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12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF KERN**

14 * * *

15 JOSEPH PAYNE, an individual,
16 Plaintiff,

17 vs.

18 PROS, INCORPORATED, a California
19 Corporation; JAMES LEAL, an individual;
20 TERESA LEAL, an individual; and Does 1
through 50, inclusive,

21 Defendants.

Case No. BCV-16-100356DRL

22 **CLASS ACTION**

[Honorable David R. Lampe - Dept. 11]

23 **MEMORANDUM OF POINTS AND**
24 **AUTHORITIES IN SUPPORT OF**
25 **PLAINTIFF'S UNOPPOSED MOTION**
26 **FOR ATTORNEYS' FEES, COSTS AND**
27 **ENHANCEMENT AWARD**

28 **FINAL APPROVAL HEARING**

Date: August 29, 2018

Time: 8:30 a.m.

Dept. 11

Motion Reservation No.:

Complaint Filed: February 22, 2016

1 I. INTRODUCTION 1

2 II. PLAINTIFFS’ ENHANCEMENT AWARD REQUEST SHOULD BE GRANTED 2

3 III. THE ATTORNEYS’ FEES AND COSTS REQUESTED BY PLAINTIFF ARE REASONABLE 3

4 A. The Agreed Upon and Requested Attorneys’ Fees Are Appropriate Under the Percentage

5 of the Common Fund Doctrine 4

6 1. The Result Obtained By Class Counsel for the Settlement Class Is Favorable 5

7 2. Class Counsel Undertook Significant Financial Risk in Agreeing To Represent the

8 Class 5

9 3. Class Counsel Provided Valuable Class Action Experience to the Class 6

10 4. Class Counsel Addressed Complex Issues On Behalf Of the Class 6

11 5. Class Counsel Expended Significant Time and Resources Pursuing the Class

12 Claims 7

13 B. Class Counsel’s Fee Request Is Reasonable under the Lodestar Cross-Check 7

14 1. The Number of Hours Claimed Is Reasonable 9

15 2. The Hourly Rates Requested Are Reasonable 9

16 C. THE REQUEST FOR REIMBURSEMENT OF COSTS FROM THE COMMON FUND

17 IS FAIR AND REASONABLE 11

18 IV. CONCLUSION 11

19

20

21

22

23

24

25

26

27

28

1	Cases	
2	<i>Aguirre v. Mariani Nut Company, Inc.</i> ,	
3	Case Number 34-2016-00190252-CU-OE-GDS	10
4	<i>Bedran v. Am. Exp. Travel Related Servs. Co.</i> ,	
5	No. B183817, 2007 WL 756364, at *14 (Cal. Ct. App. Mar. 13, 2007)	8
6	<i>Bihun v. AT&T Information Systems</i>	
7	(1993) 13 Cal.App.4th 976, 997	7
8	<i>Bogosian v. Gulf Oil Corp.</i>	
9	(E.D. Pa. 1985) 621 F.Supp.27	2
10	<i>Brinker Restaurant Corp. v. Superior Court</i>	
11	(2012) 53 Cal.4th 1004	6
12	<i>Consumer Privacy Cases</i>	
13	(2009) 175 Cal.App.4th 545, 557	7
14	<i>Duran v. U.S. Bank Nat. Assn.</i>	
15	(2014) 59 Cal.4th 1, 34	7
16	<i>Hensley v. Eckerhart</i>	
17	(1983) 461 U.S. 424, 431	9
18	<i>Heritage Bond Litigation</i>	
19	(2005) 2005 WL 1594403 at *18.....	4
20	<i>Horsford v. Board of Trustees of California State University</i>	
21	(2005) 132 Cal. App. 4th 359, 394	8
22	<i>Ketchum v. Moses</i>	
23	(2001) 24 Cal.4th 1122	5, 7, 8
24	<i>Lealao v. Beneficial California, Inc.</i> ,	
25	82 Cal. App. 4th 19, 51 (2000)	4, 8
26	<i>Medical X-Ray Anti-Trust Litigation</i>	
27	(1998) 1998 WL 661515 at *7	5
28	<i>Meister v. Regents of Univ. of Cal.</i>	
	(1998) 67 Cal.App.4th 437, 447-48	9

