

EXHIBIT 7

DECLARATION OF CAROL A. SOBEL

1 McNICHOLAS & McNICHOLAS LLP
2 Matthew S. McNicholas (State Bar No. 190249)
3 Douglas D. Winter (State Bar No. 150795)
4 10866 Wilshire Boulevard, Suite 1400
5 Los Angeles, CA 90024-4338
6 Tel: (310) 474-1582
7 Fax: (310) 475-7871

8 Attorneys for Plaintiff KAILYNN G.,
9 by and through her guardian ad litem,
10 KANDACE SIMPLIS

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

13 KANDACE SIMPLIS; KYRA S., by
14 and through her guardian ad litem
15 KANDACE SIMPLIS; and
16 KAILYNN G., by and through her
17 guardian ad litem KANDACE
18 SIMPLIS; KHANDI ROSE, an
19 involuntary plaintiff; DYVONN G.,
20 an involuntary plaintiff; DEUJANYE
21 G., an involuntary plaintiff;
22 DAJAYNE G., an involuntary
23 plaintiff,

24 Plaintiffs,

25 v.

26 CULVER CITY POLICE
27 DEPARTMENT; CITY OF CULVER
28 CITY; CHIEF DON PEDERSEN, in
his official and individual capacities;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CV 10-09497-MWF-MANx
(Consolidated Case No.: CV 11-04285-JHN-MANx)

**DECLARATION OF MATTHEW S.
McNICHOLAS IN SUPPORT OF
PLAINTIFF’S MOTION FOR
ATTORNEY’S FEES**

Date: August 26, 2013
Time: 1:30 p.m.
Ctm: 1600
Judge: Hon. Michael W. Fitzgerald

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

I, Matthew S. McNicholas, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and am a partner at McNicholas & McNicholas, LLP, counsel of record for plaintiff Kailynn G. The matters contained in this declaration are known to me personally, and if called upon to testify as to such matters under oath in a court of law, I could and would do so competently.

2. I have represented over fifty officers in employment-related matters against various law enforcement agencies, including the Los Angeles Police Department and the Sheriff's Department, and I have spoken with hundreds more concerning potential cases that I ultimately did not take. It is, in my experience, a rule without exception that such cases involve considerable time and labor in order to obtain a successful result for the officer. Whereas in other areas of law, the parties may reach an early settlement, cases against a governmental agency cannot be settled without approval by the City Council, a fact which acts in many instances as a deterrent for plaintiffs' attorneys to prosecute such cases and reduces the desirability of such cases.

3. This case was no exception. Since June, 2010, my firm has worked on this matter with a risk of no recovery. Bringing it to a successful resolution required, among other things, the skill and specific institutional knowledge I acquired from representing sworn personnel from patrol divisions throughout greater Los Angeles (which includes people conducting traffic stops, felony stops, and the like), firearms training personnel, air support personnel, bomb squad personnel, K9-Unit personnel, SWAT personnel, as well as personnel from clandestine units that track, monitor, and observe other officers. My firm has had to overcome bureaucratic red tape, government hurdles and the pervasive "code of silence" in order to obtain competent evidence to present at trial, which has led to tremendous insight and knowledge as to

1 how personnel operate in the field. This was arduous and required perseverance and
2 stamina over more than a decade.

3 4. Taking on a case of this nature involves a significant amount of time
4 and precludes me and my firm from accepting other clients.

5 5. I have been practicing law for fourteen years and have been associated
6 with McNicholas & McNicholas, LLP since 1998. I clerked for United States
7 District Judge William J. Rea, externed on a full-time basis for United States District
8 Judge John G. Davies, and externed on a full-time basis for Associate Justice
9 Richard Aldrich on the California Court of Appeal. I have been a featured panelist at
10 seminars hosted by Consumer Attorneys Association of California and Consumer
11 Attorneys Association of Los Angeles, and am a member of the American Board of
12 Trial Advocates and am currently waiting to be sworn-in to the American College of
13 Trial Lawyers this fall. I have had several articles published and have acted as
14 consultant to several members of print and television media. Currently, I am
15 representing over two dozen sworn personnel in matters against various departments
16 and agencies concerning retaliation, harassment and discrimination – all of which
17 requires extensive working knowledge of police departments and police officers.

