4 in the range of \$1.80-\$1.90. CAC ¶¶119-141. With some minor
5 alterations, these representations continued well into 2004.

6 On August 26, 2004, Chiron announced that it would delay
7 shipments of Fluvirin pending additional testing, after internal
8 tests identified a small number of lots with sterility problems.
9 Doc #100, Ex A-1 at 7. Chiron announced that the additional
10 testing would delay the Fluvirin shipment until early October and
11 would prevent the company from recognizing revenue from Fluvirin in
12 the third quarter of 2004. Doc #119 at 7. Following the
13 announcement, Chiron's stock price declined from \$47.49 per share
14 on August 26, 2004 to \$43.41 per share on August 27, 2004. Doc
15 #119 at 7.

16 On October 5, 2004 Chiron issued a press release
17 announcing that the MHRA

18 has asserted that Chiron's manufacturing process
19 does not comply with UK Good Manufacturing
20 Practices regulations and has suspended [Chiron's]
21 Liverpool facility license to manufacture influenza
22 vaccine for three months. * * * As a result of the
23 license suspension, Chiron does not expect to
24 record any sales of Fluvirin for the 2004-2005
25 season. Chiron disaffirms its previous full-year
26 2004 pro-forma earnings guidance of \$1.80-\$1.90 per
27 share (a range of \$1.50-\$1.60 per share on a GAAP
28 basis), including its August 2004 guidance of being
in the low end of this range.

Doc #50, ¶142.

26 In essence, MHRA concluded that the manufacturing process at the
27 Liverpool plant did not conform to accepted manufacturing practices
28 and had consequently produced a notable number of contaminated

1 Fluvirin doses. MHRA's Inspection Action Group concluded that it
2 would be too risky to allow Chiron to release potentially
3 contaminated vaccines and thus MHRA suspended Chiron's license.
4 Following the announcement, Chiron's trading stock price dropped
5 from \$45.42/share to close at \$37.98/share, a one-day drop of 16.3
6 percent. Doc #50, ¶142. A week later, this litigation commenced.

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8 Plaintiffs contend that Chiron's projections regarding
9 its (1) expectation to ship approximately 50 million Fluvirin doses
10 worldwide and (2) 2004 pro-forma EPS of \$1.80-\$1.90 were false and
11 misleading when made because Chiron omitted material information
12 known to it at the time of the statements, regarding manufacturing
13 deficiencies at the Liverpool plant. Based on these allegations,
14 plaintiffs sought relief against Chiron, Pien (former Chiron CEO),
15 Smith (former Chiron CFO) and Lambert (former President of Chiron
16 Vaccines).

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18 C

19 As a result of the provisions of 15 USC § 78u-4(b)(3)(B)
20 and the early settlement discussions conducted by counsel, it
21 appears that little, if any, discovery was conducted into the
22 merits of plaintiffs' allegations. The litigation thus appears to
23 have proceeded almost directly from pleading to settlement with no
24 ruling on the pleadings or substantial merits discovery. Both
25 sides stipulated to a proposed settlement on March 29, 2007. The
26 proposed settlement provided that defendants would pay \$30 million
27 in cash plus an amount equivalent to interest at the thirty-day
28 Treasury Bill rate from June 6, 2006 to the date of payment, which
would be paid into a common fund to be distributed to class

1 members. Doc #100, ¶¶4, 9-11.

2 The court denied preliminary approval of the settlement
3 on November 30, 2007, citing four concerns noted above. Plaintiffs
4 subsequently responded to each the court's concerns: (1) Class
5 counsel agreed to reduce its request from 25 percent to 17 percent
6 of the total award, from \$7.5 million to \$5.1 million. Doc #151,
7 at 2. Class counsel also agreed to move certain administrative
8 costs from the lodestar calculation to the expense category. Id.
9 (2) Plaintiffs agreed to include the "magic number" of Chiron
10 common shares in the notice sent to class members, and the court
11 approved the amended notice on June 18, 2008. Doc #171, ¶6. (3)
12 The court certified International Union of Operating Engineers
13 Local No 825 as lead plaintiff on June 18, 2008. Id, ¶3. (4)
14 Plaintiffs included all pertinent information regarding the
15 relationships among law firms involved in this matter in the notice
16 and invitation to comment sent to class members. Docs ## 171, 173.

17 To enable class members to voice their concerns about the
18 terms of the settlement and with the court's encouragement, counsel
19 created a website and an email address specific to this settlement.
20 The website contained links to all relevant documents in the case.
21 The 121,00 notices sent to class members encouraged class members
22 to send emails (or standard letters) explaining their concerns.
23 Doc #171, ¶13. Most of the forty-three class members who sent
24 emails had questions about settlement procedures. Seven of the
25 forty-three raised concerns about the proposed settlement. All
26 seven expressed concern about high class counsel fees, although
27 none provided detailed explanations of his or her concerns. Four
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1 of the seven class members expressed concern about the low value of
2 the settlement, and one of the seven class members expressed
3 concern that the web of relationships among the law firms involved
4 may have affected the settlement. No class members complained by
5 standard mail.

