

SEP 11 2003

For The Northern Mariana Islands

By (Deputy Clerk)

- For Publication on Web Site -

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

DOES I, et al., On Behalf of Themselves and  
All Others Similarly Situated,

Plaintiffs,

v.

THE GAP, INC., et al.,

Defendants.

Case No. CV-01-0031

CLASS ACTION

**ORDER REGARDING  
PLAINTIFFS'  
APPLICATION FOR  
AWARD OF  
ATTORNEYS' FEES AND  
COSTS**

DOES I, et al., On Behalf of Themselves and  
All Other Similarly Situated,

Plaintiffs,

v.

BRYLANE, L.P., et al.,

Defendants.

DOES I, et al., On Behalf of Themselves and  
All Other Similarly Situated,

Plaintiffs,

v.

THE DRESS BARN, INC.,

Defendants.

1 On March 22, 2003, the court heard plaintiffs' Motion for Final Settlement Approval. At  
2 the hearing, the court made inquiries and voiced concerns regarding plaintiff's Application for  
3 Attorneys' Fees and Expenses, and requested that plaintiffs submit additional documentation  
4 supporting their Application. On April 30, 2003, plaintiffs filed an *In Camera* Submission in  
5 Further Support of Application for Award of Attorneys' Fees and Expenses.  
6

7 Upon consideration of the written and oral arguments of counsel and review of the  
8 Settlement Agreement and the additional documentation in support of plaintiffs' Application, the  
9 court hereby GRANTS plaintiffs' Application for Attorneys' Fees and Costs as prayed for, except  
10 for the following costs discussed herein.  
11

12 The court finds that there was minimal success in the outcome of this litigation as  
13 originally contemplated by the plaintiffs. The defendants settled without admitting any liability or  
14 fault<sup>1</sup> and the plaintiffs received only 2% or less of what they originally stated they were seeking.  
15

16 1

17 See Declaration of Joyce C.H. Tang In Support of Plaintiffs' Motion for  
18 Preliminary Approval of Settlements Ex. A, p. 4 ¶ 5 ("The Plaintiffs and the Companies  
19 agree that this Agreement (including any court orders related thereto) is not a concession or  
20 admission of any fact, and that this Agreement shall not be used against the Companies or  
21 any of their past or present parents, subsidiaries,... or business partners as an admission or  
22 indication of any fault or omission by any of them or as evidence of a standard, rule, or  
23 approval process that can or should be applied anywhere except in the context of this  
24 Agreement.") and ¶ 6 ("Plaintiffs have asserted and continue to assert that the Court  
25 Actions have merit and give rise to liability and damages on the part of each of the  
26 Companies. The Companies have asserted and continue to assert that the Court Actions  
have no merit and do not give rise to any liability and damages on the part of any of the  
Companies.") (Oct. 18, 2002).

On Oct. 31, 2002, the court granted Plaintiffs' Motion for Preliminary Approval of  
Settlement. See Conditional Order Granting Plaintiffs' Preliminary Approval of Settlement  
(continued...)

1 See Declaration in Support of Advance Textile's Memorandum in Support of Motion for  
2 Disclosure and Opportunity to be Heard on Issue of Anonymous Pleading ¶ 2 Attachments 1 & 2  
3 (Feb. 25, 1999) (containing articles from the New York Times, International Edition and the San  
4 Francisco Chronicle, both dated Jan. 14, 1999, that report that at a news conference attended by  
5 Albert Meyerhoff, the lawyers handling the Saipan class action suits stated that the lawsuits seek  
6 more than \$1 billion in damages). These cases settled for approximately \$20 million dollars. See  
7 Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Approval  
8 of Settlement p. 6:24 (Oct. 18, 2002).<sup>2</sup> Pursuant to the Settlement Agreement, a portion of the  
9 \$20 million Settlement Fund will be allocated according to the following plan:  
10

- 11
- 12 (A) About \$5.8 million dollars will be used to make cash payments to the workers (the  
13 "distribution fund"). Half of the distribution fund will be available for the FLSA  
14 Opt-In Plaintiffs who filed their Consent-to-Sue forms before the Settlement  
15 Effective Date and the other half of the fund will be available to the Class  
16 Members in The Gap and Consolidated Actions;
  - 17 (B) \$5.6 million will be allocated to pay plaintiffs' counsel's costs; and
- 18