1	<i>Missouri v. Jenkins by Agyei</i>	
2	(1989) 491 U.S. 274, 283-84	9
3	<i>Mount v. Wells Fargo Bank, N.A.,</i>	
4	No. B260585, 2016 WL 537604, at *7 (Cal. Ct. App. Feb. 10, 2016)	8
5	<i>Pacific Enterprises Securities Litigation</i>	
6	(9th Cir. 1995) 47 F.3d 373, 379	2, 4
7	<i>Parker v. City of Los Angeles</i>	
8	(1974) 44 Cal.App.3d 556, 557-568	4
9	<i>People v. Yuki</i>	
10	(1995) 31 Cal. App. 4th 1754, 1771	5
11	<i>PLCM Group, Inc. v. Drexler</i>	
12	(2000) 22 Cal.4th 1084, 1095	8, 9
13	<i>Rebney v. Wells Fargo Bank</i>	
14	(1991) 232 Cal.App.3d 1344, 1347	7
15	<i>Rodriguez v. West Publ'g Corp.</i>	
16	(9th Cir. 2009) 563 F.3d 948,958-59	2
17	<i>San Bernardino Valley Audubon Soc'y v. County of San Bernardino</i>	
18	(1984) 155 Cal. App. 3d 738, 755	9
19	<i>Save El Toro Ass'n v. Days</i>	
20	(1979) 98 Cal.App.3d 544, 548-49	4
21	<i>Schiller v. David's Bridal, Inc.,</i>	
22	(E.D. Cal. 2012) 2012 WL 2117001 at *21	10
23	<i>Serrano III, supra,</i>	
24	20 Cal.3d at p. 49	7
25	<i>Serrano IV, supra,</i>	
26	32 Cal.3d at pp. 640-43, n.31	9
27	<i>Serrano v. Priest</i>	
28	(1975) 20 Cal.3d 25, 48-49	4, 7

1 *Serrano v. Unruh*
2 (1982) 32 Cal.3d 621, 633 9
3 *Six Mexican Workers v. Ariz. Citrus Growers,*
4 904 F.2d 1301 (9th Cir. 1990) 7
5 *Smith v. Cardinal Logistics Management Corp.*
6 (N.D. Cal. 2011) 2011 WL 3667462 at *5 3
7 *Staton v. Beoing*
8 (9th Cir. 2003) 327 F.3d 938,997 2, 3
9 *Van Vracken v. Atlantic Richfield Co.*
10 (N.D.Cal.1995) 901 F.Supp. 294, 298 2, 10
11 *Vizcaino v. Microsoft Corp.*
12 (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 10
13 *Wershba, supra,*
14 91 Cal.App.4th at p. 254 7, 10
15 *Williams v. MGM-Pathe Commc'ns Co.,*
16 129 F.3d 1026, 1027 (9th Cir. 1997) 7
17 *Woodland Hills Residents Assn., Inc. v. City Council*
18 (1979) 23 Cal.3d 917, 943 4

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Joseph Payne (“Plaintiff”) respectfully submits the following Memorandum of Points
3 and Authorities in Support of Plaintiff’s Motion for Attorneys’ Fees, Costs and Enhancement Award in
4 connection with the Joint Stipulation of Class Action Settlement.

5 **I. INTRODUCTION**

6 Plaintiff, individually, and on behalf of the Stipulated Class bring this Motion for an Order
7 approving Class Counsel’s request for attorneys’ fees, costs and enhancement award to Plaintiff in
8 accordance with the Joint Stipulation of Class Settlement (“the Settlement”) that was preliminarily
9 approved by this Court on May 22, 2018.

10 As set forth in Plaintiff’s Motion for Preliminary Approval, the Settlement in this case is
11 extremely favorable to the Class Members. The Settlement establishes a total fund of \$700,000 for 403
12 Class Members, which includes allocation for individual settlement payments to Class Members, Class
13 Counsel’s Fees and Expenses, an Enhancement Payment to Plaintiff as the Class Representative, costs of
14 administration, payroll taxes and payment to the California Labor and Workforce Development Agency
15 for resolution of Plaintiff’s claims under the Private Attorneys’ General Act (“PAGA”). The individual
16 shares of the Settlement will be paid to participating Class Members without the need to submit a claim
17 form or take any other affirmative action prior to receiving their individual settlement share.