6 Class members appear to have made active use of the
7 website. Data submitted by class counsel indicates that the
8 website was viewed 20,560 times as of December 2, 2008. Doc #194
9 Exh A at 2. The website also logged 6,661 hits to the various
10 litigation-related documents. Id. The most popular documents were
11 the Chiron Proof of Claim and Release Form, with 871 hits, and the
12 Chiron Notice of Pendency of Class Action, with 637 hits. Id.
13 Class counsel also noted at the final approval hearing that all
14 seven class members who complained about the settlement used the
15 website to register their complaints. Doc #193, Hrg Tr, December
16 3, 2008, at 24-25.

17 On October 29, 2008, plaintiffs filed their motion for
18 final approval of the settlement. Doc #182. Federal Rule of Civil
19 Procedure 23(e) requires court approval for the settlement of any
20 class action. In order to be approved, a settlement must be
21 "fundamentally fair, adequate and reasonable." Torrison v Tucson
22 Elec Power Co, 8 F3d 1370, 1375 (9th Cir 1993) (quoting Class
23 Plaintiffs v Seattle, 955 F2d 1268, 1276 (9th Cir 1992), cert
24 denied, 506 US 953 (1992)), cert denied, 512 US 1220 (1994).
25 Because class counsel's fee request remains the problematic element
26 of the proposed settlement, the court will begin with this issue.
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After initially requesting \$7.5 million in fees, class counsel now request \$5.1 million in fees and \$380,717.82 in expenses. Doc #182, at 13. The new fee request represents 17 percent of the total settlement, and the total amount requested is 18.27 percent of the settlement.

"Attorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" Staton v Boeing Co, 327 F3d 938, 963 (9th Cir 2003), quoting FRCP 23(e). The court is obligated to conduct an independent inquiry into the reasonableness of any attorney fee provisions of a class action settlement even in the face of an agreement between the parties regarding the payment and amount of attorney fees and costs.

Common fund cases create a situation in which normal reliance on the adversary process to police the appropriateness of a fee award is unavailing. Report of the Third Circuit Task Force, Court Awarded Attorney Fees (Task Force Report), 108 FRD 237, 251 (3d Cir 1985). A class action defendant has little or no incentive to contest the amount allocated to attorney fees in a proposed settlement, provided the total amount of the settlement is acceptable. Task Force Report at 266. "[T]o avoid abdicating its responsibility to review the agreement for the protection of the class, the Ninth Circuit requires that a district court must carefully assess the reasonableness of a fee amount spelled out in

1 a class action settlement agreement." Staton, 327 F3d at 963
2 (citing Piambino v Bailey, 610 F2d 1306, 1328 (5th Cir 1980);
3 Strong v BellSouth Telecomms, 137 F3d 844, 848-50 (5th Cir 1998);
4 Jones v Amalgamated Warbasse Houses, Inc, 721 F2d 881, 884 (2nd Cir
5 1983)). This obligation is especially strong if the fee award
6 appears high. Staton, 327 F3d at 966.

7 The court's obligation to ensure the fee award is
8 reasonable exists in part because class members have little
9 incentive to register complaints about the award. In re
10 Continental Ill Sec Lit, 962 F2d 566, 573 (7th Cir 1992). While a
11 substantial reduction in the amount class counsel receive as fees
12 creates a larger pool for class members to share, an individual
13 class member may see only a de minimus increase in his settlement
14 value. Id. Individual class members may therefore lack the
15 financial incentive to complain about an excessive fee award. But
16 class members' silence does not lessen the court's responsibility
17 to ensure that the fee award is fair and reasonable. Id.

18 To determine whether a fee award is reasonable, the court
19 uses a lodestar cross-check along with a comparison of the
20 percentage of the common fund sought as fees. The Ninth Circuit
21 has held that a fee of "25 percent has been a proper benchmark
22 figure, which [the district court] can then adjust upward or
23 downward to fit the individual circumstances" of the case. Paul,
24 Johnson, Altom & Hunt v Graulty, 886 F2d 268, 273 (9th Cir 1975).
25 As no objective framework has developed to describe a case's
26 "individual circumstances," judges can rely on numerous criteria to
27 determine whether to adjust an award away from the benchmark. See
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1 Kerr v Screen Extras Guild, 526 F2d 67, 70 (9th Cir 1975). The
2 district court can use the lodestar cross check to determine
3 whether the proposed fee award is reasonable in light of the hours
4 devoted to the case. Six (6) Mexican Workers v Arizona Citrus
5 Growers, 904 F2d 1301, 1312 (9th Cir 1990); In re Washington Public
6 Power Supply System Securities Litigation, 19 F3d 1291, 1296 (9th
7 Cir 1994). The lodestar cross check is not meant as a substitute
8 for percentage based recovery; rather, the check ensures that a
9 percent amount that appears reasonable actually is reasonable in
10 light of the effort class counsel expended. The cross check
11 prevents class counsel from receiving a windfall simply because the
12 settlement was large. In re Elan Sec Lit, 385 F Supp 2d 363, 372-
13 73 (SDNY 2005).

14 The lodestar cross-check properly conducted relies on
15 standardized hourly rates for attorneys, with a multiplier of the
16 total lodestar amount based on class counsel's assumption of the
17 risk of no recovery and the delay inherent in a contingent fee
18 arrangement. In order for the lodestar to provide a meaningful
19 comparison across cases, the court must use standardized rates -
20 more about this presently.

