

1 Bruce L. Simon (SBN 96241)  
PEARSON, SIMON, SOTER, WARSHAW & PENNY LLP  
2 44 Montgomery Street, Suite 1200  
San Francisco, CA 94104  
3 Telephone: (415) 433-9000  
Facsimile: (415) 433-9008  
4 Email: bsimon@psswplaw.com

5 Geoffrey Spellberg (SBN 121079)  
MEYERS, NAVE, RIBACK, SILVER & WILSON  
6 575 Market Street, Suite 2600  
San Francisco, CA 94105  
7 Telephone: (415) 421-3711  
Facsimile: (415) 421-3767  
8 Email: gspellberg@meyersnave.com

9 *Settlement Class Counsel and Counsel for Plaintiffs*  
Liz Hart, Mike Mertaban, Dennis Warner, and  
10 Charles Cleves

11  
12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

15 ANDRE FLEURY, d/b/a SWISS WATCH  
16 CO., MIKE MERTABAN, d/b/a WATCH  
17 EXPERTS, DENNIS WARNER, and  
18 CHARLES CLEVES, on behalf of  
themselves and all other similarly situated  
19 watchmakers, and LIZ HART, on behalf of  
herself and all other similarly situated  
consumers,

20 Plaintiffs,

21 vs.

22 RICHEMONT NORTH AMERICA, INC.,

23 Defendant.  
24  
25  
26  
27  
28

Case No: C05-04525 EMC

**DECLARATION OF  
GEOFFREY SPELLBERG  
IN SUPPORT OF MOTION FOR AWARD  
OF ATTORNEYS' FEES, LITIGATION  
EXPENSES, AND CLASS  
REPRESENTATIVE INCENTIVE  
AWARDS**

Date: May 7, 2008  
Time: 2:30 p.m.  
Dept.: C, 15<sup>th</sup> Floor

Honorable Edward M. Chen

1 I, Geoffrey Spellberg, declare:

2 1. I have personal knowledge of the following facts and if called as a witness I could and  
3 would testify competently thereto.

4 2. I am Of Counsel to the law firm of Meyers, Nave, Riback, Silver & Wilson and I have  
5 been appointed Settlement Class Counsel in this case.

6 **Summary of Settlement Class Counsels' Work**

7 3. Prior to filing the Complaint in this action, I and co-counsel Bruce Simon of the  
8 Pearson, Simon, Soter, Warshaw & Penny firm, conducted an investigation to analyze the issues  
9 raised in this lawsuit. We met with Plaintiffs, conducted research and then began to prepare  
10 the Complaint.

11 4. On or about November 7, 2005, we filed a complaint against Cartier, Inc. and Cartier  
12 International on behalf of Plaintiffs Liz Hart and Andre Fleury. Defendants filed a motion to dismiss,  
13 which was granted and resulted in Plaintiffs filing a First Amended Complaint on or about  
14 May 10, 2006.

15 5. Plaintiffs have conducted extensive discovery. This includes obtaining, reviewing and  
16 analyzing more than one million documents produced by Richemont. A substantial amount of time  
17 was spent by Meyers Nave paralegals and associates reviewing, organizing and analyzing these  
18 documents. Key documents were identified for use in the depositions of Richemont witnesses and  
19 for use by Plaintiffs' expert in preparation of the expert report.

20 6. Once the review and analysis of documents was completed, Settlement Class Counsel  
21 traveled on two occasions to Manhattan to depose key Richemont executives. Settlement Class  
22 Counsel deposed:

- 23 (1) Senior Vice President Martin Gatins;  
24 (2) Chief Operating Officer Dan Mawicke; and  
25 (3) Assistant Vice-President Denis Jaquenoud (who was deposed on two separate  
26 occasions.)  
27  
28

1 7. In addition to deposing the three key Richemont individuals, Settlement Class Counsel  
2 prepared for and defended the depositions of Ms. Hart and Mr. Fleury and responded to Richemont's  
3 written discovery.

4 8. Following this discovery, the parties began settlement discussions. To initiate  
5 settlement discussions, Settlement Class Counsel traveled to Manhattan to participate in face-to-face  
6 settlement meetings with Richemont's attorneys. That effort was valuable in starting the  
7 settlement process.

8 9. While the settlement discussions were ongoing, Plaintiffs were required to complete  
9 and produce their expert report. That report was prepared by a top Stanford University economist  
10 named Roger Noll, Ph.D. and is approximately 50 pages in length. Settlement Class Counsel spent  
11 significant time working with Dr. Noll by providing information and other materials needed to  
12 complete the report.