18 6. In 2012, I, along with Douglas Winter of my office, tried the matter of
19 *Avila v. City of Los Angeles*, Case No. CV 11-1326-SJO (FMOx) (the “*Avila*
20 *Matter*”), resulting in a jury verdict in favor of our client, Plaintiff Leonard Avila on
21 his claim for FLSA retaliation against the LAPD. As set forth more particularly
22 below, on August 2, 2012, the District Court, Hon. S. James Otero, awarded
23 attorney’s fees in favor of Plaintiff in the *Avila Matter* of approximately \$580,000.

24 7. In 2010, I tried the matter of *Romney v. City of Los Angeles*, resulting in
25 a verdict of \$3,995,000. As the Court is aware, the *Romney* matter arose out of the
26 same underlying *Maciel* trial, in which Romney, like Avila here, was retaliated
27 against for testifying against the LAPD.
28

1 8. I tried the matter of *Francois v. City of Los Angeles*, resulting in a
2 verdict of \$5,340,000. That case was substantially similar to the instant matter in
3 that it was a retaliation case against the LAPD Bomb Squad.

4 9. In April 2009, I tried the matter of *Melissa Borck v. City of Los Angeles*
5 *et al.*, a case involving retaliation and failure to prevent gender harassment by the
6 Los Angeles Police Department that resulted in a jury award of \$2,312,439.00 before
7 Judge Hatter.

8 10. In 2003, I tried the matter of *Nagatoshi v. City of Los Angeles*, resulting
9 in a jury verdict of \$3,591,000.00. Again, the case was similar to the instant matter
10 in that it involved retaliation against a member of the LAPD Metropolitan Division
11 K9 Unit.

12 11. In November 2008, I tried the matter of *Bender v. City of Los Angeles*
13 resulting in a jury verdict of \$3,603,000.00. Once again, the case was similar to the
14 *Avila* case in that it was a retaliation claim arising out of the plaintiff's support of the
15 lone female LAPD Bomb Detection K9 handler's reports of harassment.

16 12. I also handled *Fuller v. City of Los Angeles*, on behalf of the female
17 LAPD Bomb Detection K9 officer whose claims Bender supported. In October
18 2008, that case was resolved in the amount of \$2,250,000.00.

19 13. I have other substantial results, including, but not limited to: \$9,000,000
20 on behalf of a plaintiff against his employer for a brain injury in a single vehicle
21 accident in Chicago; \$2,200,000 on behalf of special education student against the
22 LAUSD for a one-time sexual assault by another special education student in a
23 school bathroom; \$8,000,000 on behalf of multiple tenants against their landlord for
24 habitability issues, wherein one young tenant was suffering uveitis leading to partial
25 blindness in one eye; and \$2,000,000 on behalf of three adult children and their
26 father for the wrongful death of their 68-year-old mother in San Francisco.
27
28

1 14. In this case, I competently performed necessary work in preparation for
2 trial as well as participated in meetings and strategy for trial. I was lead trial counsel
3 for Plaintiff Kailynn G., and conducted direct and cross-examination of witnesses.

4 15. In this matter I spent at least 303.00 hours of my own time (not counting
5 those of my associates). However, this figure does not include numerous telephone
6 conferences, internal meetings conducted and related activities. All of the work
7 undertaken and performed by me on this case was necessary and reasonable.