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19 <sup>1</sup>(...continued)  
20 ¶ 1 (Oct. 31, 2002). The court ordered, among other things, that the settlement of the  
21 parties, as set forth in the Settlement Agreement attached as Exhibit A to the Declaration of  
22 Joyce Tang, is approved for the purpose of notifying Class Members of a Fairness Hearing  
23 concerning the Settlement. *Id.* at ¶ 2. A Fairness Hearing was held on Mar. 22, 2003, and  
24 on Apr. 23, 2003, the court granted final approval of the Settlement Agreement and  
dismissed The Gap and Consolidated Actions and the FLSA action with prejudice. See  
Final Judgment and Order of Dismissal (Apr. 24, 2003); Order and Final Judgment  
Approving Settlement and Dismissing Actions With Prejudice as to Various Settling  
Parties (Gap Group) (Brylane Group) (Most Favored Nations Defendants) (Apr. 23, 2003).

25 <sup>2</sup>

26 See also discussion *supra* note 1.

1 (C) \$3.15 million will be allocated to pay plaintiffs' counsel's attorneys' fees.<sup>3</sup>

2 Id. at p. 7-8.

3 Based on plaintiffs' counsel's representation to the court at the March 22, 2003 Fairness  
4 Hearing and Motion for Final Settlement Approval, the potential class in The Gap and  
5 Consolidated Actions is "somewhere between 30[,000] and 40,000 individuals," (*see* Application  
6 for Attorneys' Fees and Costs/Motion for Final Settlement Approval/Fairness Hearing and Case  
7 Management Conference Hrg. Tr. p. 25:18-19 (Mar. 22, 2003)), while the potential class in the  
8 FLSA action is "roughly 14,000 or 15,000." Id. at 25:20-24.

9  
10 Based on these figures, the plaintiffs in The Gap and Consolidated Actions will receive  
11 about \$100.00/person, while the plaintiffs in the FLSA action will receive an average of about  
12 \$215.00/person and "the range of payments are roughly estimated to be from \$100.00 to  
13 \$3,000.00/person," per the representation of Pamela Parker, as an officer of the court, at the  
14 September 11, 2003, hearing on Duan & Duan and Williams Kastner & Gibbs' Modified Motion  
15 for Court Approval of Fees and Costs.<sup>4</sup> The court acknowledges that these figures are not  
16  
17

18 <sup>3</sup>

19 Attorneys' fees in this matter total about \$21 million dollars, which exceed the  
20 settlement amount. *See* Pl. *In Camera* Submission in Further Support of Application for  
21 Attys' Fees and Expenses p. 1:14 (Apr. 30, 2003). However, the firm Milberg Weiss  
22 agreed to waive all its fees (about \$16.1 million dollars), while the other smaller firms,  
including Altshuler Berzon, will only be paid a portion of their fees. *See* Pl. Memo. of  
Points and Auth. in Support of Mot. for Prelim. Approval of Settle. p. 8 (Oct. 18, 2002).

23 <sup>4</sup>

24 Each of the 23 Doe plaintiffs who are still in contact with plaintiffs' counsel will  
25 also be paid a \$1000.00 service award. *See* Plaintiffs' Memorandum of Points and  
26 Authorities in Support of Application for Attorneys' Fees and Expenses p. 12 n.5 (Mar. 11,  
2003). The service award will be paid out of plaintiffs' counsels' reimbursed expenses and  
(continued...)

1 confirmed and that the exact amounts will be determined based a number of factors, including the  
2 distribution formulas agreed to by the parties. *See* Pl. Memo. of Points and Auth. in Support of  
3 Mot. for Prelim. Approval of Settle. p. 9-11 (Oct. 18, 2002). However, these figures provide a  
4 “ball park” figure of how each of the plaintiffs will fare once the settlement funds have been  
5 distributed.  
6

