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Attorneys for Plaintiff: Joseph Payne, on behalf of himself and others similarly situated

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

* * *

JOSEPH PAYNE, an individual;
Plaintiff,

vs.

PROS, INCORPORATED, a California corporation; JAMES LEAL, An individual, TERESA LEAL, An individual and Does 1 through 50, inclusive,

Defendants.

Case No. BCV-16-100356DRL

CLASS ACTION

DECLARATION OF ZACHARY CROSNER IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS AND ENHANCEMENT AWARD

Judge: Honorable David R. Lampe
Complaint Filed: February 22, 2016

1 I, Zachary Crosner, declare as follows:

2 1. I am an attorney at law licensed to practice before all the courts of the State of
3 California and before this Court. I am a shareholder of the law firm in this action, Crosner Legal,
4 P.C., one of the attorneys of record for the Plaintiff and the class.

5 2. I have personal knowledge of the facts stated herein and if called as a witness, I
6 could and would competently testify to the following under oath.

7 3. This declaration is submitted in support of Plaintiff's Motion for Attorneys' Fees,
8 Costs and Enhancement Award.

9 4. Crosner Legal, P.C. is Class Counsel representing Plaintiff Joseph Payne and the
10 proposed Class in the above entitled action.

11 5. I am unaware of any conflict of interest between myself or my law firm and any
12 member of the proposed Class which should or would preclude me from representing the Class.

13 **The Court Should Grant Plaintiff's Application For An Award Of Attorneys' Fees**

14 6. While I am admittedly self-interested in this case – and I present this declaration
15 as an advocate not an expert – the fact is that the fees being sought here are reasonable in light of
16 the contingent nature of the fee, the amount of work performed and the quality of work
17 performed.

18 7. The Court has the power to award attorneys' fees and expenses to Class Counsel
19 under the "substantial benefit" theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
20 1810; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) The "substantial
21 benefit" theory permits a litigant who has sued in a representative capacity to recover fees when
22 the litigant's efforts have created a substantial, actual, and concrete benefit for members of an
23 ascertainable class and the court's jurisdiction over the subject matter makes possible an award
24 which spreads the cost proportionately among the members of the benefitted class. (*See Ciani v.*
25 *San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th 563, 578.). This doctrine rests on the
26 understanding that attorneys should normally be paid by their clients, and that unless attorneys'
27 fees are paid out of the common fund, those who benefitted from the fund would be unjustly
28 enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 943; *Save*

1 *El Toro Ass'n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent this unfair result, courts
2 exercise their inherent equitable powers to assess attorneys' fees against the entire fund, thereby
3 spreading the cost of those fees among all those who benefitted. (*Serrano III*, 20 Cal.3d at p. 35.)
4 "A court, in the exercise of its equitable discretion, may decree that those receiving the benefit
5 should contribute to the costs of its production."¹ (*Save El Toro Assn.*, *supra*, 98 Cal.App.3d at p.
6 548.) As this approach "better approximates the workings of the marketplace than the lodestar
7 approach," there is "a greater judicial willingness to evaluate a fee award as a percentage of the
8 recovery" in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal. App. 4th 19,
9 31, 48.)

10 8. Class Counsel's application for an award of attorneys' fees in the amount of
11 \$233,310, or 33 1/3% of the Gross Settlement Amount created on behalf of the Class, is
12 reasonable and fair. This litigation resulted in "a substantial, actual and concrete . . . benefit on
13 the members of an ascertainable class," *Save El Toro Assn.*, *supra*, 98 Cal.App.3d at p. 548.,
14 with the average Class Member estimated to receive \$934.71, and the highest individual
15 recovery totaling approximately \$3,931.97.