8 16. My reasonable billing rate is \$750.00. This is a reasonable rate based
9 upon fourteen years of experience as a plaintiff's attorney, experience as a trial
10 lawyer, the results obtained in jury trials, and my expertise in the area of wrongful
11 termination and retaliation. Moreover, this rate is reasonable because I have recently
12 been retained at rates of \$850 per hour and have been awarded fees at an approved
13 hourly rate of \$800.00. Specifically, in early 2011, I was retained to represent an
14 officer from one of the four largest banks in the United States concerning his
15 employment-related issues and separation from his employer. The representation
16 lasted throughout 2011. I was retained on a blended-rate, which included an hourly
17 component and a percentage of the separation package. The hourly rate was
18 \$850.00. This was the most recent time I have been retained on an hourly basis. In
19 addition, I have been recently awarded fees with an approved hourly rate of \$800.00
20 in *Do Rights Plant Growers v. RSM Equico, Inc.*, Case No. 06CC00137 (2011).
21 Previously, in late 2010, I was awarded fees with an approved hourly rate of \$650.00
22 in the *Romney* matter, and was similarly awarded fees with an approved hourly rate
23 of \$650.00 in the following cases: *Flud et al. v. Spherion Pacific Workforce, LLC, et*
24 *al.*, Case No. S-1500-CV-259321 SPC (Aug., 2010); *Jimenez v. Diamond Contract*
25 *Servs.*, Case No. BC403968 (July, 2010); *Mendoza v. AKH Company, Inc.*, Case No.
26 BC379641 (June, 2009).

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

17. Most recently, by Order dated August 2, 2012, the Hon. S. James Otero awarded \$579,400 in attorney’s fees in favor of McNicholas & McNicholas, LLP’s prevailing client in a federal FLSA retaliation matter in *Avila v. Los Angeles Police Dept., et al.*, Case No. 2:11-cv-01326 SJO (FMOx) - Docket No. 209. Judge Otero’s hourly rate determinations were as follows: Matthew McNicholas - \$700/hr.; Douglas Winter (“Mr. Winter”) - \$600/hr.; Catherine Schmidt - \$550/hr.; Alyssa Schabloski - \$450/hr.; Cameron Fredman - \$350/hr. A true and correct copy of Judge Otero’s fee order in the *Avila* matter is attached hereto as Exhibit 2. Judge Otero specifically determined that these hourly rates were reasonable based on consideration of each of our attorneys’ respective experience, prior awards and success, as well as the local legal community. With the exception of a \$50/hr. rate increase for me and Mr. Winter, Plaintiff Kailynn G. seeks an award herein based on the same hourly rates as those awarded by Judge Otero last year.

18. My experience is commensurate with that of a partner at any “blue-chip” law firm such as Gibson, Dunn & Crutcher, Paul, Hastings, Janofsky & Walker, O’Melveny & Meyers, or Latham & Watkins. In fact, I likely have more trial experience than any senior litigator in any of those firms, as evidenced by my membership in the American Board of Trial Advocates. As such, my hourly rate is necessarily on par with that of a senior partner at such a firm defending a discrimination lawsuit on behalf of a corporate client.

19. I have been assisted in this matter, including in preparation for and at trial, by my associate, Douglas Winter, who joined McNicholas & McNicholas in January, 2012. Prior to joining our firm, Mr. Winter was a partner at The Ball Law Firm, LLP (2008-2011) and at Riley & Reiner (1992-2008). Mr. Winter graduated from U.C. Hastings College of the Law in 1990, and became a member of the California Bar the same year. Prior to beginning his career in private practice, Mr. Winter served as a judicial extern to the Honorable Richard A. Gadbois, Jr.

1 20. Mr. Winter has represented clients in a wide variety of litigation
2 matters, and has extensive trial and appellate experience in both state and federal
3 courts. Mr. Winter has successfully tried several cases to decision or verdict, and has
4 been responsible for the successful outcome of significant trademark and copyright
5 litigation at both trial and appellate levels, resulting in published decisions including
6 *Fleischer Studios, Inc. v. A.V.E.L.A., Inc.*, 654 F.3d 958 (9th Cir. 2011), and *Warner*
7 *Bros. Entertainment v. X One X Productions*, 644 F.3d 584 (8th Cir. 2011).