7 Finally, the monitoring and other programs plaintiffs claim were “extraordinary” and  
8 “excellent” victories were not shown to be needed. *See* Pl. Memo. of Points and Auth. in Support  
9 of Application for Atty. Fees and Expenses p. 1:3 (“...plaintiffs obtained an extraordinary  
10 settlement....”), p. 1:18 (“The combined efforts of plaintiffs’ counsel in all the litigation  
11 contributed to an excellent result – the Settlement now before the Court.”) (Mar. 11, 2003).  
12

13 **A. Fenton Communications**

14 The \$628,735.33 for Fenton Communications is DENIED. Plaintiffs argued that “media  
15 strategies” have become commonplace in present-day, high profile litigations, and that it has  
16 become so common that seminars are offered on the subject of using the media as part of the  
17 litigation effort. *See* Plaintiffs’ *In Camera* Submission in Further Support of Application for  
18 Award of Attorneys’ Fees and Expenses p. 10:14-17 (Apr. 30, 2003). The court finds this  
19 rationale unacceptable. Using the media as part of the litigation effort is counterproductive and is  
20 not a proper function of litigation. It is the courts who determine the outcome of a case, and the  
21 court’s decision is based on all the facts, not on what kind of public opinion can be generated  
22  
23

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24  
25 <sup>4</sup>(...continued)  
26 will not be paid out of the funds to be distributed to the workers under the Settlement. *Id.*

1 through the media. Finally, using the media to publish the alleged “horribles” suffered by the  
2 plaintiffs in newspapers all over the world, without proving the truth of any of the allegations,  
3 could add an element of coercion and pressure on the defendants to settle due to the bad  
4 publicity.

5  
6 The plaintiffs rely on Davis v. City and County of San Francisco, 976 F.2d 1536 (9<sup>th</sup> Cir.  
7 1992), to support their request for \$600,000.00+ in public relations costs. Davis was a class  
8 action lawsuit involving female and minority plaintiffs who sued the San Francisco Fire  
9 Department for various acts of employment discrimination. Id. at 1539. The parties filed a  
10 consent decree in settlement of the plaintiffs’ claims which stated that the District Court will hear  
11 and resolve the issues of costs and attorneys’ fees. Id. The court awarded the fees and costs, and  
12 the City appealed the amount of attorneys’ fees awarded, arguing that it was unreasonable. Id.  
13 On appeal, the City challenged the amount billed by appellee’s counsel for time spent in giving  
14 press conferences and performing other public relations work. Id. at 1545. The Ninth Circuit  
15 noted that,  
16

17  
18 prevailing civil rights counsel are entitled to compensation for the same tasks  
19 as a private attorney. Where the giving of press conferences and performance  
20 of other lobbying and public relations work is directly and intimately related to  
the successful representation of a client, private attorneys do such work and bill  
their clients. Prevailing civil rights plaintiffs may do the same.

21 Id. The court held that, “[o]n remand, the district court should disallow any hours claimed by  
22 appellees’ counsel for public relations work which did not contribute, directly or substantially, to  
23 the attainment of appellees’ litigation goals.” Id. See also Gilbrook v. City of Westminster, 177  
24 F.3d 839, 877 (9<sup>th</sup> Cir. 1999) (affirming award to prevailing party in civil rights action for media  
25  
26

1 and public relations activities and noting with approval the district court's finding that public  
2 relations work contributed directly and substantially to plaintiffs' litigation goals because "local  
3 politics had a potentially determinative influence on the outcome of settlement negotiations and  
4 the availability of certain remedies such as reinstatement.").

5  
6 The facts of Davis are distinguishable from this case. First, in Davis, the attorneys were  
7 charging for the time *they* spent conducting press conferences and public relations work. In this  
8 case, the plaintiffs hired a national public relations firm to handle this work. Second, although  
9 Davis does not indicate the total amount requested by counsel for public relations costs, the court  
10 assumes that it is not close to the \$600,000.00+ being requested by plaintiffs' counsel in the  
11 present case. Finally, the district court in Davis determined that "appellees' counsel's public  
12 relations work represented a valid effort to lobby the San Francisco Board of Supervisors, which  
13 was just as vital to the consent decree as were the negotiations with the City's administrative  
14 officials." Davis, 976 F.2d at 1545. It cannot be said that the clipping services of Fenton  
15 Communications was "just as vital to the settlement as were the negotiations between plaintiffs'  
16 counsel and the retailer and manufacturer defendants." It is doubtful that all the work done by  
17 Fenton Communications contributed "directly or substantially" to the attainment of plaintiffs'  
18 litigation goals.<sup>5</sup> In fact, it was difficult to tell exactly what Fenton Communications did because  
19 a majority of their bills did not provide detailed explanations of the services they rendered. The  
20  
21  
22