18 This Motion is being filed sufficiently ahead of the Settlement Class’ deadline to decide whether
19 to opt-out or object to the Settlement so that Settlement Class may fully evaluate Plaintiff’s request for
20 attorneys’ fees, costs and enhancement award in deciding whether to participate in the Settlement. With
21 respect to the Class response as of the filing of this Motion, none of the Settlement Class Members have
22 evidenced any intent to object to the Settlement and none of the Class Members have opted-out of the
23 Settlement, further evidencing the fairness of the Settlement and the appropriateness of Class Counsel’s
24 fee and costs request. (Declaration of Jared Hague (“Hague Decl.”) at ¶11.) In addition, the fact that
25 Class Counsel was able to achieve a successful result in a timely and efficient manner brings immediate
26 relief to the Class. Complex litigation, and particularly wage and hour class action litigation, can
27 continue for years if litigated to final judgment, and even then are frequently appealed by employers.

28 ///

1 In sum, the Settlement represents an extraordinary outcome for the Class Members, with the
2 average Class Member estimated to receive approximately \$934.71, with the highest individual recovery
3 totaling approximately \$3,931.97. (Hague Decl. at ¶12.) This is a significant benefit to the Class
4 Members, all of whom are hourly wage earners at or near the bottom of the socio-economic scale who
5 would be unlikely to have the means to individually contract with an experienced attorney on an hourly
6 basis. The Class Members in this case receive the benefit of excellent legal work by an experienced law
7 firm that vigorously prepared, litigated and negotiated this case to a successful outcome.

8 It is also notable that Plaintiff has now been involved in the litigation of this matter for over two
9 years, based on the February 22, 2016 filing date of the original Complaint. The duration of the case, in
10 addition to the other factors involved in weighing the benefits of the Settlement, should also be taken
11 into account in evaluating Class Counsel's attorney fee request. Therefore for all of the foregoing
12 reasons as discussed more fully below, Class Counsel respectfully requests that it be awarded attorneys'
13 fees and costs in the sum of \$233,310, an amount which equates to approximately "one-third of the
14 common fund" allocation that is typical of most class action attorney fee awards. Recovery from the
15 common fund in contingency fee class actions is a regularly accepted practice. (*In re Pacific Enterprises*
16 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 379.).

17 II. PLAINTIFFS' ENHANCEMENT AWARD REQUEST SHOULD BE GRANTED

18 In addition to the sums paid to the Stipulated Class, the Parties have agreed that Plaintiff may
19 request an enhancement award not to Ten Thousand Dollars (\$10,000).

20 Class action settlements typically provide for an incentive or enhancement payment to the named
21 plaintiff for bringing and helping to prosecute an action that yields a benefit to other absent class
22 members, and courts routinely approve these supplemental payments. (*See, e.g., Van Vranken v. Atlantic*
23 *Richfield Co.* (N.D. Cal. 1995) 901 F.Supp.294; *Bogosian v. Gulf Oil Corp.* (E.D. Pa. 1985) 621
24 F.Supp.27 (award of \$20,000 each to two class representatives in antitrust case).) Further, incentive
25 awards may recognize a plaintiff's "willingness to act as a private attorney general." (*Rodriguez v. West*
26 *Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948,958-59.) As the court noted in *Staton v. Beoing* (9th Cir.
27 2003) 327 F.3d 938,997:

1 [N]amed plaintiffs...are eligible for reasonable incentive payments. The district court
2 must evaluate their awards individually, using relevant factors include[ing] the actions
3 the plaintiff has taken to protect the interests of the class, the degree which the class has
4 benefited from those actions,...the amount of time and effort the plaintiff expended in
5 pursuing the litigation...and reasonabl[e] fear[s] of work retaliation.

6 The retaliation issue identified in *Staton* extends outside the immediate workplace. It is common
7 knowledge that the modern-day workforce is mobile, with employees holding several jobs in a career
8 during their lifetime. It is also true that prospective employers in the digital age frequently conduct
9 extensive background checks to see whether applicants have filed lawsuits against their employers or
10 been sued.

11 This service award takes into consideration the risk, time, effort and expense incurred by
12 Plaintiff in coming forward to litigate this matter on behalf of the Stipulated Class. Here, Plaintiff was
13 instrumental in the preparation, prosecution, and settlement of the immediate litigation. (Hague Decl. at
14 ¶8; Declaration of Zachary Crosner (“Z. Crosner Decl.”) at ¶¶30-32.) Plaintiff is responsible for securing
15 the benefits that the class members are poised to receive. In doing so however, Plaintiff undertook a
16 serious burden. By suing his former employer, Plaintiff increased the risk of retaliation by prospective
17 employers to which he may apply in the future. Based thereon, the requested enhancement of \$10,000 to
18 Plaintiff is in line with the prevailing views of burdens undertaken by class representatives and with
19 awards in other cases. (*Smith v. Cardinal Logistics Management Corp.* (N.D. Cal. 2011) 2011 WL
20 3667462 at *5 (approving \$15,000 incentive award).) In addition, none of the other Class Members have
21 objected to the proposed enhancement award to date. Accordingly, the request is reasonable.