8 21. In this matter, Mr. Winter worked diligently both pre-trial and during
9 trial, and has billed a total of 76.25 hours in this case. Included in this amount is the
10 time worked by Mr. Winter preparing the instant motion for fees. All of Mr.
11 Winter's time and professional skills were reasonable and necessary to the successful
12 prosecution of Kailynn G.'s case. Mr. Winter's hourly rate is \$650.00. Based on
13 Mr. Winter's skill and significant experience, this rate is reasonable and appropriate.
14 Moreover, as discussed above, Judge Otero determined in August, 2012 that Mr.
15 Winter's reasonable hourly rate was \$600.00 per hour based on Mr. Winter's
16 experience and the prevailing market rates. Further, in 2010 and 2011, as a partner
17 at The Ball Law Firm, LLP, Mr. Winter customarily charged clients in the range of
18 \$500 to \$575 per hour, depending on the nature of the representation.

19 22. Patrick McNicholas prepared for and took the deposition of witness
20 Amanda Medeiros in this matter, expending a total of 6.50 hours. Mr. McNicholas'
21 hourly rate is \$800. Mr. McNicholas is a founding partner of McNicholas &
22 McNicholas, LLP and was admitted to the California Bar in 1986 after obtaining his
23 J.D. from McGeorge School of Law. Mr. McNicholas has been named a "Super
24 Lawyer" by Los Angeles Magazine from 2004-2103 and a Top 100 lawyer by
25 Superlawyers from 2007-2013. Mr. McNicholas is an extremely experienced trial
26 attorney and has won many noteworthy cases, including several multi-million dollar
27 verdicts. Among these successes include a \$10,800,000 jury verdict in *William S. v.*
28

1 *Bonita Unified School District* (molestation by school teacher), a \$10 million jury
2 verdict in *Gray v. The Saxon Group* (construction accident), and a \$5,430,000 jury
3 verdict in *Francios v. City of Los Angeles* (race discrimination). Mr. McNicholas
4 was recently awarded fees with an approved hourly rate of \$850.00 in *Do Rights*
5 *Plant Growers v. RSM Equico, Inc.*, Case No. 06CC00137 (2011).

6 23. I was also assisted in this matter by my associate, Juan C. Victoria. Mr.
7 Victoria spent no less than 75.50 hours working on this matter on behalf of Plaintiff
8 Kailynn G. All of Mr. Victoria's time and professional skills were reasonable and
9 necessary to the successful prosecution of Kailynn G.'s case. Mr. Victoria graduated
10 from U.C. Hastings College of the Law and was admitted to the California Bar in
11 2003. Mr. Victoria practices in all areas of litigation, including civil rights and
12 personal injury. In 2010 and 2011, Mr. Victoria was recognized in 2010 and 2011 as
13 one of the top lawyers under the age of forty in Southern California as listed on the
14 Rising Stars list by Southern California Super Lawyers. Mr. Victoria's hourly rate is
15 \$550.00. Based on Mr. Victoria's skill and experience, this rate is reasonable and
16 appropriate. Further, it is reasonable since Judge Otero in August 2012 approved a
17 \$550.00 hourly rate for Catherine Schmidt, Esq. in the *Avila* matter (See Exhibit 2, p.
18 11). Ms. Schmidt and Mr. Victoria have similar background and experience and,
19 until Ms. Schmidt left in early 2012 to start her own firm, both were associates
20 together for several years at McNicholas & McNicholas.