21 A widely recognized compilation of attorney and paralegal
22 rate data is the Laffey matrix, so named because of the case that
23 generated the index. In Laffey v. Northwest Airlines, Inc, 572 F
24 Supp 354 (DDC 1983), aff'd in part, rev'd in part on other grounds,
25 746 F2d 4 (DC Cir 1984), the court employed a variety of hourly
26 billing rates to account for the various attorneys' different
27 levels of experience. The Laffey matrix has been regularly
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1 prepared and updated by the Civil Division of the United States
2 Attorney's Office for the District of Columbia using the Consumer
3 Price Index.² The Laffey matrix is especially useful when the work
4 to be evaluated consists of a mix of senior, junior and mid-level
5 attorneys, as well as paralegals, as is usually the case in complex
6 litigation. Laffey matrix rates are available in appendix A.

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8 Laffey matrix rates are, however, tailored for the
9 District of Columbia, which has a lower cost of living than New
10 York and Los Angeles (the cities in which class counsel operates).
11 Accordingly, to make a locality adjustment, the court will use the
12 federal locality pay differentials based on federally compiled cost
13 of living data. See <http://www.opm.gov/oca/07tables/indexGS.asp>;
14 In re HPL, 366 F Supp 2d at 921 (adjusting locality pay
15 differentials based on the geographical region in which lead
16 counsel's firm operated). A review of the pay tables shows the
17 Washington-Baltimore area has a +18.59 percent locality pay
18 differential; the New York area has a +24.57 percent locality pay
19 differential; and the Los Angeles area has a +24.03 percent
20 locality pay differential. Adjusting the Laffey matrix figures
21 accordingly will yield appropriate rates for the respective
22 geographical regions: +5 percent for New York and +4.6 percent for
23 Los Angeles. The New York and Los Angeles rates are provided in
24 tables in Appendix B.

25 In addition to the Laffey matrix, an updated Laffey
26 matrix, adjusted using the Legal Services Index of the Consumer

27 _____
28 ²http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_3.html, visited December 2, 2008.

1 Price Index, also offers standardized rates for a lodestar cross-
2 check.³ As the Legal Services Index measures national trends in
3 attorney rates, the updated Laffey matrix measures nationwide
4 changes in rates. Accordingly, the court will not make a cost of
5 living adjustment to these rates. Updated Laffey matrix rates are
6 listed in Appendix C.

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8 Because the updated Laffey matrix is adjusted using the
9 nationwide legal services index, the updated matrix may not reflect
10 the Supreme Court's direction to consider "prevailing market rates
11 in the relevant community." Blum v Stenson, 465 US 886, 895
12 (1984). Typically, the "relevant community" refers to lawyers of
13 "reasonably comparable skill, experience and reputation" in the
14 local community. Kattan ex rel Kattan v Dist of Columbia, 995 F2d
15 274, 278 (DC Cir 1993). The updated Laffey matrix does not provide
16 this "geographic specificity." Woodland v Viacom Inc, - FRD -,
2008 WL 500025, *2 (DDC 2008).

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18 Neither is the updated Laffey matrix truly national.
19 When the matrix was developed in 1989, its base rates were local to
20 the Washington DC market.⁴ The matrix has been adjusted upward for
21 almost twenty years using national inflation data. Thus, the
22 updated Laffey matrix is neither truly national nor truly local in
23 nature. Nonetheless, the court will consider the updated Laffey
24 matrix as one approximation of national rates in spite of its
25 shortcomings, in part because the updated matrix provides one of
26 only a few sources of standardized billing rates.

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28 ³www.laffeymatrix.com, visited December 30, 2008.

⁴See www.laffeymatrix.com/expert.html, visited December 30, 2008.

1 The court will not, at this time, at least, enter into
2 any debate about which of these two standardized rate calculations
3 better reflects the market value of legal services. Doc #151 at 5-
4 7. Compare, e g: Salazar v District of Columbia, 123 F Supp 2d 8,
5 13-15 (D DC 2000)(Kessler, J)(upholding the use of updated Laffey
6 rates as evidence of prevailing rates in Washington DC) and
7 Woodland v Viacom Inc, - FRD -, 2008 WL 5000025 (D DC 2008)
8 (Facciola, J)(discrediting the updated Laffey matrix because it
9 does not provide the geographic specificity necessary to represent
10 prevailing rates in the relevant community).

11 Nor does the court contend that the Laffey matrix or its
12 updated cousin represent a precise measure of the market rates for
13 attorney services. Cf Rubenstein, Reasonable Rates: Time to Reload
14 the (Laffey) Matrix, 2 Class Action Attorney Fee Digest 47 (Feb
15 2008). Both matrices nonetheless have features that make them
16 extremely useful. Both have been compiled from baselines that are
17 adjusted in accordance with inflation adjustments consistently
18 applied over time. Further, the matrices provide different
19 compensation levels depending on attorneys' level of experience.
20 This is a particularly important feature because it allows courts
21 to compare multipliers meaningfully among cases requiring mostly
22 partner work as well as cases requiring mostly associate work. Use
23 of a blended hourly rate for attorney services fails to capture
24 this differentiation. A blended or average rate either
25 overcompensates or undercompensates depending on the experience
26 levels of the lawyers involved in the litigation. It would seem
27 the rare case in which the experience-level mix of lawyer inputs
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1 mirrors the average of the lawyers' hourly rates. Thus, whatever
2 criticism may attend use of the Laffey rates, they are useful
3 tools. In any event, counsel here have not offered the court a
4 substitute more accurate measure.