16 9. Courts historically award fees in the twenty to fifty percent range, depending on
17 the circumstances of the case. Thus, Class Counsel's requested fee of 33.3% is well within the
18 range of reasonableness. (See, e.g., *In re Activision Securities Lit.* (N.D. Cal. 1989) 723 F. Supp.
19 1373, 1378). No general rule can be articulated on what is a reasonable percentage of a common
20 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
21 in order to assure that the fees do not consume a disproportionate part of the recovery obtained
22 for the Class, although somewhat larger percentages are not unprecedented. (Newberg on Class
23 Actions, 3rd Ed., 1992, § 14.03.) It is recognized that one of the primary factors justifying an
24 attorney fee award in cases such as this are the attendant risks inherent in the litigation. As
25 observed in *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 470: No one

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27
28 ¹ In addition, the Court has the authority under PAGA to award Class Counsel's request for an
award of attorneys' fees and expenses, since Plaintiff brought an action under the PAGA.

1 expects a lawyer whose compensation is contingent upon his success to charge, when successful,
2 as little as he would charge a client who had agreed to pay for his services, regardless of success.
3 Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend
4 solely on the reasonable amount of time expended.

5 10. I have over seven years of experience as a practicing attorney, all of which have
6 focused on litigation of employment, labor law, consumer, and class action claims. I graduated
7 from University of California Santa Barbara in 2007, and graduated from University San Diego
8 School of Law in 2010. While in law school, I was a member of the International Moot Court
9 Team and an article writer for the USD Law Newspaper.

10 11. I was selected as a 2018 Rising Star by Superlawyers. I am currently an executive
11 board member of the Wage and Hour Committee and the Legislative Committee for the
12 California Employment Lawyers Association. I have been a member of the Grassroots Advocacy
13 Team for the National Employment Lawyers Association; Wage and Hour Committee member
14 and Class Action Committee member for the National Trial Lawyers; a member of the American
15 Association for Justice; and member of the Pound Civil Justice Institute.

16 12. I have over seven years of experience as a practicing attorney, all of which have
17 focused on litigation of employment, labor law, consumer, and class action claims. Following
18 my graduation, I immediately began working for a nationally recognized plaintiff's complex
19 litigation firm, CaseyGerry, where I had the fortune of working directly with past presidents of
20 the consumer attorneys and recipients of trial attorneys of the year awards. I also worked for
21 former CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole
22 associate attorney. During my tenure at these firms, I focused on advocating for the rights of
23 consumers and employees in class action litigation, individual civil rights and employment
24 litigation, catastrophic injuries, insurance bad faith and appellate litigation.

25 13. In 2013, I founded the law firm of Crosner Legal, P.C. which since its inception
26 has focused almost exclusively on wage and hour class actions and other labor and employment
27 law cases representing plaintiffs. Currently, over ninety percent (90%) of my practice is
28 dedicated exclusively to the prosecution of wage and hour class and representative actions, and

1 my law firm is currently responsible as lead counsel or co-lead counsel for prosecuting over fifty
2 (50) wage and hour class actions and/or representative actions brought under the Private
3 Attorneys' General Act of 2004 ("PAGA") in both federal and state court.

4 14. Michael Crosner has over 50 years of experience as a practicing litigation
5 attorney. He began his legal career as a litigation attorney at the Los Angeles City Attorney's
6 Office where he successfully tried approximately 75 cases to jury verdict or judgment. Shortly
7 thereafter, he founded Michael R. Crosner Law Corporation. Throughout his years in private
8 practice, he has handled many plaintiff side complex litigation cases and arbitrations in various
9 areas of law, such as consumer advocacy, catastrophic injury, labor and employment, business
10 disputes, immigration, and criminal defense. He is presently "of counsel" to Crosner Legal, P.C.
11 where he directly and fully participates in wage and hour class actions, representative actions
12 brought under the Private Attorneys' General Act of 2004 ("PAGA"), and other employment and
13 labor law cases. He has been co-lead counsel in over fifty wage and hour class and/or
14 representative PAGA actions. In 2015, he was appointed to be a Board Member of Law360's
15 Employment Law Editorial Advisory Committee. He has served as a private mediator and panel
16 arbitrator with the American Arbitration Association, and as judge pro tem. He has also been
17 retained as a special contract attorney for the City of Santa Monica where he handled selected
18 litigation and appeals.