13 10. Following production of the expert report, the parties met for a full day mediation with  
14 the Honorable Edward Infante on May 17, 2007. After a full day of negotiations, the parties reached  
15 a settlement, and an initial settlement term sheet was signed by all parties present.

16 11. Concurrent with the withdrawal of representation of Mr. Fleury, Settlement Class  
17 Counsel was able to identify other Class Representatives.

18 12. Ultimately, on November 28, 2007, the Court granted preliminary approval of  
19 the settlement.

20 **The Settlement**

21 13. Settlement here constitutes an outstanding result for the members of the two sub-  
22 classes. The consumer sub-class is represented by Ms. Hart. Under the Settlement Agreement, each  
23 member of the Consumer Sub-Class is entitled to receive a \$100 credit to be used on future Cartier  
24 purchases. A consumer who paid for multiple repairs, is entitled to receive multiple credits.

25 14. As part of the settlement, the Cartier "network" has been opened, meaning that  
26 independent watchmakers who qualify will be able to purchase repair parts directly from Richemont  
27 and thus repair Cartier watches for their customers. In addition to this prospective relief which  
28

1 should provide lucrative income for these watchmakers, each watchmaker who qualifies to perform  
2 Cartier repairs will receive free specialized tooling from Cartier that is valued at \$2,000 and will  
3 further be entitled to receive up to \$750 in discounted parts over a two-year period.

4 **Legal Issues**

5 15. The litigation of this case was difficult and complex. The theories advanced by  
6 Settlement Class Counsel involved allegations of tying between the sale of Cartier watch repair  
7 services and the purchase of repair parts for those Cartier watches. Tying cases are difficult to prove  
8 as established in the seminal decisions of *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504  
9 U.S. 451 (1992); *N. Pac. Ry. Co. v. United States*, 356 U.S. 1 (1958); *County of Tuolumne v. Sonora*  
10 *Cnty. Hosp.*, 236 F.3d 1148 (9th Cir. 2001).

11 16. Defendant Richemont filed a Supplemental Memorandum of Points and Authorities in  
12 Further Support of Joint Motion for Preliminary Approval on October 26, 2007 (Docket # 179).  
13 In that 22 page brief, Richemont argues that there is no tie here, that Richemont lacks appropriate  
14 market share, and that there is no coercion. Although Settlement Class Counsel dispute these  
15 positions, it is evident from the quality of Richemont's arguments that Plaintiffs' ability to prevail  
16 here is anything but a foregone conclusion.

17 17. In addition to the difficulty in establishing liability under a tying antitrust theory,  
18 Plaintiffs always faced a challenge in establishing damages.

19 **Costs Incurred**

20 18. The Meyers Nave and Pearson Simon firms are co-counsel in this action although  
21 initially Mr. Simon was working with the firm of Cotchett, Pitre, Simon & McCarthy. The Meyers  
22 Nave firm incurred 1,479.20 hours of attorney and support staff time in litigating this case. See  
23 Exhibit A hereto.

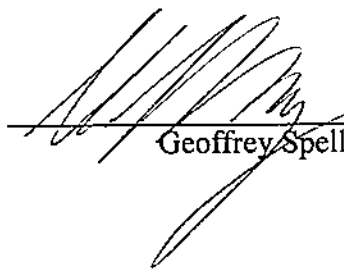
24 19. In addition, Meyers Nave has incurred out-of-pocket expenses in litigating this case of  
25 \$21,254.49. Attached as Exhibit B is a true and correct copy of the costs incurred. These expenses  
26 are broken down as follows:

- 1 • Court Reporters \$ 1,407.90
- 2 • Delivery Services \$ 1,354.06
- 3 • Depositions \$ 315.00
- 4 • In-House Costs (photocopies, fax,
- 5 postage) \$ 439.56
- 6 • Mediation Fees \$ 1,750.00
- 7 • Outside Photocopies \$ 9,734.58
- 8 • Transcription \$ 198.00
- 9 • Travel \$ 5,212.36
- 10 • Westlaw/Lexis Nexis research \$ 843.03

11 **Incentive Payments to Class Representatives**

12 20. Ms. Hart has been a class representative from the inception of the case and has  
 13 participated in strategy discussions, assisted in responding to written discovery, prepared for and was  
 14 deposed and attended the full day mediation. Ms. Hart undertook a financial risk that she could be  
 15 assessed personally for costs. I believe the the nature and quality of her assistance supports an  
 16 incentive payment of \$5,000.

