CO-COUNSEL AGREEMENT

This co-counseling arrangement is between the firms of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (collectively referred to as “Counsel”) relating to a proposed case or cases to be brought, individually and on behalf of a class of persons who \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The case or cases will be brought against \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and such entities as may also may be responsible for the misconduct sought to be redressed in the case.

I. General Cooperation and Terms

We will all share in the preparation and presentation of this case. We will work cooperatively on discovery, briefing and hearings, with assignment of tasks to be decided by consensus. We will consult with each other prior to taking any strategic actions and will regularly confer with each other in the planning and direction of the case. It is anticipated that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will have direct, in person relationships with the Class Representatives, in which case it will have the primary responsibility for advising the Class Representatives on the progress of the case and discussing settlement offers and demands with them.

The Class Representatives and any other future named class representatives will sign a joint Retainer Agreement with Counsel, prior to our proceeding with the representation of their interests in this action.

If it is subsequently decided unanimously by Counsel that additional counsel should be brought into the case to assist in the representation of the Class Representatives and the putative class, this agreement will be revised to reflect any new arrangements that are agreed upon.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will be responsible for publicizing this case and the public interest issues it addresses nationally, while \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will be responsible for local publicity, if any. Counsel will cooperate fully with all publicity and public education efforts and may publicize this case through their own publications and organizational memberships. All parties to this agreement must approve all press releases and press conferences, in advance. In all written and oral communications with the press about the case, the involvement of all counsel will be mentioned.

II. Attorney Fees

A. If there is a Fee-Shifting Award

Fee-shifting may be available on some of the claims in this matter. If so, we will attempt to obtain an order from the Court requiring the defendant(s) to pay litigation expenses and attorneys’ fees on a lodestar basis calculated using hours worked times reasonable hourly rate. Similarly, if the case is settled, and no common fund is created for the benefit of the class, we will attempt to get Defendants to agree to pay such fees and expenses. We may also agree to seek a reasonable multiplier to the lodestar amount where deemed appropriate. Fees recovered through fee-shifting will be divided among us in proportion to the respective lodestars of our firms.

B. If there is a Common Fund Recovery

If the case is settled on behalf of a class and a common fund is created, we all reserve the right to have our attorneys’ fees and litigation expenses paid from said common fund. In recognition of the sharing of responsibility in representing the clients, while dividing the labor between us, Counsel have agreed that, after all costs and expenses incurred have been reimbursed first from the common fund, whatever fee is awarded by the court from the common fund will be distributed on a pro rata basis, to be determined fairly by our relative contributions to the litigation based upon a lodestar basis calculated using hours worked times the hourly rates agreed to by the parties, for purposes of this calculation only, as set forth in Schedule A below. For purposes of this division of fees in the event of a common fund recovery, these hourly rates are to be applied uniformly by experience level determined by years of practice regardless of jurisdiction or expertise in particular matters.

C. Miscellaneous

(i) Each counsel will keep detailed, contemporaneous records of all time expended on this matter.

(ii) We will at all times endeavor to ensure that there is no duplication of the work performed.

(iii) In calculating his/her/their lodestar for purposes of a fee shifting award or a common fund fee award, each counsel may include documented time spent prior to the date of this Agreement in researching and analyzing relevant legal issues, drafting documents, conferring with class representatives and co-counsel, and other endeavors directly related to the case.

III. Costs and Expenses

Common Expenses shall consist of those costs relating to the investigation and prosecution of the lawsuit, including, but not limited to filing fees, reporter fees and transcript costs, costs of copying of documents produced in the case, costs of mailings to class or potential class members, class administration costs, costs of publishing notices, witness fees and expenses, investigative costs, expert fees and expenses and expenses associated with the preparation of demonstrative exhibits including trial exhibits. The firms that are party to this agreement shall divide and share the costs of the Common Expenses among themselves equally. Common Expenses will be reimbursed from any settlement or court award at their face value, prior to the distribution of the remaining funds for attorneys’ fees and other, non-Common Expenses and costs.

Each Counsel will advance its own costs for general office overhead, travel, lodging, meals-away, telephone, fax, copying (miscellaneous only, see above, computerized research, mailing (miscellaneous only, not mailings to class or potential class members, see above), word processing and clerical support. These will be reimbursed from any settlement or court award at their face value, prior to the distribution of the remaining funds for attorneys’ fees.

IV. Right to Terminate this Agreement

Each of our respective offices reserves the right to terminate this agreement and to seek withdrawal of representation of the Class Representative(s) and the putative class if any of the Counsel do not honor the terms reached herein or for any just reason as permitted or required by applicable Codes of Professional Conduct or as permitted by rule of court. A withdrawing office will provide Counsel with advance notice of their decision to seek withdrawal prior to any filing with the Court. A withdrawing office retains the right to seek payment of attorney fees or reimbursement of expenses from any court award or settlement for all work performed prior to the termination of the agreement or withdrawal.

V. Appeals and Separate Legal Actions

In the event that the Class Representatives receive a negative decision on their claims, each Counsel will determine whether their office will agree to provide legal representation in an appeal of the decision. Similarly, if a separate legal action becomes necessary as part of the litigation of any and all of the Class Representatives’ claims, Counsel will have the right to determine whether to provide them with legal representation in the ancillary case or cases.

IT IS SO AGREED.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: Dated:

|  |  |
| --- | --- |
| SCHEDULE A  LODESTAR BILLING RATES FOR PURPOSES OF THIS AGREEMENT | |
| Experience | Hourly Rate |
| 1-3 years: | $/hr. |
| 4-7 years: | $/hr. |
| 8-10 years: | $/hr. |
| 11-19 years: | $/hr. |
| 20+ years: | $/hr. |
| Paralegals & Law Clerks: | $/hr. |