5 The importance of using a consistent standard index like
6 the Laffey matrices deserves a further few words. The failure of
7 many courts, commentators and others who report class counsel fees
8 to use standardized hourly rates renders their reported multipliers
9 problematic. A little arithmetic illustrates the point. Assume
10 that class counsel claims their average hourly rate is \$400, but
11 claim a fee after application of the multiplier of \$750. The
12 reported multiplier in that scenario is 1.8. If, however, an
13 hourly rate of \$300 were claimed, the reported multiplier is 2.5,
14 some forty percent higher. As attorneys' claimed hourly rates vary
15 widely, reported multipliers will be thus affected. Of course, one
16 could accept attorneys' claimed hourly rates and then apply some
17 multiplier and this apparently is what many, if not most, courts
18 do. But attorneys' claimed hourly rates may not accurately capture
19 the going market rate for attorney services upon which fee awards
20 are supposed to be based. See Blum, 465 US at 896 n11. To the
21 extent that counsel can show Laffey rates understate (or overstate)
22 the market rate for the attorney services involved in a particular
23 case that adjustment can (and should) be included in a higher (or
24 lower) multiplier, thus making this adjustment explicitly. Counsel
25 have attempted no such demonstration here.

26 Whatever their imperfections, the Laffey matrices provide
27 a standard that allows multipliers to be compared in one case to
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1 another. Able counsel have not come forward with a better standard
2 than the Laffey matrices, so for now they must do. The court will
3 thus consider both the Laffey matrix and the updated Laffey matrix
4 to determine the reasonableness of class counsel's fee request and
5 use 2007 billing rates to provide the best average rate for work
6 performed from 2004-2008.

7 The court will perform two different lodestar cross-check
8 calculations using original and updated Laffey rates. The court
9 will use class counsel's hours through May 2008 even though the
10 court is somewhat hesitant to apply a multiplier to attorney work
11 performed after the court initially denied approval in November
12 2007, Doc #130. The court nonetheless finds it appropriate to
13 include some hours worked after the settlement was finally
14 negotiated, because class counsel still needed to obtain judicial
15 approval of the settlement. Because class members cannot recover
16 until the court approves the settlement, this work did confer a
17 benefit on class members. The court will however exclude hours
18 spent calculating attorneys' fees. Because the court is performing
19 cross-checks and not determining which lodestar most accurately
20 reflects the value of class counsel's work, the court will consider
21 the resulting multipliers as the range implied by counsel's fee
22 request. The court will then determine whether the individual
23 circumstances in this case support the range of multipliers.

24 The court will perform its calculations as follows. Only
25 categories covered by the Laffey matrix are included. When
26 adjusting original Laffey rates for location, New York rates are
27 used for lead counsel summer clerks and paralegals, and Mr Long's
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1 billing rate reflects a 1 percent downward adjustment for Delaware.
 2 The court will adjust requested rates below Laffey rates upward to
 3 ensure the lodestar calculation provides a meaningful comparison to
 4 other multipliers.

5 The two charts in Appendices D and E represent the two
 6 different lodestar data sets. The chart in Appendix D uses
 7 original Laffey rates and the chart in Appendix E uses updated
 8 Laffey rates. The resulting multipliers are displayed in Table 1
 9 below.

Table 1: Requested Fee and Multipliers			
<u>Data Set</u>	<u>Lodestar</u>	<u>Fee Request</u>	<u>Multiplier</u>
Appendix D (original <u>Laffey</u> rates)	\$991,722	\$5,100,000	5.15
Appendix E (updated <u>Laffey</u> rates)	\$1,254,245	\$5,100,000	4.07

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 19 Based on the court's calculations, the multipliers range
 20 from 4.07 to 5.15.⁵ To illustrate, using updated Laffey rates and
 21 a multiplier of 4.07, a partner with twenty years of experience
 22 would receive \$2499 per hour ($\614×4.07) and a paralegal would
 23 receive \$566 ($\139×4.07) per hour. Using original Laffey rates
 24 and a multiplier of 5.15, that (New York based) partner would

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 27 ⁵ The court also considered whether to apply a multiplier to
 28 hours worked after the court denied preliminary approval of the
 settlement in November 2007. If it had not used those hours in the
 multiplier calculation and instead compensated those hours at a
 straight hourly rate, the multiplier range would have been 5.21-6.66.