19 15. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class action
20 settlements while serving as lead class counsel in recent years, including but not limited to a \$1.9
21 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
22 Case No. 3:13-cv01579-WHA (U.S. District Court California Northern District); a \$4.1 million
23 dollar wage and hour class action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et*
24 *al.*, Case No. 34- 2016-00190252-CU-OE-GDS (Sacramento Sup. Ct.); and a \$1.35 dollar wage
25 and hour class action settlement in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-
26 2014-00458249- CU-OE-VTA).

27 16. In addition to the complexity of this case, Class Counsel has borne the entire risk and cost
28 of this litigation during the entire time that it has been pending, all on a pure contingency

1 basis. Through the investment of substantial effort and resources, Class Counsel has secured an
2 outstanding settlement of behalf of the Settlement Class members. Defendants vigorously
3 contested liability, the amount of claimed damages, and the propriety of class certification. It is
4 this kind of situation, involving complex issues, that has been recognized as justifying a
5 substantial attorney fee award.

6 17. Class Counsel’s fee request is also reasonable under a Lodestar Crosscheck. Court
7 may “cross-check” the results of the common fund method against the lodestar method. (See,
8 e.g., *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar is calculated
9 by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano v. Priest*
10 (1977) 20 Cal.3d 25, 48-49 [“*Serrano III*”].) Those rates reflect “the general local hourly rate for
11 a fee-bearing case” and do “not include any compensation for contingent risk, extraordinary
12 skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The court may
13 then enhance the lodestar with a multiplier. (*Wershba*, supra, 91 Cal.App.4th at p. 254; *Rebney v.*
14 *Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347; *Serrano III*, supra, 20 Cal.3d at p. 49.

15 18. The purpose of using the lodestar/multiplier method is to mirror the legal
16 marketplace. Counsel will not handle cases for straight hourly fees payable only if they win;
17 therefore, an enhancement is often awarded so that the fee received is commensurate with what
18 attorneys could expect to be compensated for services in similar circumstances. (See *San*
19 *Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738,
20 755 [an award must be large enough “to entice competent counsel to undertake difficult public
21 interest cases”].) No specific findings reflecting the court’s calculations are required. (*Wershba*,
22 supra, 91 Cal.App.4th at p. 254; *Rebney*, supra, 232 Cal.App.3d at p. 1349.) “The record need
23 only show that the attorney fees were awarded according to the ‘lodestar’ or ‘touchstone’
24 approach.” (Ibid.)

25 **Lodestar In This Litigation**

26 19. Here, a lodestar cross-check confirms that the percentage requested by Class
27 Counsel is reasonable. Class Counsel’s aggregate lodestar amounts to \$221,104, which
28 represents 487.95 hours of attorney work on this litigation incurred from its inception through

1 the filing of this Motion for Attorneys' Fees, Costs and Enhancement Award. Typically, the
2 lodestar is merely the starting point of the calculation of a reasonable fee, and courts often
3 multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
4 quality of work, and the novelty and difficulty of the issues involved. (See *Radar v. Thrasher*
5 (1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419;
6 *Coal for L.A. County Planning v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251.)

7 20. In preparing this fee application, I reviewed the firm's time records, files and
8 emails. Based on my review of these records, I can attest that all of the time set forth was
9 reasonably devoted to pursuing the class' interests and otherwise would have been billed to a
10 fee-paying client. To summarize, our office's lodestar in this matter is the following: 43 hours
11 worked by Zachary Crosner and 45.10 hours worked by Michael Crosner. I believe these hours
12 expended are reasonable given the complexity and novelty of the issues involved, the vigorous
13 defense, the length and intensity of the litigation, and the exceptional results obtained. Class
14 Counsel litigated this action with great efficiency in light of the amount of work required to
15 achieve the Settlement. Plaintiff's counsel are entitled to be compensated "for all time reasonably
16 expended in pursuit of the ultimate result achieved in the same manner that an attorney
17 traditionally is compensated by a fee-paying client for all time reasonably expended on a
18 matter." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431 [internal quotations omitted]; accord
19 *Serrano v. Unruh* (1982) 32 Cal.3d 621, 633 [*"Serrano IV"*] [parties should recover for all hours
20 reasonably spent]; *Meister v. Regents of Univ. of Cal.* (1998) 67 Cal.App.4th 437, 447-48
21 [same].)