17 I declare under penalty of perjury under the laws of the United States of America that the  
 18 foregoing is true. Executed this 2nd day of April, 2008 at San Francisco, California.

19   
 20 \_\_\_\_\_  
 21 Geoffrey Spellberg

22  
 23  
 24  
 25  
 26  
 27 1078921.1

28 **DECLARATION OF GEOFFREY SPELLBERG ISO PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES,  
 REIMBURSEMENT OF EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARDS / C05-04525 EMC**

# **EXHIBIT A**

**MEYERS NAVE RIBACK SILVER & WILSON  
ANDRE FLEURY 8007.002  
INCEPTION THROUGH MARCH 31, 2008**

<b>NAME</b>	<b>RANK</b>	<b>HOURLY RATES</b>	<b>CURRENT HOURS</b>	<b>TOTAL AMOUNT</b>
Rosales, Mara E.	Principal	\$500.00	3.40	\$1,700.00
<b>SUB TOTAL PRINCIPALS</b>			<u>3.40</u>	<u>\$1,700.00</u>
Spellberg, Geoffrey	Of Counsel	\$500.00	218.50	\$109,250.00
Duran, Ruben M.	Of Counsel	\$275.00	55.90	\$15,372.50
Lee, Reichi	Of Counsel	\$300.00	28.00	\$8,400.00
<b>SUB TOTAL OF COUNSELS</b>			<u>302.40</u>	<u>\$133,022.50</u>
Davtyan, Ellin	Associate	\$375.00	8.10	\$3,037.50
Drake, Kimberly M.	Associate	\$375.00	93.70	\$35,137.50
Hinderliter, Justine D.	Associate	\$275.00	31.10	\$8,552.50
La Londe, Kyle W.	Associate	\$275.00	7.50	\$2,062.50
Pasquinelli, Sara N.	Associate	\$300.00	31.40	\$9,420.00
Zamczyk, Dana S.	Associate	\$300.00	772.60	\$231,780.00
<b>SUB TOTAL ASSOCIATES</b>			<u>944.40</u>	<u>\$289,990.00</u>
Aganon, Keith	Paralegal	\$170.00	229.00	\$38,930.00
<b>SUB TOTAL PARALEGALS</b>			<u>229.00</u>	<u>\$38,930.00</u>
<b>GRAND TOTALS</b>			<u>1479.20</u>	<u>\$463,642.50</u>

# **EXHIBIT B**

**MEYERS NAVE RIBACK SILVER & WILSON  
ANDRE FLEURY 8007.002  
INCEPTION THROUGH MARCH 31, 2008  
COST REPORT**

<b>WESTLAW</b>	<b>\$569.53</b>
<b>LEXUS NEXUS</b>	<b>\$273.50</b>

<b>TRANSCRIPTION</b>	<b>\$198.00</b>
----------------------	-----------------

**LITIGATION COPIES**

San Francisco Legal	\$302.43
Digital One	\$9,432.15
<b>Total</b>	<b>\$9,734.58</b>

**DELIVERY SERVICES**

California Overnight	\$904.30
Speedway	\$99.35
FedEx	\$340.21
Pelican Delivery	\$10.20
<b>Total</b>	<b>\$1,354.06</b>

**DEPOSITION CHARGES**

Golden Gate Reporters	\$315.00
<b>Total</b>	<b>\$315.00</b>

**COURT REPORTERS**

TSG Reporting	\$1,407.90
<b>Total</b>	<b>\$1,407.90</b>

<b>GRAND TOTAL OF ALL COSTS</b>	<b>\$21,254.49</b>
---------------------------------	--------------------

**TRAVEL COSTS**

Airfare	\$2,720.41
Hotel	\$1,701.00
Bart	\$10.70
Taxi	\$692.55
Mileage	\$59.70
Tolls	\$6.00
Parking	\$22.00
<b>Total</b>	<b>\$5,212.36</b>

**MEDIATION FEES**

Jams, Inc.	\$1,750.00
<b>Total</b>	<b>\$1,750.00</b>

**IN HOUSE COSTS**

Photocopies	\$403.00
Fax	\$32.00
Postage	\$4.56
<b>Total</b>	<b>\$439.56</b>