23 <sup>5</sup>

24 The present case is also distinguishable from Gilbrook because "local politics" in  
25 Saipan did not have a determinative influence on the outcome of settlement negotiations  
26 between the plaintiffs and the retailer and manufacturer defendants and the availability of  
certain remedies for the plaintiff Does.

1 court specifically notes the following exorbitant bills provided without any explanation: Dec. 30-  
2 31, 1998 - \$43,224.19; May 30-31, 1999 - \$57,245.25; Nov. 30, 1999 - \$33,064.49; Dec. 30, 1999  
3 - \$22,290.00; and Mar. 31, 2000 - \$26,505.28.

4 Accordingly, plaintiffs' request for \$628,735.33 for Fenton Communications is DENIED.

5  
6 **B. Timothy Skinner and Jennifer Skinner**

7 The request for approval of \$414,095.82 for Timothy Skinner is REDUCED by  
8 \$87,548.26 and the request for approval of \$507,462.44 for Jennifer Skinner is REDUCED by  
9 \$127,876.85. The Skinners should never have been involved in this case because of Mr.  
10 Skinner's conflict of interest. He had represented Neo Fashion in prior litigation and then  
11 represented the plaintiffs in an action against Neo Fashion. Mr. Skinner's conflict was discovered  
12 by defense counsel on or about Jan. 3, 2001.<sup>6</sup> On Jan. 12, 2001, Mr. Skinner indicated to defense  
13 counsel that he and Jennifer would no longer participate in the prosecution of the FLSA case as it  
14 pertains to Neo Fashion.<sup>7</sup>

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16  
17 <sup>6</sup>  
18 *See Declaration of Richard Pierce in Support of Neo Fashion's Motion to*  
19 *Disqualify (Apr. 4, 2001) (filed Under Seal).*

20 <sup>7</sup>  
21 *See Id. See also Declaration of Timothy H. Skinner ¶ 33 (June 4, 2001) (filed*  
22 *Under Seal) ("After the motion [to disqualify] was filed, Ms. Parker and Mr. Rubin*  
23 *disclosed to Mr. Pierce the facts regarding their firms' lack of prior knowledge of my prior*  
24 *representation of Neo Fashion.... They also informed Mr. Pierce that once I was replaced*  
25 *as local counsel in this case, neither Jennifer Skinner nor I would have any further*  
26 *involvement as counsel or otherwise, in the prosecution or this litigation on behalf of any*  
*plaintiff.").*

On Jan. 23, 2001, Bruce Berline noticed the court and all parties that he was now  
representing Jane Doe XX who, according to the Complaint, was an employee of Neo

(continued...)



1 Furthermore, within the same time frame that this case was brought before this court, Mrs.  
2 Skinner had apprised the court that she could no longer take on court appointed cases because she  
3 was going to work part time and devote her time to child care. When in fact, she represented to  
4 Milberg Weiss on March 16, 1999, that she opened up her own law office in December 1998 to  
5 specifically work on this case. See Facsimile from Jennifer Skinner to Pam Parker, Milberg  
6 Weiss, Re: Bills for Dec. 1998, Jan. 1999 and Feb. 1999 (Mar. 16, 1999).

8 Plaintiffs' counsel argued that it had no knowledge of the conflict and that it should be  
9 reimbursed for monies it already paid to the Skinners because these expenses were a necessary  
10 litigation expense to ensure the thorough prosecution of the plaintiffs' claims in the Class Action  
11 and FLSA Action. See Pl. *In Camera* Submission in Further Support of Application for Attys'  
12 Fees and Expenses p. 6:14-17 (Apr. 30, 2003) ("Whatever misgivings the court may have about  
13 Mr. Skinner because of his failure earlier to recognize and reveal the potential conflict of interest,  
14 the fact remains that he performed vital and necessary services for plaintiffs, did so competently,  
15 and Milberg Weiss - without knowledge of the conflict - paid for those services on an ongoing  
16 basis...."). Plaintiffs' counsel further argued that it should not be penalized for matters not within  
17 its knowledge or control. The court denies this request.  
18  
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21 <sup>7</sup>(...continued)  
22 Fashion.