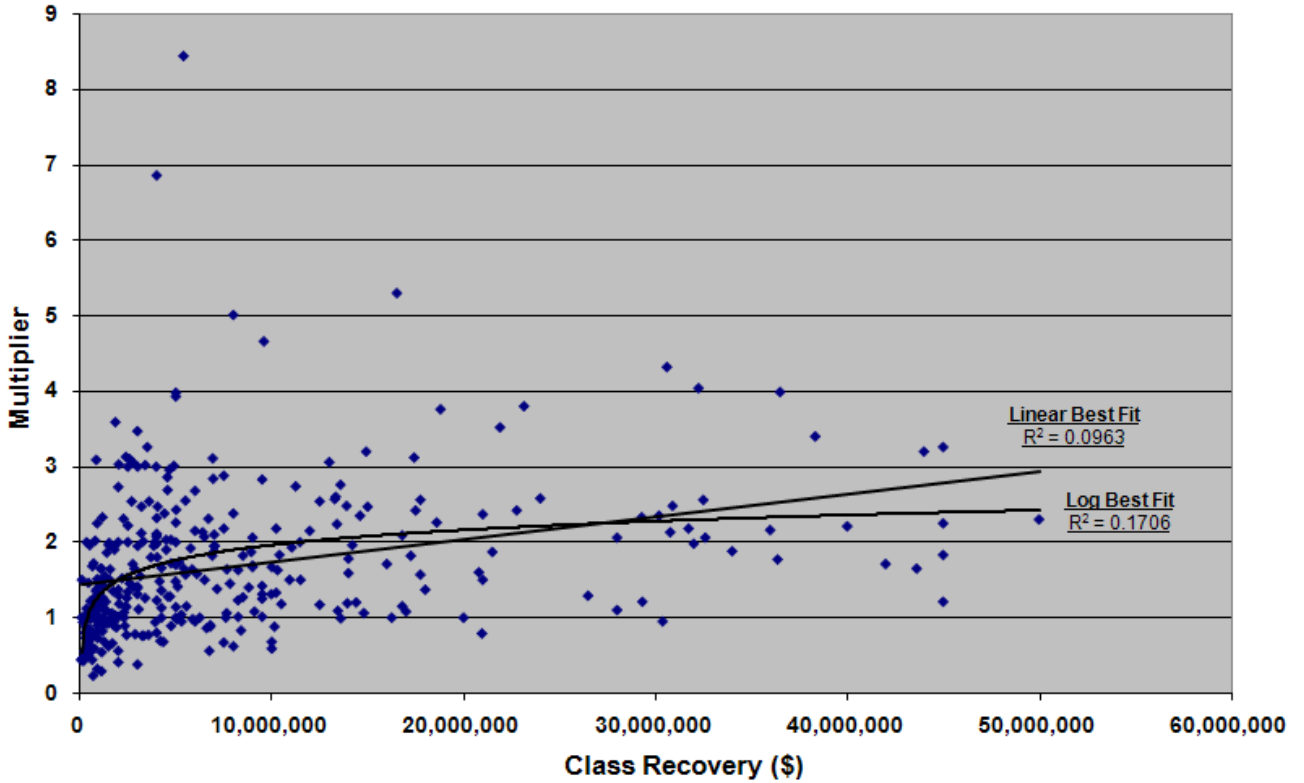
1 receive \$2379 per hour ($\462×5.15) and the paralegal would
2 receive \$676 per hour ($\131.25×5.15).

3 In other scenarios the court has encountered, the
4 multiplier is greater than one and often in the order of two to
5 four. See, e g, Van Vranken v Atlantic Richfield Corp, 901 F Supp
6 294, 298 (ND Cal 1995) ("Multipliers in the 3-4 range are common in
7 lodestar awards for lengthy and complex class action litigation.");
8 Behrens v Wometco Enterprises, Inc, 118 FRD 534, 549 (SD Fla 1988)
9 ("[The] range of lodestar multiples in large complicated class
10 actions [varies from] a low of 2.26 to a high of 4.5."); see also
11 In re Elan, 385 F Supp 2d at 376 (reducing fee award from the
12 requested 4.72 multiplier to a multiplier of 3.47) These judicial
13 observations are borne out in a more systematic study of common
14 fund class action fee awards compiled a few years ago. Beverly C
15 Moore, et al, 24 Class Action Reports, no 2 (March-April 2003).
16 This study included 877 securities class actions, 391 of which
17 reported multiplier data. Of these 391 cases, 353 involved class
18 recoveries of \$50 million or less. The multipliers observed in
19 these cases charted against the amounts of recovery are displayed
20 in the following chart:
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United States District Court
For the Northern District of California

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Multiplier v Class Recovery \$50 Million or Less



Linear and non-linear regressions show the multiplier in these cases to fall in the range of 0.5 to 3.0. This chart shows that negative multipliers - those below 1.0 - are more common than the court previously perceived. See Doc #190 in 03-5138 VRW (In re Portal Software, Inc Sec Litig). Because these multipliers appear not to have been calculated with standardized hourly rates, they may not afford definitive guidance. The court expects some variation between multipliers calculated with standardized rates and multipliers calculated with attorneys' requested rates.

The court will nonetheless use the study as a starting point to compare multipliers in this case with other reported class action multipliers. The 4.07-5.15 range barely brushes against the

1 high end of typical lodestar multiplier range (2-4.5). Some of
2 that disparity may be explained by the court's use of standardized
3 rates, which may be lower than attorneys' request rates and may
4 result in a higher multiplier. The court is not convinced,
5 however, that updated Laffey rates are significantly different from
6 typical attorney rates. While the rates for the most senior
7 lawyers claimed by class counsel are higher than updated Laffey
8 rates, hourly rates claimed for other less than the most senior
9 lawyers claimed by counsel fall fairly well in line with updated
10 Laffey rates. Compare Appendix C and Docs ## 127, 128. Indeed,
11 the updated Laffey matrix was created to reflect attorney billing
12 practices accurately. See www.laffeymatrix.com/expert.html,
13 visited December 30, 2008. While the range of typical multipliers
14 must be viewed broadly because the rates used to calculate the
15 multiplier were not standardized, by any measure class counsel's
16 fee request implies a multiplier outside the standard range. This
17 is not the end of the analysis, however, because the court can
18 award a large multiplier in appropriate cases. Accordingly, the
19 court will consider a range of factors to determine whether a
20 larger than usual multiplier might be appropriate based on the
21 facts in this case.