21 24. I was further assisted in this matter by my associate, Alyssa Kim
22 Schabloski. Ms. Schabloski joined McNicholas & McNicholas in February, 2012,
23 after having been an associate with the firm of Michels & Watkins from 2008-2011.
24 At the Michels firm, Ms. Schabloski performed plaintiff's contingency litigation
25 work, focusing on catastrophic personal injury and medical malpractice litigation,
26 and her work contributed to the successful resolution of several confidential seven
27 (7) figure settlements. Ms. Schabloski graduated from U.C.L.A. School of Law with
28

1 a joint JD and Masters of Public Health (MPH) degree, and as an American Board of
2 Trial Advocates (ABOTA) fellow, clerked with the Honorable Victoria Cheney, now
3 an appellate justice at the Second Appellate District Court of Appeals. All of Ms.
4 Schabloski's time and professional skills were reasonable and necessary to the
5 successful prosecution of Avila's case. Ms. Schabloski worked a total of 43.25 hours
6 on this matter, at the hourly rate of \$450. All of Ms. Schabloski's time and
7 professional skills were reasonable and necessary to the successful prosecution of
8 Kailynn G.'s case. Based on Ms. Schabloski's skill and experience, this rate is
9 reasonable and appropriate. Furthermore, as set forth above, Judge Otero determined
10 in August, 2012 that \$450 per hour was a reasonable rate for Ms. Schabloski based
11 on Ms. Schabloski's experience and the prevailing market rates.

12 25. I was assisted in this matter until late 2011 by my associate, Cameron
13 Fredman, who joined McNicholas & McNicholas after working in the litigation
14 department at Manatt, Phelps & Phillips, LLP, where he practiced in the general
15 litigation group and handled cases involving commercial litigation and class actions.
16 He graduated from Loyola Law School magna cum laude and served as Editor-in-
17 Chief of the Loyola Law Review. He served as a full-time judicial extern for the
18 Honorable A. Wallace Tashima at the United States Court of Appeals for the Ninth
19 Circuit. Mr. Fredman spent 100.00 hours working on this matter. All of Mr.
20 Fredman's time and professional skills were reasonable and necessary to the
21 successful prosecution of Kailynn G.'s case. Mr. Fredman's hourly rate is \$350.00,
22 which is the same rate Judge Otero determined in August 2012 to be his reasonable
23 hourly rate based on his experience and the prevailing market rates.

24 26. The successful result in this civil rights case was achieved by Plaintiffs'
25 attorneys through diligent and tireless effort, both in the preparing the case for trial
26 and at trial. The work performed by each attorney in furtherance of this action was
27 reasonable and necessary. All of the time was contemporaneously kept and was
28

1 billed was for legitimate, necessary activities such as: (1) meetings with the client;
 2 (2) drafting pleadings; (3) preparing for, taking and defending numerous depositions
 3 and conducting written discovery; (4) drafting and opposing motions; (5) attending
 4 court proceedings; (6) reviewing extensive documentation and evidence; (7) locating
 5 and speaking with witnesses; (8) preparing pre-trial pleadings, including drafting and
 6 opposing numerous motions in limine ; (9) preparing for trial; and (10) trial.

7 27. The time set forth does not include significant time spent reading and
 8 reviewing emails, making phone calls, drafting internal memoranda, internal
 9 meetings, and various administrative tasks associated with prosecution of a case. As
 10 such, the requested time already incorporates a substantial reduction, which I
 11 approximate at roughly ten percent (10%).

12 28. The time described above is accurately summarized in the following
 13 table:

Attorney	Rate	Hours	Total Amount
Matthew S. McNicholas, Esq.	\$750.00 / Hour	303.00	\$227,250.00
Douglas D. Winter, Esq.	\$650.00 / Hour	76.25	\$49,562.50
Patrick McNicholas, Esq.	\$800.00 / Hour	6.50	\$5,200.00
Juan C. Victoria, Esq.	\$550.00 / Hour	75.50	\$41,525.00
Alyssa K. Schabloski, Esq.	\$450.00 / Hour	43.25	\$19,462.50
Cameron Fredman, Esq.	\$350.00 / Hour	100.00	\$35,000.00
	Sum	604.50	\$378,000.00

23 29. A true and correct copy of my firm’s detailed billing records itemizing
 24 the date, hours and description of the nature of the work performed to date by each of
 25 the attorneys in my office, is attached hereto as Exhibit 1. The Invoice identifies
 26 each attorney by their initials.
 27
 28

