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Attorneys for Plaintiffs RICHMAN MANAGEMENT CORPORATION and TROLLEY SECURITY, INC.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO - CENTRAL COURTHOUSE

RICHMAN MANAGEMENT CORPORATION, a California corporation; and TROLLEY SECURITY, INC., a California corporation,

Plaintiffs,

v.

HIGGS FLETCHER & MACK, LLP, a limited liability company doing business in California; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020240
ASSIGNED FOR ALL PURPOSES TO: JUDGE EDDIE C. STURGEON, DEPT. C-67

NOTICE OF ENTRY OF JUDGMENT

Complaint Filed: **June 20, 2014**
Trial Date: **Not Set**

PLEASE TAKE NOTICE that on December 19, 2018, the court entered judgment in favor of plaintiffs Richman Management Corporation and Trolley Security, Inc. and against defendant Higgs Fletcher & Mack, LLP. A copy of the judgment is attached as Exhibit 1.

KLEIN & WILSON

Dated: December 20, 2018

By: _____
Amy H. Nguyen, Esq.
Attorneys for Plaintiffs Richman Management Corporation and Trolley Security, Inc.

EXHIBIT 1

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HIGGS FLETCHER & MACK, LLP, a limited liability company doing business in California; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020240
ASSIGNED FOR ALL PURPOSES TO: JUDGE EDDIE C. STURGEON, DEPT. C-67

~~[PROPOSED]~~ JUDGMENT

Complaint Filed: **June 20, 2014**
Trial Date: **Not Set**

The above-referenced matter was submitted to arbitration on March 12, 2015. The parties memorialized their claims in cross-demands for arbitration. Arbitration was conducted from July 24 to August 2, 2017, before a panel of three retired judges: (1) Hon. Rex Heeseman, Ret.; (2) Hon. Coleman A. Swart, Ret.; and (3) Hon. Rebecca Westerfield, Ret. (collectively the "Panel"). The Panel issued its Interim Award on October 3, 2017. The Panel issued its Final Award on April 5, 2018.

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VIA FAX

EXHIBIT 1

After considering objections and briefing from the parties, on April 26, 2018, the Panel issued its Corrected Final Award, a copy of which is attached as Exhibit 1 and is incorporated by reference. The Panel awarded plaintiffs/claimants Richman Management Corporation and Trolley Security, Inc. (collectively "Richman") the following: (1) damages in the amount of $1,009,244.16 against defendant/respondent Higgs Fletcher & Mack, LLP ("HFM") on Richman's negligence claim; (2) damages in the amount of $186,545 against HFM on Richman's breach of contract claim, plus prejudgment interest of $104,152 and daily interest of $51.10 from November 30, 2017 until paid; and (3) costs in the amount of $60,798.03. The total amount to be paid by HFM to Richman was $1,360,739.19 plus daily interest of $51.10 per day from November 30, 2017 until paid. The Panel denied HFM's cross-demand.

On July 30, 2018, Richman filed a motion to correct or vacate the Corrected Final Award (the "Motion"). On July 30, 2018, HFM filed a petition to correct or confirm the Corrected Final Award (the "Petition"). On November 30, 2018, the trial court issued an order granting in part and denying in part Richman's Motion, a copy of which is attached as Exhibit 2 and which is incorporated by reference. The order provides, "The panel improperly removed the award of prejudgment interest on the negligence claim in the Corrected Final Award. The Corrected Final Award is corrected to include prejudgment interest on the negligence claim in the amount of $414,777.65." The trial court denied Richman's Motion for arbitration fees, additional negligence damages, and expenses incurred in proving requests for admission. The trial court denied HFM's Petition.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. The Corrected Final Award is corrected to include prejudgment interest on Richman's negligence claim through November 30, 2018 in the amount of $414,777.65 and is confirmed in all other respects;

2. Judgment is entered in favor of Richman and against HFM in the amount of $1,797,399.89 [$1,360,739.19 (damages) + $19,366.90 (prejudgment interest on contract claim from November 30, 2017 to December 14, 2018) + $414,777.65 (prejudgment interest on negligence claim up to November 30, 2018) + $2,516.15 (prejudgment interest on negligence claim from December 1, 2018 to December 14, 2018)];

EXHIBIT 1

3. Post judgment interest at the annual rate of 10 percent (10%) on damages of $1,797,399.89 shall begin to accrue on the date of entry of the judgment; and

4. HFM shall not recover anything on its claims against Richman.

IT IS SO ORDERED.

Dated: 19 DEC 2018

Eddie C. Sturgeon
The Honorable Eddie C. Sturgeon
Judge of the Superior Court

EXHIBIT 1

PROOF OF SERVICE
California Rules of Court, rule 2.251
***Code of Civil Procedure* sections 1010.6, 1013, 1013a, and 1013b**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 4770 Von Karman Avenue, Newport Beach, California 92660. My electronic service address is andrea@kleinandwilson.com.

On **December 11, 2018**, I served the foregoing document described as **[PROPOSED] JUDGMENT** on the interested party in this action. The document was served by the following method:

__✓__ BY ELECTRONIC SERVICE. I electronically served the above listed document by sending the document via email to the addresses set forth below.

James R. Lance, Esq.
Ethan T. Boyer, Esq.
Noonan Lance Boyer & Banach, LLP
701 Island Avenue, Suite 400
San Diego, CA 92101

Attorneys for Defendant Higgs Fletcher & Mack, LLP
Telephone: (619) 780-0880
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eboyer@noonanlance.com
bcrena@noonanlance.com
phoffman@noonanlance.com

Executed on **December 11, 2018**, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Andrea J. F. Ramirez

VIA FAX

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EXHIBIT 1

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EXHIBIT 1

JAMS ARBITRATION No. 1200050009

RICHMAN MANAGEMENT CORP, and TROLLEY SECURITY, INC.,

Claimants,

vs.