22 21. Class Counsel is entitled to be compensated at hourly rates that reflect the
23 reasonable market value of their legal services, based on their experience and expertise. (See
24 *Serrano IV*, supra, 32 Cal.3d at pp. 640-43, n.31.) "The reasonable hourly rate is that prevailing
25 in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
26 1095.) Payment at full market rates is essential to entice well-qualified counsel to undertake
27 difficult cases, such as this one. (*San Bernardino Valley Audubon Soc'y v. County of San*
28 *Bernardino* (1984) 155 Cal. App. 3d 738, 755.) Additionally, calculation of a lodestar based on

1 current hourly rates is appropriate as a means of compensating for delay in payment. (*Missouri v.*
2 *Jenkins by Agyei* (1989) 491 U.S. 274, 283-84.)

3 22. My office has been fully committed to dedicating the time, resources and finances
4 to see this case through to its conclusion. Our office took this case on a contingency fee basis
5 wherein we obligated ourselves to covering potentially a significant amount of expenses for costs
6 without a guarantee of any reimbursement or award. Further, the amount of work involved in
7 litigating a wage and hour class action frequently requires hundreds or even thousands hours of
8 work, hundreds of thousands of dollars in costs, and years of time. In sum, plaintiff's counsel
9 must be prepared to devote a significant of our time and resources to each particular wage and
10 hour class action and must be willing to take large risks on their outcome.

11 23. Further, litigation of wage and hour class actions requires a specialized
12 knowledge of the seemingly almost daily and often complex changes to the body of procedural
13 and substantive law. Our office has gained this experience and kept abreast with this area of law
14 by serving as lead and co-lead counsel in several wage and hour class actions; discussing and
15 working closely with highly reputable attorneys within this field; consistently attending
16 seminars, subscribing and reviewing articles and other specialized learning materials; and
17 reviewing court documents, awards and judgments in other cases.

18 24. As a result, I have become familiar with the non-contingent market rates charged
19 by attorneys in California which in my experience are generally based on an attorney's current
20 rate at the time a motion for fees is made. We request that the Court find that the requested
21 hourly rate of \$400.00 per hour for Zachary Crosner and \$800.00 per hour for Michael Crosner,
22 a California litigation attorney for the past 50 years, to be reasonable.

23 25. Class Counsel's charged rates are commensurate with the prevailing market rates
24 in Sacramento County for attorneys of comparable experience and skill handling complex
25 litigation, and have been previously approved by this Court in similar wage and hour class action
26 litigation. (See *Aguirre v. Mariani Nut Company, Inc.*, Case No. 34-2016-00190252-CU-OE-
27 GDS (Sacramento County Sup. Ct.). Furthermore, Class Counsel's rates in calculating the
28 lodestar are the same rates charged to non-contingent hourly clients and thus necessarily reflect

1 the current market value of counsel’s legal services. Class Counsel has made all reasonable
2 attempts to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate
3 billing rates.

4 26. Finally, Michael Crosner and Zachary Crosner’s hourly rates are in line with the
5 Laffey Matrix, which is a fee scale that courts often consult in determining the reasonableness of
6 hourly rates. Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years
7 of experience, such as Michael Crosner (50 years), is \$864, and a reasonable rate for an attorney
8 with approximately seven years of experience, such as myself is \$440 [2018 Adjusted Laffey
9 Matrix].) At our proposed hourly rates of \$800 and \$400, respectively, our lodestar would be
10 \$53,280, which combined with Sutton Hague Law Corporation’s lodestar of \$167,824, yields a
11 combined lodestar of \$221,104.

12 **Litigation Costs**

13 27. In addition to their request for fees, Class Counsel further request reimbursement
14 of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with
15 this litigation, in the amount of \$17,321.