22 **III. THE ATTORNEYS’ FEES AND COSTS REQUESTED BY PLAINTIFF ARE**
23 **REASONABLE**

24 Courts typically consider the following factors when determining the reasonableness of a request
25 for attorneys’ fees in a class action: “(1) the result obtained for the class; (2) the effort expended by
26 counsel; (3) counsel’s experience; (4) counsel’s skill; (5) the complexity of the issues; (6) the risks of
27 non-payment assumed by counsel; (7) the reaction of the class; and (8) comparison with counsel’s
28

1 lodestar.” (*In re Heritage Bond Litigation* (C.D. Cal. 2005) 2005 WL 1594403 at *18 (exercising
2 discretion to award 1/3 of the class fund as fee).)

3 **A. The Agreed Upon and Requested Attorneys’ Fees Are Appropriate Under the**
4 **Percentage of the Common Fund Doctrine**

5 Recovery of attorney’s fees under the “percentage of fund” doctrine, the validity of which is
6 recognized and is the preferred method of fee calculation in common fund cases in California courts, has
7 long been recognized to be within the province of the Court’s equitable jurisdiction. (*Serrano v. Priest*
8 (1977) 20 Cal.3d 25, 38-39; *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379; *In re*
9 *AT&T Corp. Secs. Litig.* (3rd Cir. 2006) 455 F.3d 160, 164; *Lealao v. Beneficial Calif., Inc.* (2000) 82
10 Cal.App.4th 19, 49-50 (appropriate for courts to evaluate lodestar amount as a percentage of recovery
11 and adjust it accordingly if it differs from the range of percentage fees freely negotiated in comparable
12 litigation).)

13 This theory also rests on the understanding that attorneys should normally be paid by their clients
14 and that unless attorneys’ fees are paid out of the common fund, those who benefited from the fund
15 would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917,
16 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent this unfair result,
17 courts exercise their inherent equitable powers to assess attorneys’ fees against the entire fund, thereby
18 spreading the cost of those fees among all those who benefited. (*Serrano III*, 20 Cal.3d at p. 35.) “A
19 court, in the exercise of its equitable discretion, may decree that those receiving the benefit should
20 contribute to the costs of its production.” (*Save El Toro Assn., supra*, 98 Cal.App.3d at p. 548.) As this
21 approach “better approximates the workings of the marketplace than the lodestar approach,” there is “a
22 greater judicial willingness to evaluate a fee award as a percentage of the recovery” in common fund
23 cases. (*Lealao v. Beneficial Calif., Inc., supra* at 82 Cal. App. 4th 19, 31, 48.)

24 Here, Class Counsel requests an amount that equates to the percentage of the common fund
25 traditionally approved by courts. In practice, an award equal to or greater than one-third of the common
26 fund is commensurate with judicial precedent. (*See, e.g., In re Pacific Enter. Sec. Litig.*, (9th Cir. 1995)
27 47 F.3d 373, 379 (affirming award equal to 33% of the common fund); *Parker v. City of Los Angeles*
28 (1974) 44 Cal.App.3d 556, 557-568 (affirming award equal to one-third of recovery achieved).) Courts

1 generally recognize that a number of factors determine whether the attorneys’ fees requested out of a
2 common fund are reasonable. Based thereon, Class Counsel’s request of \$233,310, amounting to
3 approximately one-third (33.3%) of the Gross Settlement Fund of \$700,000, clearly falls within the
4 appropriate parameters of a “reasonable” award.

5 **1. The Result Obtained By Class Counsel for the Settlement Class Is Favorable**

6 Given the fact that the Stipulated Class in this case is receiving an estimated average recovery of
7 over \$900 and a maximum individual recovery of \$3,931.97, the Settlement provides a significant
8 benefit to the Class Members. The favorable nature of the Settlement is further evidenced by the fact
9 that to date no objections to the settlement have been filed as of the filing of this Motion. (Hague Decl.
10 at ¶11.) Based on these factors, the result obtained for the Class Members is very favorable.