HIGGS FLETCHER & MACK, LLP

Respondent.

CORRECTED FINAL AWARD

Richman Management Corp. and Trolley Security Inc.
Claimants

Mark B. Wilson, Esq.
Amy H. Nguyen, Esq.
Klein & Wilson, PC
4770 Von Karman Ave
Newport Beach, CA 92660
949-631-3300
Counsel for Claimants

Higgs, Fletcher & Mack, LLP
Respondent

James R. Lance, Esq.
Ethan Boyer, Esq.
Genevieve Ruch, Esq.
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701 Island Ave., Suite 400
San Diego, CA 92101
619-557-4416
Counsel for Respondent

Arbitrators:
Hon. Coleman A. Swart (Ret.) Chair
Hon. Rex Heeseman (Ret.)
Hon. Rebecca Westerfield (Ret.)

Place of Arbitration: JAMS Office, San Diego, CA

EXHIBIT 1
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Dates of Arbitration: July 27, 2017 through August 2, 2017

THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the Amendment to the Arbitration Agreement dated February 16, 2016, originally contained in the contract between the parties executed in April 2002, having been accepted as qualified by the parties, and having examined the submissions, proof and allegations of the parties, find, conclude and issue this Corrected Final Award as follows:

Introduction and Procedural Statement

Claimants' counsel filed a Demand to Arbitrate before JAMS on March 16, 2015. The provisions of paragraph 11 of the Standard Terms incorporated in the amendment to the Arbitration agreement require the Arbitration Panel to follow "the same rules of substantive law, and the same rules as to the application of such law to the facts as a California trial court judge hearing the matter would be bound to follow". The parties' agreement requires the Arbitration Panel to follow the California Evidence Code. The Arbitration Agreement further states that as to Errors of Law: "The award may be entered by any court of competent jurisdiction but in connection with entry by the court shall be subject to review by such court with respect to errors of law (but not with respect to errors of fact). In the event such court shall find that there was a material error of law in the arbitration award, the court, in the exercise of its discretion, shall correct the award and enter it or return the matter to the arbitrator for further action consistent with the determinations of the court."

Evidentiary Hearing

The Arbitration was conducted from July 26, 2017 to August 2, 2017 at the JAMS San Diego, CA office. Claimants and Respondent submitted trial briefs. The Arbitrators read and considered the submitted briefs. Witnesses were called and cross examined: Larry Richman, Anca Ionescu, David Hall, Wendy Beerbower (by stipulation of counsel from deposition transcript), Dennis Jackson (by stipulation of counsel from deposition transcript), David Hoffman, Jackye Sullins (by video deposition), Dana Froelich (by video deposition), Steven J.

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Cologne Esq., Sam G. Sherman Esq., and John F Hyland Esq. – (Claimants' standard of care expert), Kenneth D. Rugeti, Fred M. Plevin Esq. – (Respondent's standard of care expert), and Dr. Patrick F. Kennedy.

Exhibits were marked and admitted into evidence as noted in the record. At the conclusion of the presentation the parties stated they had no further evidence to offer. The counsel made closing arguments and the case was submitted for decision. Supplemental briefing was requested by the Panel and final briefs were filed on September 8, 2017[1]. Upon service of the Interim Award, counsel would then submit requests for fees and costs. The Interim Award was entered on October 4, 2017.

Counsel engaged in extensive further post-award briefing. Oral arguments on various motions discussed herein including Claimants' petition for fees and costs were heard on March 22, 2018. The final award was issued on April 5, 2018.

Claimant filed a Motion to Correct Computational Errors in Final Award pursuant to JAMS Rule 24(j). Respondent filed a Request to correct the Final Award pursuant to JAMS rule 24(j). Both parties filed objections. Claimant filed a Reply. Respondent filed a Reply.

Facts

The following is a statement of facts found to be true by the Arbitrators as necessary to the award. To the extent that the recitation differs from any party's position it is the result of determination as to credibility, relevance, burden of proof considerations and weighing of the evidence.

Larry Richman was the sole owner and President of Claimants, Richman Management Corporation, which did business as Heritage Security Services, providing unarmed security services to business and residential communities; and Trolley Security Inc, which provided

[1] Claimants filed a supplemental expert report with their briefs, contrary to the directions of the Panel. That unverified report filed after close of evidence has not been nor should it be considered by the Arbitrators.

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armed security guard services for San Diego's trolley system (Claimants are also collectively referred to as "Richman"). Richman Management Corporation also provided administrative services to Larry Richman's other companies. Respondent, Higgs, Fletcher & Mack, LLC (Higgs) is a full-service law firm in San Diego, California, with over 70 attorneys.

In June 2000, Richman and Higgs signed a fee agreement that covered all of Higgs' services to Claimants (Exhibit 1). Higgs began providing litigation services to Richman's businesses in June 2000 and then began providing general employment advice in May 2001. Higgs was general counsel for Claimants' employment matters until 2013. Steven J. Cologne, a senior partner for Higgs was asked by Jackye Sullins, Richman's HR Director, in 2002 or 2003 to review all of the employment practices and policies of Claimant to ensure that they were in compliance with California law.

