Kralowec Law
The Kralowec Law Group

November 17, 2014

VIA OVERNIGHT DELIVERY

Hon. Fred Woods, Acting Presiding Justice
Hon. Laurie D. Zelon, Associate Justice
Hon. John Segal, Associate Justice *Pro Tempore*
California Court of Appeal
Second Appellate District, Division Seven
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: Request for Publication of Opinion:
Laffitte v. Robert Half International Inc., No. B249253

Dear Honorable Justices:

Pursuant to Rule of Court 8.1120, Consumer Attorneys of California ("CAOC") respectfully requests publication of the Court's opinion in *Laffitte v. Robert Half International Inc.*, No. B249253. This publication request is timely submitted within 20 days after the opinion was filed on October 29, 2014. *See* Rule of Court 8.1120, subd. (a)(3).

Statement of Interest

Founded in 1962, CAOC is a voluntary non-profit membership organization of over 3,000 consumer attorneys practicing in California. Its members predominantly represent individuals subjected to consumer fraud, unlawful employment practices, personal injuries and insurance bad faith. CAOC's members have taken a leading role in advancing and protecting the rights of consumers, employees and injured victims in both the courts and in the Legislature. This has often occurred through class-action contingency-fee litigation, in which attorney fee awards are sought either under the common fund doctrine or pursuant to a fee-shifting statute.

Reasons Why the *Laffitte* Opinion Should Be Published

The *Laffitte* opinion meets the standards for publication set forth in Rule of Court 8.1105(c) because it "[a]dvances a new interpretation [or] clarification" of several important aspects of California law governing class action settlements and fee-shifting in contingency-fee litigation.

First, the opinion unambiguously confirms the continuing vitality of the percentage-of-the-fund method in common fund cases for the first time since *Lealao v. Beneficial California*

Inc., 82 Cal.App.4th 19 (2000), published 14 years ago. *See* Slip op. at 15-24. Whether California law continues to permit use of the percentage-of-the-fund method has been called into question recently, especially by litigants in federal court. *See, e.g., In re Apple iPhone/iPod Warranty Litigation*, ___ F.Supp.2d ___, 2014 WL 1478707, *2 (N.D. Cal. Apr. 14, 2014) ("Apple argues ... that under current California law, which undisputedly applies in this matter, only the lodestar approach remains permissible." (footnote omitted)); *Fraley v. Facebook, Inc.*, 2013 WL 4516806, *2 (N.D. Cal. Aug. 26, 2013) ("In opposing the fee request, Facebook insists that applicable California law requires that the fee award be calculated through the lodestar approach, and *not* as a percentage of the recovery." (emphasis in original)).

For the benefit of federal courts applying California law, the Court should take this opportunity to clarify California law on this fundamental point. By publishing *Laffitte*'s holding that "[t]he percentage of fund method survives in California class action cases" (slip op. at 19), along with the analysis that preceded that holding and the Court's application of the holding, the Court will eliminate the ambiguity lingering after the *Lealao* opinion, will put contrary arguments to rest, and will provide needed guidance to federal judges (and state-court judges) faced with such arguments.

Second, the opinion clarifies the interplay between – and important differences distinguishing – California law and Ninth Circuit law. Slip op. at 10-13, 24-26. No published California Court of Appeal opinions have cited, let alone construed, *In re Mercury Interactive Corp. Securities Litigation* (9th Cir. 2010) 618 F.3d 988 or *In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935. Publication of the *Laffitte* opinion, which carefully considers both of those opinions, will provide needed guidance for litigants and trial judges regarding the extent to which California courts and litigants should follow federal procedures and Ninth Circuit decisions on attorney fee awards and settlement approval in class actions.

Conclusion

For the reasons stated above, CAOC respectfully asks that the Court enter an order directing publication of the *Laffitte* opinion.

Sincerely,

Kimberly A. Kralowec
State Bar No. 163158

cc: See attached proof of service

PROOF OF SERVICE

I, the undersigned, hereby declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; am over the age of 18 years; am employed by THE KRALOWEC LAW GROUP, located at 180 Montgomery Street, Suite 2000, San Francisco, California 94104, whose principal attorney is a member of the State Bar of California and of the Bar of each Federal District Court within California; am not a party to the within action; and that I caused to be served a true and correct copy of the following documents in the manner indicated below:

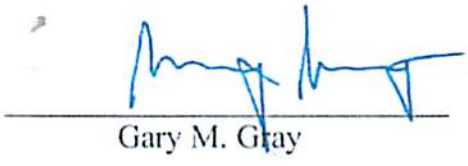
1. REQUEST FOR PUBLICATION OF OPINION FILED OCTOBER 29, 2014; and
2. PROOF OF SERVICE.

☑ **By Mail**: I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date. I then deposited that same envelope with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that upon motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

Counsel for Objector and Appellant David Brennan	Lawrence W. Schonbrun Law Offices of Lawrence W. Schonbrun 86 Eucalyptus Road Berkeley, CA 94705

Counsel for Plaintiff and Respondent Mark Liffitte	Kevin T. Barnes Law Offices of Kevin T. Barnes 5670 Wilshire Blvd., Suite 1460 Los Angeles, CA 90036 Janelle C. Carney Law Office of Joseph Antonelli 14758 Pipeline Avenue Suite E, Second Floor Chino Hills, CA 91709 Mika M. Hilaire Appell Hilaire Benardo LLP 15233 Ventura Blvd, Suite 420 Sherman Oaks, CA 91403
Counsel for Defendants and Respondents Robert Half International, Inc., Robert Half of California, Inc., Robert Half Incorporated, and Robert Half Corporation dba RHC	Judith M. Kline Paul Hastings LLP 515 S. Flower St. 25th Floor Los Angeles, CA 90071 Maurice Kirby C. Wilcox Paul Hastings LLP 55 Second Street 24th Floor San Francisco, CA 94105

Executed November 17, 2014 at San Francisco, California.



Gary M. Gray