11 **2. Class Counsel Undertook Significant Financial Risk in Agreeing To Represent the**
12 **Class**

13 As a contingency fee case, the immediate action posed significant financial risk of non-payment
14 when Class Counsel chose to accept the representation. Courts uniformly recognize that this risk plays a
15 significant factor when determining whether an attorneys requested award is “reasonable.” (*See, e.g.*
16 *People v. Yuki* (1995) 31 Cal. App. 4th 1754, 1771; *In re Medical X-Ray Anti-Trust Litigation* (1998)
17 1998 WL 661515 at *7.) Indeed, as a contingent fee, “involves a gamble on the result, [the court] may
18 properly provide for a larger compensation than would otherwise be reasonable.” (*Ketchum v. Moses*
19 (2001) 24 Cal.4th 1122 at 1133.) This notion conforms to basic public policy which seeks to incentivize
20 attorneys to take contingency fee cases—cases which tend to act as the exclusive means of legal remedy
21 for lower income communities. (*Id.*)

22 Class Counsel’s representation of the interest of the Class Members—on a contingency basis
23 alone—has extended for over two years now, since February 2016, and has required counsel to forego
24 significant other work and required the advancement of costs at a time when routine business expenses
25 still had to be met. (Declaration of S. Brett Sutton (“Sutton Decl.”) at ¶¶25-26.) Through the investment
26 of substantial effort and resources, Class Counsel has secured an outstanding settlement on behalf of the
27 Class Members. An attorneys’ fee award that represents approximately one-third (33.3%) of the
28 settlement fund reflects the real economics that have been passed on to the members of the Stipulated

1 Class and the true risks of the case, and is therefore consistent with the market value for work fully
2 performed. (Sutton Decl. at ¶¶16-27; Z. Crosner Decl. at ¶¶19-22.) This percentage accounts for the
3 risks undertaken by Class Counsel in litigating this case, both in terms of the distinct possibility on non-
4 recovery and non-payment.

5 **3. Class Counsel Provided Valuable Class Action Experience to the Class**

6 Class Counsel's modest request is further bolstered by the significant experience and skill Class
7 Counsel provided to the immediate litigation. Attorneys Michael and Zachary Crosner dedicate their
8 practice to representing employees in wage and hour and other employment-related matters and have
9 combined decades of experience. (Z. Crosner Decl. at ¶¶10-15.) Among the numerous accomplishments
10 expounded upon in detail in the accompanying declaration, lead counsel S. Brett Sutton has been listed
11 as a Northern California Super Lawyer for the past six years; has been appointed as class counsel in
12 numerous wage and hour class actions and has recovered millions of dollars for Plaintiffs in such cases
13 throughout the years and has also appeared as counsel for defendants in several wage and hour class
14 action lawsuits. (Sutton Decl. at ¶¶3-13.) Attorney Jared Hague is also highly experienced in cases of
15 these types and has practiced exclusively in the area of employment law during his career. (Hague Decl.
16 at ¶¶3-6.) In other recent wage and hour class action cases, the hourly rates of the attorneys and staff of
17 Class Counsel have received court approval. (Sutton Decl. at ¶ 24.)

18 **4. Class Counsel Addressed Complex Issues On Behalf Of the Class**

19 This case, as in many other wage and hour class actions cases, there is substantial complexity
20 and skill required in the analysis of voluminous time records and internal policy documents to develop
21 an accurate framework for potential settlement. Significantly, the risk attendant to the underlying claims
22 in this matter was great considering the class size. Were this case to proceed, Defendant would have a
23 strong incentive to litigate tenaciously. Further, the large class size required Plaintiff's Counsel to
24 vigilantly investigate the claims and thoroughly analyze hundreds of pages of policy documents and
25 sample timekeeping and pay records to determine the scope and the extent of alleged violations.

26 As detailed in Plaintiffs' Motion for Preliminary Approval, there are also significant and difficult
27 legal and factual questions for which Class Counsel had to account in the litigation of this matter. For
28 example, although the *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 case clarified

1 California’s meal and rest break standards, the legal issues presented herein are by no means settled law,
2 as wage-and-hour law and class certification requirements in California are in a state of flux. (*See, e.g.,*
3 *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 34.).