On January 1, 2001 the California Industrial Welfare Commission (IWC) issued Wage and Order 4-2001. (Exhibit 604) On April 4, 2001, the Division of Labor Standards Enforcement (DLSE) sent a letter to Richman citing a violation of IWC Order 4 – 2001 for the on-duty meal periods for security guards. (Exhibit 4) On April 12, 2001, Larry Richman responded to David Dorame, Director of the IWC, in regard to discussions with him regarding Richman's on-duty meal procedure, claiming a "nature of the work" exception necessary for security guards (Exhibit 5). On May 18, 2001, an additional letter was sent to David Dorame. (Exhibit 6) A response from David Dorame was received dated May 29, 2001 with the IWC order #4 -2001 attached. The letter stated "Your example of a private patrol operator and security guard or security officers are circumstances but not determinative, thus it is clear, they are not in a situation where the nature of the work prevents them from being relieved. Furthermore, a careful reading of the new IWC order will reveal that DLSE no longer has the ability to issue exemption from provisions of the meal section." (Exhibit 7)

Richman sent a copy of Exhibit 6 to Higgs in May 2001. (Exhibit 6.1) The principal advising attorney at Higgs for Richman employment problems was Steven J. Cologne, a senior partner of the firm. Larry Richman and Steven Cologne were well acquainted before Cologne became a partner at Higgs. After Richman sent Cologne Exhibit 6, Larry Richman and Steven

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Cologne had several discussions about the security guard work and Richman's policies. After reading Exhibit 6, Cologne expressed no concern that Richman might be subject to a Class Action lawsuit. Richman sent Higgs a copy of Exhibit 7. After reading Exhibit 7, Cologne had no advice for Richman. Cologne told Richman that the meal waivers were in compliance with the law and that the "nature of the work" exception applied. Richman continued with their practices and policies and never heard back from the IWC. At that time, no attorney at Higgs advised Richman or any of his employees to stop their meal or rest period practices, their non-payment of employees for orientation class attendance, or their collection of costs from employees for their name tags and laundry. Higgs failed to advise Richman or its employees that any of their policies violated the law, did not advise them to change their policies or advise them that Richman was at risk of being sued by individuals or may be subject to a Class Action lawsuit.

In August of 2004, Richman was sued by Mike Rogers and Christine Dawson in a Class Action Complaint for (1) Violation of California Labor Code for Failure to Pay Overtime Wages, (2) Failure to Provide Meal Breaks, (3) Recovery of Civil Penalties and (4) Violation of B and P Code 17200 and 17203. (Exhibit 608) Higgs represented Richman in this lawsuit and wrote a letter to Jackye Sullins, Richman HR Director, stating "Meal periods will be the major issue in the case as employers generally do not follow religiously the meal period allowances to employees under the law. We can then discuss whether to make changes to your practices so this doesn't happen again." (Exhibit 26)

The policies and practices of Richman in place at the time of the *Rogers* lawsuit included:

1. Meal breaks were on duty.
2. Rest breaks were on duty.
3. Prospective employees were not paid for an eight hour orientation class (Exhibit 334 and 242).
4. Employees were charged for the cost of name tags for their uniforms and for laundry services for their uniforms. (Exhibit 9).

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On September 10, 2004, Richman sent its off-duty meal break waiver form to Higgs for approval. (Exhibit 10) The waiver form did not contain the required words "in writing" as set forth in Wage Order 4-2001. Higgs did not warn Richman that its off-duty meal break waiver form was defective. While the *Rogers* lawsuit was pending, Richman's written policy of not paying prospective guards for an eight hour orientation class was marked as a deposition exhibit. (Exhibit 242) This exhibit was known to Higgs. At his deposition Cologne admitted that Higgs never warned Richman that this policy of not paying employees could violate the law. While the *Rogers* lawsuit was pending, Higgs sent Larry Richman a copy of Wage Order 4-2001 and identified the section regarding on-duty rest breaks as being an issue that was raised in the *Rogers* lawsuit. (Exhibit 12) Again Higgs failed to advise Richman that its on-duty rest breaks policy may have violated the law or may have exposed it to a lawsuit.

On April 22, 2005 Steven Cologne of Higgs sent a letter to Larry Richman in which he stated "Generally, it is my belief that we have good defenses for the on-duty meal periods and rest breaks for locations other than the Sheriffs."(Exhibit 118) He recommended the case be mediated. (Exhibit 118)

On the advice of Higgs, Richman settled the *Rogers* lawsuit in September 2005 and paid $505,000 for a release of claims. (Exhibit 639) Upon settlement of the *Rogers* case, the Claimants represented to the Court in a declaration prepared by Higgs that: "Our attorney continues to advise us in the latest labor law regulations." (Exhibit 27) After the *Rogers* lawsuit settled, Higgs advised Richman to develop a recordkeeping system to record every meal and rest break, however, Higgs did not advise Richman to modify the new hire packet it had been using since March 2003. This new hire packet is the same document that was used and executed by Michael Verdugo when he was hired in 2003 (Exhibit 228) and which led to the filing of the *Verdugo* Class Action lawsuit. Between the settlement of the *Rogers* lawsuit and the filing of the *Verdugo* lawsuit, no changes to the New Hire packet or changes to procedures and policies regarding meal or rest breaks, the non-payment to employees who attend orientation classes, or regarding employees being charged for name tags and laundry services were recommended by Higgs other than creating a new record keeping system.

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On July 28, 2010 the *Verdugo* Class Action lawsuit was filed against Claimants. Attorney Sam Sherman of the Higgs firm told both Larry Richman and David Hoffman that the *Verdugo* lawsuit was a nuisance lawsuit. Higgs performed no legal analysis of the claims in the *Verdugo* lawsuit. There is no correspondence from Higgs to Richman discussing any *Verdugo* lawsuit claims, any Richman exposure, or any legal analysis.