23 On June 1, 2001, Teker Civile Torres & Tang filed a Notice of Designation of New  
24 Local Counsel for Plaintiff Does I-XIX and XXI-XXIII and Plaintiff Jane Doe XX. The  
25 notice indicated that Patrick Civile would replace Timothy Skinner as Does I-XIX and  
26 XXI-XXIII's local counsel and that Patrick Civile would replace Bruce Berline as Jane  
Doe XX's local counsel.

At the very latest, as of Jan. 3, 2001, Timothy Skinner and Jennifer Skinner should not have been working on this case. Accordingly, the court deems that a reduction in the amounts billed by the Skinners is warranted. The proper reduction, at a minimum, is for all fees and costs billed on Jan. 1, 2001, and onward - \$87,548.26 for Timothy Skinner<sup>8</sup> and \$127,876.85 for Jennifer Skinner.<sup>9</sup> The court is sympathetic to the argument that plaintiffs' counsel should not be penalized for the Skinners' wrongdoing. However, the remedy to plaintiffs' counsel is not for the

<sup>8</sup>

This figure is computed as follows:

	<u>Time Period</u>	<u>Total Fees and Costs Billed</u>
(a)	1/01/01 - 1/31/01:	\$27,149.33
(b)	2/01/01 - 2/28/01:	\$17,005.63
(c)	3/01/01 - 3/30/01:	\$15,788.58
(d)	5/01/01 - 5/31/01:	\$24,428.59
(e)	6/28/01 - 6/29/01 and 11/29/01:	<u>\$3,176.13</u>
	GRAND TOTAL:	\$87,548.26

<sup>9</sup>

This figure is computed as follows:

	<u>Time Period</u>	<u>Total Fees and Costs Billed</u>
(a)	1/02/01 - 1/31/01:	\$24,459.60
(b)	2/01/01 - 2/28/01:	\$26,662.36
(c)	3/01/01 - 3/30/01:	\$24,645.99
(d)	4/01/01 - 4/30/01:	\$22,115.95
(e)	5/01/01 - 5/31/01:	<u>\$29,992.95</u>
	GRAND TOTAL:	\$127,876.85

1 court to simply overlook what it finds to be improper.

2 **C. Attorney Expenses: Travel/Hotel/Meals**

3 The court reviewed the travel, hotel and meal expense documentation of plaintiffs'  
4 attorneys and has concerns with some of the documentation provided by Milberg Weiss, Altshuler  
5 Berzon and plaintiffs' other counsel. In some instances, plaintiffs' counsel spent as much as  
6 \$1,348.00 a night for lodging, which the court finds unreasonable and not recoverable. Thus, the  
7 court disallows hotel expenses in the amount of \$30,805.54, which include the following  
8 expenses: (1) lodging at the Four Seasons (no itemized receipt attached) - \$2,762.89; (2) one (1)  
9 night lodging at Rihga Royal Hotel - \$1,348.78; (3) two (2) nights lodging at the Willard Inter-  
10 Continental Hotel - \$1,959.96; (4) two (2) nights lodging at the Willard Inter-Continental Hotel -  
11 \$1,584.34; (5) lodging at the Four Seasons Hotel (no itemized receipt attached) - \$2,123.89; (6)  
12 one (1) night lodging at Rihga Royal Hotel - \$714.83; (7) lodging at the Kahala Mandarin on (no  
13 itemized receipt attached) - \$4,867.04; (8) lodging at Hyatt Regency Saipan (no itemized receipt  
14 attached) - \$9,165.15; (9) lodging at The Park Shore Hotel (no itemized receipt attached) -  
15 \$1,979.14; (10) three (3) nights lodging at the Fairmont Hotel - \$1,510.87; (11) one (1) night  
16 lodging at the Hyatt Regency Saipan - \$828.10; (12) two (2) nights lodging at Hyatt Regency  
17 Saipan - \$1,168.50; and (13) one (1) night lodging at Hyatt Regency Saipan - \$792.05.