4 **5. Class Counsel Expended Significant Time and Resources Pursuing the Class Claims**

5 Class Counsel also dedicated a significant amount of time and resources attempting to secure the
6 vindication of class interests. Courts regularly recognize that the length and expense of this relationship
7 bears proportional relationship to the “reasonable” nature of fee awards. (*Six Mexican Workers v. Ariz.*
8 *Citrus Growers* (9th Cir. 1990) 904 F.2d 1301.) This factor particularly supports Class Counsel’s
9 request in the immediate case insofar as Class Counsel has worked with Plaintiff for more than two
10 years in the immediate litigation—advancing considerable fees and costs in the process. (Sutton Decl. at
11 ¶26.)

12 **B. Class Counsel’s Fee Request Is Reasonable under the Lodestar Cross-Check**

13 Courts may “cross-check” the results of the common fund method against the lodestar method.
14 (*See, e.g., In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. The court determines a
15 “lodestar” figure based on the time spent and the reasonable hourly rate for each attorney involved in the
16 case. Those rates reflect “the general local hourly rate for a fee-bearing case” and do “not include any
17 compensation for contingent risk, extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001)
18 24 Cal.4th 1122, 1138.) The court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91
19 Cal.App.4th at p. 254; *Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347; *Serrano III,*
20 *supra*, 20 Cal.3d at p. 49.). The multiplier typically references the following factors: 1) novelty and
21 difficulty of the issues involved; 2) skill displayed in presenting them; 3) extent to which the litigation
22 precluded other employment; and 4) the contingent nature of the fee award owing to the uncertainty of
23 prevailing on the merits and establishing eligibility for the award. *Serrano v. Priest* (1975) 20 Cal.3d 25,
24 48-49; *Bihun v. AT&T Information Systems* (1993) 13 Cal.App.4th 976, 997.

25 As an initial matter the Ninth Circuit has established that an attorneys’ fees award in a claims-
26 made class action settlement should be based on the maximum potential settlement value rather than the
27 amount actually claimed by class members. *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026,
28 1027 (9th Cir. 1997) (“We conclude that the district court abused its discretion by basing the fee on the

1 class members’ claims against the fund rather than on a percentage of the entire fund or on the
2 lodestar.”). California courts have largely endorsed this approach. *See Lealao v. Beneficial California,*
3 *Inc.*, 82 Cal. App. 4th 19, 51 (2000); *Bedran v. Am. Exp. Travel Related Servs. Co.*, No. B183817, 2007
4 WL 756364, at *14 (Cal. Ct. App. Mar. 13, 2007); *Mount v. Wells Fargo Bank, N.A.*, No. B260585,
5 2016 WL 537604, at *7 (Cal. Ct. App. Feb. 10, 2016).

6 In determining the attorney fee award that would have been reached using the lodestar method,
7 California courts uniformly acknowledge that lodestar figures, “may . . . be adjusted, based on
8 consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal
9 services provided.” *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. Specifically, “it has
10 long been recognized . . . that the contingent and deferred nature of the fee award in a civil rights or
11 other case with statutory attorney fees requires that the fee be adjusted in some manner to reflect the fact
12 that the fair market value of legal services provided on that basis is *greater than the equivalent*
13 *noncontingent hourly rate.*” *Horsford v. Board of Trustees of California State University* (2005) 132
14 Cal. App. 4th 359, 394 (citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132) (emphasis added).

15 The *Horsford* court further noted that the court must consider that years may pass between the
16 time that an hourly fee attorney would begin collecting fees from the client, and that the demands of
17 those contingency fee cases preclude the attorney from other work during those years, “which makes the
18 ultimate risk of not obtaining fees all the greater.” *Id.* The court reinforced the public policy
19 considerations requiring a risk of delay enhancement, stating:

20 [A] failure to fully compensate for the enormous risk in bringing even a wholly
21 meritorious case would effectively immunize large or politically powerful defendants
22 from being held to answer for constitutional deprivations, resulting in harm to the public.
Id.

23 Applied to the instant case, a lodestar cross-check confirms that the percentage requested is
24 reasonable. The aggregate lodestar of attorneys for Plaintiff amounts to \$221,104, comprised of Sutton
25 Hague Law Corporation’s lodestar of \$167,824 (Sutton Decl. at ¶18) and Crosner Legal’s lodestar of
26 \$53,280 (Z. Crosner Decl. at ¶26), which represents 487.95 hours of attorney work on this litigation,
27 incurred from its inception, which included substantial pre-litigation investigation, exchange of
28 information and settlement discussions, through the filing of this Motion. (Sutton Decl. at ¶¶18, 26; Z.
Crosner Decl. at ¶¶20, 26.) It should be noted that this figure does not include future time anticipated to

1 be spent in Final Approval briefing and hearing and time spent subsequent to the Final Approval hearing
2 to resolve any potential outstanding issues surrounding the Settlement.