When the Motion for Class Certification was filed in the *Verdugo* Class Action case, Higgs told Richman "don't even mediate this case." Higgs further said "The motion for class certification has been filed. We anticipate defeating most of these claims in class certification motion. And whatever is left, we're going to win by summary judgment." (Exhibit 162)

On May 11, 2012, Plaintiff Verdugo filed an Amended Notice of Motion for Class Certification. (Exhibit 651) The accompanying Points and Authorities contained the Los Angeles Superior Court opinion in *Augustus v. American Commercial Security Services,* Case No. BC336416. (Exhibit 652)

In March 2012 Higgs changed two of Claimants' policies at issue in the *Verdugo* lawsuit. The employee handbook (new hire packet) was changed to state that Richman would pay guards to attend orientation classes (Exhibit 57) and the off-duty meal waiver was changed to add the words "in writing". (Exhibits 58 and 164) Higgs told Richman that the law had changed (when actually it had not) thus suggesting an "admission" of Higgs' prior failure to advise of the deficiencies in Claimants' policies. Higgs recommended mediation of the *Verdugo* matter.

On July 18, 2012 Higgs sent Richman an email with the news of the *Augustus* trial court decision (Exhibit 67) in which the trial court awarded the plaintiffs $90,000,000.

Mediation continued and the *Verdugo* lawsuit was settled by Richman, on the advice of Higgs. After the settlement, Higgs told Richman "you had exposure on the on-duty rest break policy, the on-duty meal break policy, the failure to pay for your orientation classes, and deducting wages for nametags and uniform cleaning." (Hearing testimony of Larry Richman)

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It was uncontroverted that Richman had exposure in the *Verdugo* Class Action lawsuit in the amount of $31,509.882, (Exhibit 726), inclusive of pre-judgment interest.

Richman paid $4,060,928 to plaintiffs to settle the *Verdugo* Class Action. (Exhibit 736) Additionally, Richman paid $186,545 in litigation fees and costs and $119,868 in Opt-out Settlements and Costs in the *Verdugo* Class Action. (Exhibit 736)

Analysis

Claimants seek an award against Higgs for two causes of action: professional negligence and breach of contract. Claimants has the burden of proof by a preponderance of evidence that it has proved each element of each cause of action.

Professional Negligence

Negligence by a law firm occurs when it fails to use the skill and care that a reasonably careful law firm would have used in similar circumstances. "In order to establish a cause of action for legal malpractice the plaintiff must demonstrate: (1) breach of the attorney's duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a proximate causal connection between the negligent conduct and the resulting injury; and (3) actual loss or damage resulting from the negligence." *Thompson v. Halvonik* (1995) 36 Cal. App. 4th 657, 661.

Breach of the Standard of Care

Both sides presented testimony by expert witnesses opining on the standard of care in this case.

Claimants' standard of care expert testified that:

1. "If Higgs at any point learned that Richman had in place an on-duty meal period practice – whether through review of documents or communications

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with Richman employees – failure to advise Richman of the risks of these practices would fall below the stand of care."

2. "If Higgs received a copy of the correspondence from the DLSE regarding Richman's on-duty meal period practice or learned of the DLSE's inquiry or conclusion, Higgs representation/advice fell below the standard of care because it failed to advise Richman of the risks of continuing its on-duty meal period practice."

3. "If Higgs learned of Richman on-duty meal period practice from communications with Richman, review of policies or documents, or from the DLSE correspondence, a failure to obtain a copy of the on-duty meal period agreement used by Richman fell below the standard of care because assessment of the lawfulness of the on-duty meal period practice required not only consideration of the circumstances and ability to provide an off-duty meal period, but also review of the written agreement used."

4. "If Higgs reviewed a copy of the on-duty meal period agreement and did not Advise Richman of the provision in the applicable IWC Wage Order requiring revocation in writing, Higgs representation and counsel fell below the standard of care."

5. "If Higgs learned at any time that Richman did not relieve employees of all duties during rest breaks and did not advise Richman that California law requires duty-free rest breaks and the risks of failing to provide such breaks, Higgs representation and counsel fell below the standard of care."

6. "If Higgs learned that Richman had a practice of requiring newly-hired employees to attend an orientation without compensation and failed to advise Richman that this policy might violate California law, Higgs representation and counsel fell below the standard of care."

7. "If Higgs learned that Richman had a practice of charging employees for uniforms or equipment needed for the job, or charging employees for all loss, damage or breakage, and did not advise Richman od the applicable rules and the risks of both the practice and any deductions from wages made to cover

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these expenses, Higgs representation and counsel fell below the standard of care."

Respondent's standard of care expert opined that Higgs' representation of Richman were within the standard of care.

The Arbitration Panel considered the expert testimony and gave each expert's testimony the weight each Panel member deemed proper. The Panel finds that Higgs' representation fell below the standard of care by failing to properly advise the Claimants of the risks and attendant exposure as a result of its on-duty meal and break policies, its failure to pay for orientations and its charging employees for name tags and uniform cleanings.

Causation

Claimants must also prove that the breaches of the standard of care by Higgs caused damages to Claimants and prove the nature and extent of the damages. Richman must prove that it would have obtained a better result if Higgs had acted as a reasonably careful attorney. In *Viner v. Sweet* (2003) 30 Cal.4th 1232, the California Supreme Court explained: "In both litigation and transactional malpractice cases, the crucial causation inquiry is what would have happened if the defendant attorney had not been negligent. This is so because the very idea of causation necessarily involves comparing historical events to a hypothetical alternative." (*Viner, supra,* 30 Cal. 4th at 1242.)