22 Some factors that may justify a multiplier outside the
23 usual range include the risk of non-recovery at the outset of
24 litigation, the complexity of the action, class counsel's
25 performance in obtaining the best settlement possible for the
26 class, class counsel's efficiency and whether class members are
27 satisfied with the settlement. See Goldberger v Integrated
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1 Resources, Inc, 209 F3d 43, 47 (2d Cir 2000)(listing factors that
2 support the use of a multiplier greater than one in common fund
3 settlement cases); Van Vranken, 901 F Supp at 297 (discussing
4 factors that could justify a higher than typical fee award).

5 Class counsel argue that these factors justify their
6 requested fee award. Specifically, counsel argues that they
7 obtained a larger than average settlement (10.7 percent of
8 estimated damages rather than what counsel asserts as the typical
9 median, 2.3-2.8 percent). Doc #182 at 43. Further, counsel assert
10 that the risk of non-recovery was high because of the difficulty in
11 demonstrating scienter, one of the elements of their claim. Id at
12 44. Counsel point to the dismissal of several securities class
13 actions as an indication that securities class actions are often
14 dismissed with no recovery for class counsel. Id at 45. Counsel
15 point out that their work was high quality, measured both by their
16 experience and their success in this case. Id at 46. Finally,
17 counsel note that while class members had ample opportunity to
18 object to the settlement via email through the court-created
19 website, only seven class members voiced any concern about the size
20 of class counsel's requested fee award.

21 The court accepts most of counsel's arguments. Counsel
22 worked hard to obtain a good settlement for class members. The
23 risk of non-recovery was real. Certainly class counsel deserve a
24 multiplier. The real question is whether they deserve a multiplier
25 as high as they have requested, and in this case, the court
26 believes a multiplier in the three to four range is more
27 appropriate for the following reasons.
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1 The court turns first to the risk of non-recovery implied
2 in class counsel's requested multiplier. The risk of non-recovery
3 is one of the most important factors the court considers when
4 determining whether to award a multiplier. Goldberger, 209 F3d at
5 54. Accordingly, the court conducts a calculation to determine an
6 estimate of the risk implied by the multiplier. The equation used
7 is simple: (value of \$1 of attorney time plus interest)/(risk of
8 non-recovery) = multiplier. The court will use an interest rate of
9 10% and take one dollar worked in the middle of the case. As class
10 counsel has worked four years on this case, the court will
11 calculate 2.5 years of (non-compounding) interest on the dollar.
12 The equations thus become $1.25/p = 4.07$ or $1.25/p = 5.15$ where p is
13 the probability of non-recovery and 4.07 and 5.15 are class
14 counsel's requested multipliers. In the first equation, $p = .31$.
15 In the second, $p = .25$. Class counsel is thus asking to be
16 compensated assuming they would only recover 25 to 31 percent of
17 the time. The court does not believe this accurately represents
18 the risk faced by counsel at the outset of this litigation.

19 Counsel's risk level was not out of the ordinary. Twelve
20 different law firms filed six different cases that make up this
21 litigation, which indicates that at the outset many firms were
22 willing to take the risk. See In re Elan, 385 F Supp 2d at 375
23 (noting that because many firms wanted to bring a suit, the risk of
24 non-recovery at the outset was not that great). Further, both the
25 Securities and Exchange Commission and the United States Attorney's
26 Office for the Southern District of New York announced
27 investigations into potential Chiron wrongdoing, Doc #103, ¶22,
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1 which provides yet another indicator that counsel had a good chance
2 to recover. In re Elan, 385 F Supp 2d at 375. At the outset, this
3 case was far from a long shot. While class counsel certainly faced
4 a risk, these circumstances show their chances of recovery were
5 greater than one in four.

6 The other factors, including the quality of work
7 performed by class counsel and the amount of the settlement
8 obtained in the face of possible dismissal, do indicate that class
9 counsel deserves a multiplier. The recovery for the class was
10 substantial but compared to the claimed estimate of class damages
11 not large. Class counsel did a good job and did so at a time when
12 the principal law firm representing the class was undergoing
13 significant challenges. Counsel's continuing professionalism in
14 the face of these challenges is commendable but that unfortunate
15 circumstance does not warrant extracting an unusually large fee
16 award from the class's share of the recovery. Nothing about these
17 other factors is unique enough to justify a multiplier as large as
18 the one class counsel has requested.