3 **1. The Number of Hours Claimed Is Reasonable**

4 Plaintiff's counsel are entitled to be compensated "for all time reasonably expended in pursuit of
5 the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-
6 paying client for all time reasonably expended on a matter." (*Hensley v. Eckerhart* (1983) 461 U.S. 424,
7 431 [internal quotations omitted]; *accord Serrano v. Unruh* (1982) 32 Cal.3d 621, 633 ["Serrano IV"]
8 [parties should recover for all hours reasonably spent]; *Meister v. Regents of Univ. of Cal.* (1998) 67
9 Cal.App.4th 437, 447-48 [same].)

10 The Declarations of Counsel for Plaintiff offered in support of this Motion confirm that counsel
11 spent 487.95 hours through the filing of this Motion on this case, comprised of 399.85 hours by Sutton
12 Hague Law Corporation (Sutton Decl. at ¶18) and 88.1 hours by Crosner Legal (Z. Crosner Decl. at
13 ¶20), all of which were necessary to achieve the highly favorable result attained for the Class Members.
14 (*Id.*) This figure is also reasonable given the complexity and novelty of the issues involved, the
15 vigorous defense, the length of the case, including substantial pre-litigation efforts, and the intensive
16 documentary review and analysis that supported Plaintiff's settlement position. Accordingly, Plaintiff is
17 entitled to full compensation for the hours claimed by Class Counsel.

18 **2. The Hourly Rates Requested Are Reasonable**

19 Class Counsel is entitled to be compensated at hourly rates that reflect the reasonable market
20 value of their legal services, based on their experience and expertise. (*See Serrano IV, supra*, 32 Cal.3d
21 at pp. 640-43, n.31.) "The reasonable hourly rate is that prevailing in the community for similar work."
22 (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) Payment at full market rates is essential
23 to entice well-qualified counsel to undertake difficult cases, such as this one. (*San Bernardino Valley*
24 *Audubon Soc'y v. County of San Bernardino* (1984) 155 Cal. App. 3d 738, 755.) Additionally,
25 calculation of a lodestar based on current hourly rates is appropriate as a means of compensating for
26 delay in payment. (*Missouri v. Jenkins by Agyei* (1989) 491 U.S. 274, 283-84.)

27 Here, the requested hourly rates in this case range from \$300 per hour to \$800 per hour. (Sutton
28 Decl. at ¶¶17-22; Hague Decl. at ¶¶3-9; Z. Crosner Decl. at ¶¶21-26.) Counsel's hourly rates are fully

1 supported by their experience and reputation in handling complex employment litigation, including
2 wage and hour class actions, and actual trial experience. For example, attorneys Brett Sutton and
3 Michael Crosner have more than 74 years of combined experience, much of it dedicated to complex
4 litigation with a substantial amount of experience taking cases through trial to verdict. Biographical
5 information for these and the other attorneys is included in the concurrently filed Declarations of Mr.
6 Sutton, Mr. Hague and Mr. Zach Crosner. (Sutton Decl. at ¶¶3-13; Hague Decl. at ¶¶3-6; Z. Crosner
7 Decl. at ¶¶10-15.)

8 The reasonableness of Class Counsel’s hourly rates has been cited and approved by other judges
9 in recent actions. *See e.g. Aguirre v. Mariani Nut Company, Inc.*, Case Number 34-2016-00190252-CU-
10 OE-GDS (Sacramento County Superior Court), approved on August 15, 2016.) (Sutton Decl. at ¶24.)
11 Class Counsel has made all reasonable attempts to avoid duplication of assignments and to assign tasks
12 to timekeepers at the appropriate billing rates.

13 Counsel’s rates are also in line with the rates set forth in the Laffey Matrix, a “widely recognized
14 compilation of attorney and paralegal rates used in the District of Columbia, and frequently used in
15 determining fee awards.” *Schiller v. David’s Bridal, Inc.*, (E.D. Cal. 2012) 2012 WL 2117001 at *21.
16 (Sutton Decl. at ¶16; Hague Decl. at ¶9; Z. Crosner at ¶26.)