Richman alleges that but for the negligence of Higgs he would not have paid over $4,000,000 to settle the *Verdugo* lawsuit as he would have changed his policies and procedures after the *Rogers* lawsuit, thus preventing any illegal policies and procedures that led to the filing of the *Verdugo* complaint.

Larry Richman testified that had he been advised by Higgs that his meal and rest break policies were illegal, he would have chosen alternative actions as set forth in Exhibit 739 and would not have paid the increased amounts set forth in the report of Patrick Kennedy,

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Respondent's expert, dated August 1, 2017 and as testified to by him during the arbitration hearing. Further, Larry Richman testified that if Higgs had advised Richman that continuing its policies would subject Claimants to other lawsuits he would have changed his policies in regard to non-payment to employees for orientation classes and to charging employees for name tags and laundry services for their uniforms.

The Panel finds that Richman would have changed his policies and procedures regarding the non-payment to employees for attending orientation classes had Richman been advised by Higgs that these practices were in violation of California law. Further, the Panel finds that Richman would have changed his policies and procedures regarding charging employees for name tags and laundry services had Richman been advised by Higgs that these practices were in violation of California law.

Whether he would have changed his policies regarding on duty meal and rest breaks is a more difficult question. Larry Richman believed that the "nature of the work" exception was necessary for security guards. If he had been told by Higgs that his policies and procedures regarding meal and rest breaks were in violation of California law, how would he have addressed the problem?

Respondent's experts opined that Claimants had only two options: (1) hire relief guards or (2) pay his employees for the missed off-duty meal breaks and rest breaks. Both of these options would have led to expenses much greater than the over $4,000,000 paid to settle the *Verdugo* Class Action lawsuit.

Would a correction of the wording of the waiver agreement to include the "in writing" language requirement have changed Richman's approach to meal break policy? Would such change have changed the dynamics of the meal break issue? Would the meal break policy of "on duty" meal breaks be legal if the language had been changed in the waiver agreement? No persuasive evidence was received to answer these questions in the affirmative.

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Larry Richman testified that he was not aware of the alternate options as set forth in Exhibit 739[2] until they were raised by Claimants' expert retained for the arbitration. Several of these alternatives involve customer cooperation with Richman: leaving some posts unattended during the rest/meal breaks; scheduling shorter shifts so rest/meal breaks were not required; having customers provide coverage during rest/meal breaks where feasible; and relying on camera coverage during rest/meal breaks where feasible. The other alternatives of Exhibit 739 are: providing relief guards during rest/meal breaks, paying guards a penalty of rest/meal breaks that were interrupted, and terminating contracts if a customer refused to permit duty-free rest/meal breaks. Terminating contracts is a money losing proposition. The other two alternatives of providing relief guards or paying guards a penalty are an expensive endeavor as testified to by Respondent's expert. None of Richman's customers testified as to the viability of any of the alternatives set forth in Exhibit 739. No evidence was offered as to how using the alternatives set forth in Exhibit 739 would reduce costs of operating his business.

It is the position of Higgs that even if Richman was advised that the practices and procedures regarding the meal and rest breaks may be illegal he would not have changed his policies as to these issues because doing so would have cost him millions to provide relief guards or alternatively would have required Richman to pay for missed off-duty meal and rest breaks. The position of Higgs is that Richman would have made the same business decision he made by continuing to use on-duty meal breaks and hope that he would not face law suits challenging these policies. In fact, even after the *Verdugo* mediation, Richman in January 2013 wanted to set aside the Class Action settlement agreement in *Verdugo*.

Claimants have the burden of proof to show causation of damages. The Panel finds that Claimant has failed to meet that burden in regard to the meal and rest break issues. Claimant Richman has however satisfied this burden as to the issues of paying employees for attending orientation classes and of the impermissible charging of employees for name tags and laundry services.

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[2] Richman is highly knowledgeable about the security guard industry, which is quite competitive. All things considered, the Panel believes Richman himself would have thought through these options before 2017.

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Breach of Contract

Richman and Higgs had a written fee agreement. Higgs was to provide competent advice and representation to Richman and Richman was to pay for these services. Since the advice and representation given to Richman concerning its employment policies and procedures were below the standard of care required by attorneys, Higgs breached the fee agreement. Richman did not receive value for the fees it paid Higgs. Richman is entitled to recover all the fees and costs paid to Higgs for the advice and representation in the *Verdugo* Class Action Lawsuit.

Higgs affirmative defenses are rejected as unproven.

Damages

The exposure of Richman in the Verdugo case per exhibit 726, before adding any pre-judgment interest, was $24,847,823. Since this amount included exposure for failing to provide meal and rest breaks, the percentage of the exposure due to orientation training pay and the business and equipment expense categories must be calculated as the Panel found that Claimants did not meet the burden of proof as to the meal and rest break categories. The orientation training pay exposure is $357,888 as set forth in Exhibit 726 schedule C. The Business and Equipment Expense exposure is $312,105 as set forth in Exhibit 726 schedule D.

A violation of IWC regulations by failing to pay for orientation training or by requiring employers to pay for name badges or laundry services exposes Claimants to the waiting time penalties and untimely pay statement penalties. Richman's employees were impacted by the requirement to attend orientation training without compensation and were charged for the name tag cost and the laundry charges. The issue then becomes the determination of exposure in the Verdugo case of Waiting time penalties and Untimely pay statement penalties.

Waiting time penalties and pay statement penalties relating to Exhibit 456 sets forth the law that explains how to calculate these penalties. Claimants' damage expert testified that he relied on (1) the law in exhibit 456 and (2) his conversations with the Claimants' standard of care

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expert John Hyland, to prepare Exhibit 726. Hyland testified that the law (and formulas) set forth in Exhibit 456 were accurate. Neither Respondent's standard of care expert nor Claimants' damage expert challenged the formulas in Exhibit 456 nor testified that any of the damage expert's calculations were inaccurate.