16 28. To date, my law firm, Crosner Legal, P.C. has incurred \$2,479 in costs in
17 prosecuting this case. All of the requested costs are reasonable in amount and necessarily
18 incurred in prosecuting this litigation, and all costs advanced have already been paid by my law
19 firm. This does not include the filing fees for final approval or any anticipated future costs. The
20 costs incurred by Sutton Hague Law Corporation of \$14,842 are set forth in the supporting
21 declaration of Brett Sutton.

22 29. No Class Member objected to an award of costs to Class Counsel. Accordingly,
23 the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred
24 is appropriate and justified as part of the overall Settlement and the Court should approve the
25 total amount requested for reimbursement.

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1 **Incentive Award Requested For the Class Representative**

2 30. I respectfully request that the Named Plaintiff Joseph Payne be awarded an
3 enhancement award in the amount of \$10,000. As this Court preliminary found, this amount is
4 fair and reasonable.

5 31. Were it not for Mr. Payne stepping forward and shouldering the duties of
6 protecting and prosecuting the interests of other Class Members, it is likely the interests of the
7 Settlement Class would neither have been prosecuted nor benefited. Indeed, the parties have
8 acknowledged that, to their knowledge, there is no litigation, either pending or otherwise, on a
9 class or individual class, concerning the claims in this lawsuit.

10 32. Moreover, I believe Mr. Payne has done all things reasonably expected of him in
11 his capacity as class representative. By stepping forward to shoulder this action on behalf of the
12 class, Mr. Payne took on risks, including the risk of subjecting himself to intrusive discovery.
13 Mr. Payne also regularly and consistently communicated with me throughout the more than two
14 year duration of this case. Through my discussions and other communications with him, I know
15 that he reviewed relevant documents, provided his input, and otherwise kept apprised of
16 litigation related events and developments. He also provided her ideas and opinions to me in the
17 various rounds of settlement negotiations and exchanges of information. I believe that he was
18 able to understand the issues in this litigation and meaningfully participate in negotiations of this
19 settlement. In sum, I believe Mr. Payne contributed as much of his valuable time as this litigation
20 demanded to ensure a vigilant prosecution of and favorable outcome for the best interests of the
21 Class Members. I believe these facts further support an incentive award because they “recognize
22 [a class representative’s] willingness to act as a private attorney general.” *Rodriguez v. West*
23 *Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009).

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33. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 21st Day of June 2018 at Los Angeles, California.



Zachary M. Crosner, Esq.

PROOF OF SERVICE

My business address is **5200 N. Palm Ave., Suite 203, Fresno, California 93704**. I am employed in Fresno, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as:

NOTICE OF MOTION AND MOTION IN SUPPORT OF PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT AWARD; DECLARATION OF JARED HAGUE IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT AWARD; DECLARATION OF S. BRETT SUTTON IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT AWARD; AND DECLARATION OF ZACHARY CROSNER IN SUPPORT OF MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT AWARD

on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

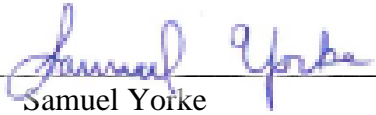
Jerry Wayne Pearson Jr., Esq. Young Wooldridge LLP 1800 30th Street, Fourth Floor Bakersfield, CA 93301-1919	Zachary Crosner, Esq. Michael Crosner, Esq. Crosner Legal, PC 345 Reeves Dr., Suite 2 Beverly Hills, CA 90212
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- X (BY FIRST CLASS MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.
- _____ (BY PERSONAL SERVICE) I caused such envelopes to be delivered by hand to the office(s) of the addressee(s).
- _____ (BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).
- _____ (BY OVERNIGHT MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing and that correspondence will be deposited with an overnight carrier on the date noted below in the ordinary course of business, in accordance with the overnight carrier’s method for billing for same, and before the last scheduled pick-up time, at Fresno, California.

EXECUTED on June 22, 2018, at Fresno, California.

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



Samuel Yorke