19 Class members had the opportunity to comment on the terms
20 of the settlement, and for the most part, class members did not
21 voice concern about the amount that class counsel would obtain in
22 fees. But, as noted, class members do not always have an incentive
23 to speak up, because an individual class member's recovery may not
24 significantly increase if class counsel's fee award is reduced. In
25 re Continental Ill Sec Lit, 962 F2d at 573. The court believes
26 that class members' relative silence, especially in a case where
27 class members could easily express disapproval via email, is
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1 another factor that justifies a multiplier in the upper range.
2 Class members' silence does not however give the court authority to
3 approve a fee award that provides class counsel with a windfall.

4 Accordingly, the court will reduce class counsel's fee
5 award from \$5.1 million to \$4.6 million. As illustrated in Table
6 2, below, this award implies a multiplier of 3.67 - 4.64. Using
7 the equation described above, (value of \$1 of attorney time plus
8 interest)/(risk of non-recovery) = multiplier, assuming a ten
9 percent interest rate, this new fee award assumes a risk of non-
10 recovery of between twenty-seven percent ($1.25/p = 4.64$) and
11 thirty-four percent ($1.25/p = 3.67$). While the court recognizes
12 this is still a generous multiplier, it more accurately represents
13 the risk faced by class counsel and brings the award within the
14 standard range of multipliers. The court is thus confident this
15 award reasonably compensates class counsel and is not unfair to
16 either the class or class counsel.

17

18 Table 2: Adjusted Award

19 <u>Data Set</u>	<u>Lodestar</u>	<u>Fee Award</u>	<u>Multiplier</u>
21 Appendix D 22 (original <u>Laffey</u> 23 rates)	\$991,722	\$4,600,000	4.64
24 Appendix E 25 (updated <u>Laffey</u> 26 rates)	\$1,254,245	\$4,600,000	3.67

27 The court now turns to the other factors that prevented it
28 from granting preliminary settlement approval in November 2007.

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B

The court initially expressed concern that the notice sent to class members did not include the "magic number" of Chiron Corporation common shares that, if held by opt-outs, would trigger defendants' rights to terminate the settlement. The court considered this a material term of the settlement. Doc #130, at 21. The plaintiffs agreed to include the "magic number" of Chiron common shares in the notice sent to class members, and the court approved the amended notice on June 18, 2008. Doc #171, ¶6. The court's approval of the notice adequately addressed this concern.

C

The court was concerned that the lead plaintiff, International Union of Operating Engineers Local 825, would not fairly and adequately represent all class members because of its relationship with class counsel and its involvement as lead counsel in other securities class action lawsuits. Doc #130, at 24-26. These concerns were resolved when the court certified Local 825 as lead counsel on June 18, 2008. Doc #171, ¶3.

D

The court's final concern involved criminal charges then pending against lead counsel. Doc #130, at 29-30. The court's concerns were twofold: (1) to ensure that all class members received full and fair disclosure of the charges and the attorney relationships and (2) to avoid any appearance of impropriety. The court was never concerned with any actual wrongdoing in connection with this case. Doc #130, at 35.

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To address its concerns, the court required that the notice sent to class members contain a complete and accurate statement of all relevant facts. Docs ##171, 173. Further, the notice invited class members to comment regarding any concerns members had with counsel in this case. The court received only one response from a class member, who noted that "it is hard to believe there was no inter-mingling in this litigation." Email from Roy W and Patricia A Fogle, August 12, 2008. No other class members raised any concerns. Class members' overwhelming silence indicates that class members do not believe criminal charges or the web of attorney relationships affected this case. The court is thus satisfied that no appearance of impropriety exists in this case.

III

The court has reviewed and resolved its initial concerns with the proposed settlement and now concludes that the updated settlement, Doc #182, is fair and reasonable in this case. Class counsel's fee request, however, must be reduced. Accordingly, the court reduces class counsel's fees to \$4.6 million and GRANTS lead plaintiff's motion for final settlement approval.

IT IS SO ORDERED.



VAUGHN R WALKER
United States District Chief Judge

Appendix A: Laffey Base Rates

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Original Laffey Matrix 2007 Rates

<u>Experience</u>	<u>Rate Per Hour</u>
20+ Years	\$440
11-19 Years	\$390
8-10 Years	\$315
4-7 Years	\$255
1-3 Years	\$215
Paralegals and Law Clerks	\$125

Appendix B: New York and Los Angeles Laffey Rates

Adjusted 2007 original Laffey Rates

<u>Experience</u>	New York Hourly Rate (+5% Adjustment)	Los Angeles Hourly Rate (+4.6% Adjustment)
20+ Years	\$462	\$460.24
11-19 Years	\$409.50	\$407.94
8-10 Years	\$330.75	\$329.49
4-7 Years	\$267.75	\$266.73
1-3 Years	\$225.75	\$224.89
Paralegals and Law Clerks	\$131.25	\$130.75

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Appendix C: Updated Laffey Rates

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Updated <u>Laffey</u> Matrix 2007 Rates	
<u>Experience</u>	<u>Rate Per Hour</u>
20+ Years	\$614
11-19 Years	\$509
8-10 Years	\$452
4-7 Years	\$313
1-3 Years	\$255
Paralegals and Law Clerks	\$139

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Appendix D: Original Laffey RatesOriginal Laffey Rates for Hours through May 27, 2008