Waiting time penalties are triggered when an employer fails to pay "wages" when an employee who is discharged or quits. (Labor Code 203(a). The trigger for penalties is termination of the employee whose wages have not been fully paid. In this instance, said wages includes money owed employees not paid for orientation training. There is also exposure for untimely pay statement penalties. These penalties are triggered when an employer fails to provide an accurate pay stub to an employee. (Labor Code 226(a). Because the guards' first paychecks were inaccurate, the penalty for each affected guard is for all guards who started working between July 28, 2009 up to the time the Verdugo case was settled.

Waiting time penalties are calculated in the amount of $5,253,506. Pay statement penalties are calculated in the amount of $74,600. The exposure for waiting time penalty and pay statement penalties is $5,328,106. Counsel agree there is no stacking of penalties in these calculations.

As calculated in Exhibit 726 and unrebutted by any calculations by Respondent, the total of Claimants' exposure for the Orientation Training Pay, The Business and Equipment exposure, the Waiting time penalty exposure and the Pay statement penalty exposure is $5,998,099 ($357,888 + 312,105 + 5,328,106) which does not include any of the wage exposures of Schedule A and B of exhibit 726.

This exposure of $5,998,099 is 24.14% of the total exposure of $24,847,823. 24.14 percent of the total Verdugo Class settlement is $980,308.02. Added to this number is the Opt-out settlement and costs in the amount of $28,936.14 which is 24.14% of $119,868. The total damages to be paid by Higgs to Richman for the negligence cause of action is $1,009,244.16.

EXHIBIT 1
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The damages for the breach of contract cause of action is $186,545 for legal fees. Claimants request for pre-judgment interest on the contract damage award is granted in the amount of $104,152 plus daily interest after November 30, 2017 of $51.10 until paid. Claimants request for pre-judgment interest for the negligence claim is denied.

POST HEARING MOTIONS

The Panel has received, read and considered Respondent's Motion to Reduce the Damage Award in the Interim Award due to Claimants' failure to submit evidence re: waiting time and pay statement penalties for orientation pay and business equipment claims; the Claimants Opposition and Respondent's Reply. Respondent's Motion to Reduce Damages Award Due to Claimants' Failure to Submit Evidence re: Waiting Time and Pay Statement Penalties for Orientation Pay and Business Claims is denied.

The Panel has received, read and considered Claimants' Motion for an Order Correcting the Interim Award or in the Alternative an Order for Judgment Notwithstanding the Verdict (JNOV) or in the alternative a Motion for New Trial. The Panel has read and considered all papers submitted by Respondent in opposition and Claimants' reply. Claimants allege that Richman and Trolley met the burden of proof on every issue and that Higgs did not present any evidence to the contrary. The Panel found that as a factual finding that Claimants failed to meet the required burden of proof to establish damages in regard to the meal and rest break issues. The Motions for an Order Correcting the Interim Award, for Judgment Notwithstanding the Verdict and Motion for New Trial are denied.

Claimants filed a Motion for an Order Directing Respondent to Pay Reasonable Expenses Claimants' incurred in proving the truth of Requests for Admission. The Panel has read and considered Claimants' motion with exhibits, Respondent's Opposition with exhibits and Claimants' Reply with exhibits. Claimants' Motion for an Order Directing Respondent to Pay Reasonable Expenses Incurred in Proving the Truth of Requests for Admission is denied.

COSTS AND FEES

EXHIBIT 1
EXHIBIT 1

Claimants filed a memorandum of Costs. Respondent filed a Motion to Strike or Tax Costs. Claimants filed an opposition to Respondent's Motion to Strike or Tax Costs. The Panel has read and considered the above documents concerning costs.

Certain costs were not subject to objection:

1. Filing fee - $890
2. Deposition costs - $19,372.41
3. Service of process on Sam Sherman - $54.95
4. Fees for electronic filing service - $107.42
5. Ordinary witness fees - $191.00
6. Certain other costs - $1461(telephonic appearances $86, video tech fee $375, AJL media $1000

Certain costs were objected to:

1. Expert fees - $31,174.25
2. JAMS fees - $155,242.82
3. Graphics - $38,721.25
4. Court reporter - $7,248.78
5. Jury fees - $150

The motion to tax or strike costs is granted as to jury fees - $150.

The motion to tax or strike Claimants' share of reporter fees is granted. The Panel finds that pursuant to JAMS rule 22k both Claimants and Respondent desired that the arbitration hearing be reported and that the panel have access to the record. The parties are deemed to have agreed to share the reporting costs absent an agreement that the arbitration panel may allocate the stenographic record costs.

Respondent's Motion to tax or strike the cost for graphics is denied. Expenses for models, blowups, photo copies and the like, which are reasonably helpful to aid the trier of fact

EXHIBIT 1
EXHIBIT 1

are recoverable costs under CC 1035(c). The panel finds that the items claimed under graphics were reasonably helpful in determining the facts of this case.

Respondent's Motion to tax or strike the costs of JAMS fees in the amount of $155,242.82 is granted. JAMS rule 24(f) provides that the arbitrator may allocate Arbitration compensation and expenses, unless such an allocation is expressly prohibited by the parties' agreement. The panel allocates the payment of JAMS fees equally to Claimants and Respondent. The total of JAMS fees is not yet final.

Respondent's Motion to tax or strike Claimants' expert fees is granted since the damage award does not exceed the CCP 998 offer.

MOTIONS PURSUANT TO JAMS RULE 24(J)

The panel has read and considered the Motions pursuant to JAMS Rule 24(j), their objections thereto, and the replies of both sides.