18 The court disallows meal expenses in the amount of \$31,033.75, which include 60 meals  
19 that cost \$100.00 or more. The following are some examples of the meal costs that the court finds  
20 particularly unreasonable: (1) Hy's - \$222.10; (2) Tavalino - \$298.38; (3) Michel Castellano -  
21 \$538.98; (4) Chantrelle - \$355.80; (5) La Cite - \$194.41; (6) Manhattan Ocean Club - \$579.57;

(7) Lunaria - \$236.89; (8) Cub Room - \$275.99; (9) The Palm - \$251.75; (10) Felidia - \$238.93; (11) Nora - \$748.40; (12) Diamond Head Grill - \$371.77; (13) Le Cirque 2000 - \$214.57; (14) Manhattan Steak House - \$357.65; (15) Bamboo - \$231.00; (16) Nick's Fish Market - \$205.79; (17) Savoy - \$258.00; (18) Rain Waters - \$222.00; (19) Ben Benson's - \$212.26; (20) Isabella's - \$293.72; (21) Rose Pistola - \$241.00; (22) The Chinese Restaurant - \$400.00; (23) The Palm - \$325.56; (24) Moose's - \$185.21; and (25) Union Square Grill - \$173.68.

Finally, the court disallows miscellaneous expenses in the amount of \$6,348.30, which include the following expenses: (1) clothing purchased at Nordstrom's for plaintiffs' spokesperson - \$1135.66; (2) luggage purchased at Brookstone for plaintiffs' spokesperson - \$242.44; (3) general merchandise purchased at the Cal Student Store in Berkeley, CA. - \$300.00; (4) Assured reservation - no show charge for The Biltmore Hotel - \$188.00; (5) tour/tickets from Aloha VIP Tours - \$270.40; and (6) charter services - \$4,211.80.<sup>10</sup>

The court finds many of the hotel and meal bills submitted by plaintiffs' counsels excessive. Many of the bills did not contain itemized receipts and documentation. The court will not further review plaintiffs' counsels' cost bills, but will disallow the entirety of the above itemized expenditures and costs. Accordingly, plaintiffs' counsels' request for attorneys' costs is

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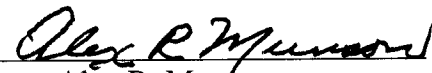
The court disallows limousine/charter services in the amount of \$4,211.80, which include the following expenses: (1) charter services from Carey International - \$240.00; (2) charter services from Going In Style - \$207.80; (3) charter services from Limousine Chauffeur - \$540.82; (4) charter services from RLM Executive - \$496.00; (5) charter services from Carey International - \$232.68; (6) charter services from Carey International - \$227.20; (7) charter services from Carey International - \$219.50; (8) charter services from Carey Limousine - \$250.00; and (9) charter services from Carey International - \$1,797.80.

1 REDUCED by \$68,187.59.

2 In conclusion, plaintiffs' request for attorneys' expenses is hereby REDUCED IN TOTAL  
3 by \$912,348.03.<sup>11</sup> Plaintiffs are awarded attorneys' fees of \$3,150,000.00 and expenses in the  
4 amount of \$4,687,651.97.<sup>12</sup>

5 IT IS SO ORDERED.

6 Dated this 11<sup>th</sup> day of September, 2003.

7  
8  
9  
10 

11 Alex R. Munson  
12 Chief Judge  
13

14 <sup>11</sup>

15 This figure is computed as follows:

	<u>Expense</u>	<u>Amount Denied</u>
16 (a)	Fenton Communications	\$628,735.33
17 (b)	Timothy Skinner	\$87,548.26
18 (c)	Jennifer Skinner	\$127,876.85
19 (d)	Attorneys' Hotel and Meal Costs	<u>\$68,187.59</u>
20	GRAND TOTAL:	<u>\$912,348.03</u>

21  
22 <sup>12</sup>

23 This figure is computed as follows:

24 Settlement Fund allocation for Plaintiffs' Counsels' Costs:	\$5,600,000.00
25 Court Ordered Reduction:	<u>(\$912,348.03)</u>
26 TOTAL Expenses Awarded:	\$4,687,651.97