17 In cross-checking the current \$221,104 lodestar against the \$233,310 in attorneys’ fees to which
18 the Defendants agreed under the terms of the Settlement, the award would provide Class Counsel with a
19 lodestar multiplier of 1.055, not including time anticipated to be spent preparing for and appearing at the
20 hearing on the instant Motion and anticipated Motion for Final Approval of Joint Stipulation of Class
21 Settlement. This figure is within the range of multipliers applied by California courts. *Vizcaino v.*
22 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 (“[m]ultiples ranging from one to four are
23 frequently awarded in common fund cases when the lodestar method is applied.”) In fact, “[m]ultipliers
24 in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.” (*Van*
25 *Vraken v. Atlantic Richfield Co.* (N.D.Cal.1995) 901 F.Supp. 294, 298; *see also, Wershba, supra*, 91
26 Cal.App.4th at p. 255 [“Multipliers can range from 2 to 4 or even higher.”].) Here, Class Counsel is
27 requesting a multiplier of 1.055, which is substantially less than the multipliers routinely approved in
28 other cases. Based on the foregoing, Class Counsel asks the Court to give final approval to the amount

1 of \$233,310 in attorneys' fees as set forth in the Settlement Agreement. Defendants have agreed to such
2 payment, subject to Court approval, and do not dispute the amount of attorneys' fees payable to Class
3 Counsel.

4 **C. THE REQUEST FOR REIMBURSEMENT OF COSTS FROM THE COMMON FUND**
5 **IS FAIR AND REASONABLE**

6 All costs set forth in Class Counsel's declaration are litigation-related costs. (Sutton Decl. ¶¶25-
7 26; Z. Crosner Decl. at ¶¶27-29.) The authority for the Court to award costs from the common fund is
8 derived from the Settlement Agreement. In the course of this litigation, Class Counsel incurred costs
9 including, but not limited to, filing fees, travel costs to hearings and mediation, mediation fees, copy
10 charges and postage charges. (*Id.*) This request should be approved. As of June 21, 2018, Class Counsel
11 has incurred \$17,321 in costs, comprised of \$14,842 in costs incurred by Sutton Hague Law Corporation
12 and \$2,479 in costs incurred by Crosner Legal (*Id.*) Plaintiff respectfully request that the Court approve
13 the request for reimbursement of costs from the common fund.

14 **IV. CONCLUSION**

15 Based on all of the foregoing, the Plaintiff respectfully requests that the Court grant the instant
16 Motion and issue an order approving an award of attorneys' fees in the amount of \$233,310, costs in the
17 amount of \$17,321, and an enhancement award to Plaintiff in the amount of \$10,000. These awards are
18 abundantly reasonable and fair in light of the outstanding result achieved in the case on behalf of the
19 Settlement Class, and are fully in line with the Settlement Agreement between the Parties, which the
20 Court has already preliminarily approved.

21
22 DATED: June 21, 2018

SUTTON HAGUE LAW CORPORATION

23 

24 By: _____
25 JARED HAGUE
26 Attorneys for Named Plaintiff
27 and the Settlement Class
28

PROOF OF SERVICE

1
2 My business address is **5200 N. Palm Ave., Suite 203, Fresno, California**
3 **93704**. I am employed in Fresno, California. I am over the age of 18 years and am not a party
4 to this case.

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

6 **NOTICE OF MOTION AND MOTION IN SUPPORT OF PLAINTIFF’S MOTION**
7 **FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT AWARD;**
8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
9 **PLAINTIFF’S UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS AND**
10 **ENHANCEMENT AWARD; DECLARATION OF JARED HAGUE IN SUPPORT OF**
11 **UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT**
12 **AWARD; DECLARATION OF S. BRETT SUTTON IN SUPPORT OF PLAINTIFF’S**
13 **UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT**
14 **AWARD; AND DECLARATION OF ZACHARY CROSNER IN SUPPORT OF**
15 **MOTION FOR ATTORNEYS’ FEES, COSTS AND ENHANCEMENT AWARD**

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

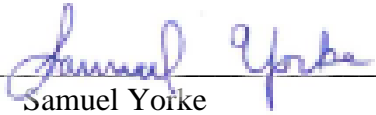
18 Jerry Wayne Pearson Jr., Esq. 19 Young Wooldridge LLP 20 1800 30th Street, Fourth Floor 21 Bakersfield, CA 93301-1919	22 Zachary Crosner, Esq. 23 Michael Crosner, Esq. 24 Crosner Legal, PC 25 345 Reeves Dr., Suite 2 26 Beverly Hills, CA 90212
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- 27 X (BY FIRST CLASS MAIL) I am readily familiar with the business' practice for
28 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