Claimant requests that the damage award of $186,545 for litigation costs not be included in the negligence damage calculations as it is awarded as breach of contract damages. The panel grants the request. Claimant's motion at paragraph 3 claims that the panel used the wrong penalty numbers when calculating Richman's damages caused by Higg's negligence. Claimants are correct. The panel used the corrected waiting time penalties - $5,253,506 + $74,600 - to calculate the orientation training pay and business and equipment expense claims and should have used the exposure of Richman as $24,847,823. Claimants also state the calculation of pre-judgment interest is incorrect. The panel has determined that pre-judgment interest on the negligence claim will not be awarded. Respondent's Motion to Correct Computational Errors is granted as reflected in this Corrected Final Award. The computational errors have been corrected.

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EXHIBIT 1
EXHIBIT 1

FINAL AWARD

Claimants Richman Management Corporation, a California corporation and Trolley Security, Inc. are awarded damages in the amount of $1,009,244.16 against Respondent Higgs, Fletcher & Mack, LLP, a limited liability partnership doing business in California, for the negligence cause of action heard by this arbitration panel. The panel elects not to award pre-judgment interest for the negligence cause of action.

The Claimants are further awarded damages in the amount of $186,545 against Respondent for breach of contract plus pre-judgment interest of $104,152 plus daily interest of $51.10 from November 30, 2017 until paid.

Claimants are awarded costs in the amount of $60,798.03.

The total to be paid by Respondent to Claimants is $1,360,739.19 plus the daily interest of $51.10 per day from November 30, 2017 until paid.

Dated: April 26, 2018

Hon. Coleman A. Swart, Ret.
Arbitrator (Chair)

Hon. Rex Heeseman, Ret.
Arbitrator

April 25, 2018

Hon. Rebecca Westerfield, Ret.
Arbitrator

EXHIBIT 1
EXHIBIT 1

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Richman Management Corp. vs. Higgs Fletcher & Mack LLP
Reference No. 1200050009

I, Mirra Jhang, not a party to the within action, hereby declare that on April 27, 2018, I served the attached CORRECTED FINAL AWARD on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Mark B. Wilson P.C.
Amy Nguyen Esq,
Klein & Wilson
4770 Von Karman Ave
Newport Beach, CA 92660
Phone: 949-631-3300
wilson@kleinandwilson.com
anguyen@kleinandwilson.com
Parties Represented:
Richman Management Corp.
Trolley Security Inc.

James R. Lance Esq.
Ethan T. Boyer Esq.
Genevieve M. Ruch Esq.
Noonan Lance Boyer & Banach
701 Island Avenue
Suite 400
San Diego, CA 92101
Phone: 619-557-4416
jlance@noonanlance.com
eboyer@noonanlance.com
gruch@noonanlance.com
Parties Represented:
Higgs Fletcher & Mack LLP

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on April 27, 2018.

Mirra Jhang
mjhang@jamsadr.com

EXHIBIT 1
EXHIBIT 1

EXHIBIT 2

EXHIBIT 1

Mark B. Wilson, P.C. - Bar No. 137400
Amy H. Nguyen, Esq. - Bar No. 307617
KLEIN & WILSON
A Partnership of Professional Corporations
4770 Von Karman Avenue
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wilson@kleinandwilson.com; anguyen@kleinandwilson.com

Attorneys for Plaintiffs RICHMAN MANAGEMENT CORPORATION and TROLLEY SECURITY, INC.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO - CENTRAL COURTHOUSE

RICHMAN MANAGEMENT CORPORATION, a California corporation; and TROLLEY SECURITY, INC., a California corporation,

Plaintiffs,

v.

HIGGS FLETCHER & MACK, LLP, a limited liability company doing business in California; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020240
ASSIGNED FOR ALL PURPOSES TO: JUDGE EDDIE C. STURGEON, DEPT. C-67

NOTICE OF RULING RE: (1) PLAINTIFFS' MOTION TO CORRECT OR VACATE ARBITRATION AWARD; AND (2) DEFENDANT'S MOTION TO CORRECT OR CONFIRM ARBITRATION AWARD

Date: **November 30, 2018**
Time: **9:00 a.m.**
Dept: **C-67**

Complaint Filed: **June 20, 2014**
Trial Date: **Not Set**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 30, 2018, at 9:00 a.m., in Department C-67 of the above-referenced court located at 330 West Broadway, San Diego, California 92101, the court heard plaintiffs Richman Management Corporation and Trolley Security, Inc's (collectively "Richman") motion to correct or vacate the arbitration award and defendant Higgs Fletcher & Mack, LLP's ("HFM") motion to correct or confirm the arbitration award. Mark B. Wilson, P.C., of Klein & Wilson, appeared on behalf of Richman. James R. Lance, Esq. and Genevieve M. Ruch, Esq. of Noonan Lance Boyer & Banach LLP, appeared on behalf of HFM.

EXHIBIT 2
EXHIBIT 1

After considering the arguments of counsel, the court adopted its tentative ruling, a copy of which is attached as Exhibit 1.

KLEIN & WILSON

Dated: November 30, 2018

By: _____
Amy H. Nguyen, Esq.
Attorneys for Plaintiffs Richman Management Corporation and Trolley Security, Inc.