<u>Attorney/ Paralegal</u>	<u>Location</u>	<u>Years Experience</u>	<u>2007 Laffey Rate</u>	<u>Total Hours</u>	<u>Total Lodestar</u>
Bauer, G	NY	27	462.00	110.5	\$51051
Bershad, D	NY	42	462.00	1.25	\$577.50
Graziano, S	NY	15	409.50	7.5	\$3,071.25
Kartapoulos, A	NY	25	462.00	378.5	\$174,867
Kusel, E	NY	12	409.50	72.25	\$29,586.38
Rogers, K	LA	11	407.94	6.5	\$2,651.61
Schulman, S	NY	26	462.00	2.75	\$1,270.50
Seidman, P	NY	12	409.50	67	\$27,436.50
Weiss, M	NY	47	462.00	31.4	\$14,506.80
Westerman, J	NY	27	460.24	317.25	\$146,569.50
Andrejkovis, P	NY	11	409.50	1.5	\$614.25
Furukawa, M	LA	3	224.89	60.5	\$13,605.85
Lin, E	LA	13	407.94	960.5	\$391,826.37
Lipton, A	NY	6	267.75	0.25	\$66.94
Long, B	DE	9	313.43	0.75	\$235.07
McCulloch, K	LA	12	407.94	24.3	\$9,912.94
Mills, J	NY	4	267.75	2.5	\$669.38
Quinn, MJ	NY	15	409.50	0.25	\$102.38
Rado, A	NY	7	267.75	75.5	\$20,215.13
Chowdhury, I	LA	9	329.49	9.25	\$3047.78
Kroll, A	NJ	33	462	4.6	\$2125.20
Giblin, V	NJ	11	409.50	52.5	\$21,498.75
Finnell, L	NJ	3	225.75	0.1	\$22.58

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1	Glancy, L	LA	19	407.94	0.75	\$305.96
2	Goldberg, M	LA	11	407.94	12.0	\$4,895.28
3	MacDiarmid,	LA	4	266.73	1.2	\$320.08
4	D					
5	Murray, B	NY	17	409.50	8.0	\$3,276.00
6	Belfi, E	NY	11	409.50	8.5	\$3,480.75
7	Donders, L	NY	5	267.75	1.0	\$267.75
8	Hinton, C	NY	4	267.75	0.5	\$133.88
9	Patton, A	NY	4	267.75	1.6	\$428.40
10	Summer	NY	-	131.25	6.25	\$820.31
11	Clerks					
12	Paralegals		-	130.75	345.45	\$45,167.59
13	(LA)					
14	Paralegals		-	131.25	127.25	\$16,701.56
15	(NY)					
16	Paralegals		-	131.25	3.0	\$393.75
17	(NJ)					
18	Totals				2702.9	\$991,722

Appendix E: Updated Laffey Rates

Adjusted <u>Laffey</u> Rates for Hours through May 27, 2008					
<u>Attorney/ Paralegal</u>	<u>Location</u>	<u>Years Experience</u>	<u>2007 Laffey Rate</u>	<u>Total Hours</u>	<u>Total Lodestar</u>
Bauer, G	NY	27	614	110.5	\$67,847
Bershad, D	NY	42	614	1.25	\$767.50
Graziano, S	NY	15	509	7.5	\$3,817.50
Kartapoulos, A	NY	25	614	378.5	\$232,399
Kusel, E	NY	12	509	72.25	\$36,775.25
Rogers, K	LA	11	509	6.5	\$3,308.50
Schulman, S	NY	26	614	2.75	\$1,688.50
Seidman, P	NY	12	509	67	\$34,103
Weiss, M	NY	47	614	31.4	\$19,279.60
Westerman, J	NY	27	614	317.25	\$194,791.50
Andrejkovis, P	NY	11	509	1.5	\$763.50
Furukawa, M	LA	3	255	60.5	\$15,427.50
Lin, E	LA	13	509	960.5	\$488,894.50
Lipton, A	NY	6	313	0.25	\$78.25
Long, B	DE	9	452	0.75	\$339
McCulloch, K	LA	12	509	24.3	\$12,368.70
Mills, J	NY	4	313	2.5	\$782.50
Quinn, MJ	NY	15	509	0.25	\$127.25
Rado, A	NY	7	313	75.5	\$23,631.50
Chowdhury, I	LA	9	452	9.25	\$4,181
Kroll, A	NJ	33	614	4.6	\$2,824.40
Giblin, V	NJ	11	509	52.5	\$26,722.50
Finnell, L	NJ	3	255	0.1	\$25.20

1	Glancy, L	LA	19	509	0.75	\$381.75
2	Goldberg, M	LA	11	509	12.0	\$6,108
3	MacDiarmid,	LA	4	313	1.2	\$375.60
4	D					
5	Murray, B	NY	17	509	8.0	\$4,072
6	Belfi, E	NY	11	509	8.5	\$4,326.50
7	Donders, L	NY	5	313	1.0	\$313
8	Hinton, C	NY	4	313	0.5	\$156.50
9	Patton, A	NY	4	313	1.6	\$500.80
10	Summer	NY	-	139	6.25	\$868.75
11	Clerks					
12	Paralegals		-	139	345.45	\$48,017.55
13	(LA)					
14	Paralegals		-	139	127.25	\$17,687.75
15	(NY)					
16	Paralegals		-	139	3.0	\$417
17	(NJ)					
18	Totals				2702.9	\$1,254,245

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