EXHIBIT 2
EXHIBIT 1

EXHIBIT 1

EXHIBIT 2
EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - November 29, 2018

EVENT DATE: 11/30/2018 EVENT TIME: 09:00:00 AM DEPT.: C-67

JUDICIAL OFFICER:Eddie C Sturgeon

CASE NO.: 37-2014-00020240-CU-PN-CTL

CASE TITLE: RICHMAN MANAGEMENT CORPORATION VS. HIGGS FLETCHER & MACK LLP [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Professional Negligence

EVENT TYPE: Motion Hearing (Civil)
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate, 07/30/2018

Richman Management Corporation and Trolley Security, Inc.'s ("Richman") motion to correct or vacate arbitration award is granted in part and denied in part.

The panel improperly removed the award of prejudgment interest on the negligence claim in the Corrected Final Award. The Corrected Final Award is corrected to include prejudgment interest on the negligence claim in the amount of $414,777.65, which is calculated as follows: $1,009,244.16 (negligence damages) x 7% = $70,647.09 in interest per year and $193.55 in daily interest ($70,647.09/365 days per year); there are 2,143 days from January 17, 2013 (date damage suffered) to November 30, 2018 (date of award); and 2,143 days x $193.55 per day = $414,777.65.

Richman failed to establish that the panel abused its discretion in allocating the arbitration fees equally between the parties and in denying its motion for expenses incurred in proving requests for admission, therefore the motion is denied on these grounds.

The apportionment of negligence damages rests on factual determinations regarding causation and credibility and is therefore not subject to review. The motion is therefore denied on this ground.

Higgs Fletcher & Mack, LLP's ("Higgs") petition to confirm or correct arbitration award is denied.

Higgs' challenge to the apportionment of negligence damages is a challenge to a finding of fact regarding the total exposure on the negligence claim and therefore not subject to review.

Because the panel found that Higgs' advice fell below the applicable standard of care, Higgs' advice had no value and it was appropriate to award damages on the breach of contract claim based on the legal fees that were paid for this advice. Accordingly, the theory of apportionment under the negligence claim does not apply to the breach of contract claim.

The damages under the breach of contract claim were sufficiently certain for prejudgment interest because they were based on the legal fees paid to Higgs, and Higgs had reasonably available information from which it could have computed the amount owed.

EXHIBIT 1

EXHIBIT 2
EXHIBIT 1

PROOF OF SERVICE
California Rules of Court, rule 2.251
***Code of Civil Procedure* sections 1010.6, 1013, 1013a, and 1013b**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 4770 Von Karman Avenue, Newport Beach, California 92660. My electronic service address is andrea@kleinandwilson.com.

On **November** 30**, 2018**, I served the foregoing document described as **NOTICE OF RULING RE: (1) PLAINTIFFS' MOTION TO CORRECT OR VACATE ARBITRATION AWARD; AND (2) DEFENDANTS' MOTION TO CORRECT OR CONFIRM ARBITRATION AWARD** on the interested party in this action. The document was served by the following method:

__✓__ **BY ELECTRONIC SERVICE**. I electronically served the above listed document by sending the document via an electronic filing service provider to the addresses set forth below.

James R. Lance, Esq. Ethan T. Boyer, Esq. Noonan Lance Boyer & Banach, LLP 701 Island Avenue, Suite 400 San Diego, CA 92101	*Attorneys for Defendant Higgs Fletcher & Mack, LLP* *Telephone: (619) 780-0880* *Facsimile: (619) 780-0877* *Email: jlance@noonanlance.com* *eboyer@noonanlance.com* *bcrena@noonanlance.com* *phoffman@noonanlance.com*

Executed on **November** 30**, 2018**, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Andrea J. F. Ramirez

EXHIBIT 2
EXHIBIT 1

PROOF OF SERVICE
California Rules of Court, rule 2.251
***Code of Civil Procedure* sections 1010.6, 1013, 1013a, and 1013b**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 4770 Von Karman Avenue, Newport Beach, California 92660. My electronic service address is andrea@kleinandwilson.com.

On **December 11, 2018**, I served the foregoing document described as **[PROPOSED] JUDGMENT** on the interested party in this action. The document was served by the following method:

✓ BY ELECTRONIC SERVICE. I electronically served the above listed document by sending the document via email to the addresses set forth below.

James R. Lance, Esq. Ethan T. Boyer, Esq. Noonan Lance Boyer & Banach, LLP 701 Island Avenue, Suite 400 San Diego, CA 92101	*Attorneys for Defendant Higgs Fletcher & Mack, LLP* *Telephone: (619) 780-0880* *Facsimile: (619) 780-0877* *Email: jlance@noonanlance.com* *eboyer@noonanlance.com* *bcrena@noonanlance.com* *phoffman@noonanlance.com*

Executed on **December 11, 2018**, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Andrea J. F. Ramirez

PROOF OF SERVICE
California Rules of Court, rule 2.251
***Code of Civil Procedure* sections 1010.6, 1013, 1013a, and 1013b**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 4770 Von Karman Avenue, Newport Beach, California 92660. My electronic service address is andrea@kleinandwilson.com.

On **December 20, 2018**, I served the foregoing document described as **NOTICE OF ENTRY OF JUDGMENT** on the interested party in this action. The document was served by the following method:

__✓__ **BY ELECTRONIC SERVICE.** I electronically served the above listed document by sending the document via an electronic filing service provider to the addresses set forth below.

James R. Lance, Esq. Ethan T. Boyer, Esq. Noonan Lance Boyer & Banach, LLP 701 Island Avenue, Suite 400 San Diego, CA 92101	*Attorneys for Defendant Higgs Fletcher & Mack, LLP* *Telephone: (619) 780-0880* *Facsimile: (619) 780-0877* *Email: jlance@noonanlance.com* *eboyer@noonanlance.com* *bcrena@noonanlance.com* *phoffman@noonanlance.com*

Executed on **December 20, 2018**, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Andrea J. F. Ramirez