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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF KERN**

AARON DICKERSON, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

AERA ENERGY, LLC., a California limited liability company; and DOES 1 through 50, inclusive,

Defendants.

Case No: BCV-21-101646

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS**

Date: March 27, 2023  
Time: 8:30 a.m.  
Dept.: 17  
Judge: Hon. Thomas S. Clark

*[To be heard concurrently with Plaintiff's Motion for Final Approval of Class Action Settlement]*

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1 **I. INTRODUCTION**

2 By this motion, Plaintiff Aaron Dickerson (“Plaintiff”) seeks this Court’s final approval of (1)  
3 an award of attorneys’ fees for Class Counsel Sutton Hague Law Corporation (“Class Counsel”) in  
4 the amount of \$154,984, which is approximately one-third (1/3) of the \$465,000 non-reversionary  
5 gross settlement amount, plus reimbursement of litigation costs and expenses in the amount of  
6 \$8,268.91 as allowed under the Parties’ Settlement Agreement (“Settlement”).

7 On or about October 24, 2022, the Court granted preliminary approval of the parties’ class  
8 action and PAGA settlement. On or about December 27, 2022, pursuant to the Court’s order, the  
9 Settlement Administrator mailed the Notice of Settlement to the Settlement Class Members.  
10 (Declaration of Jared Hague (“Hague Decl.”) at ¶8.) The Notice of Settlement specifically notified the  
11 Settlement Class that Class Counsel would be seeking an award of \$154,984 in attorneys’ fees plus  
12 reimbursement of litigation costs and expenses in the amount of no more than \$10,000. (*Id.*, Ex. 1  
13 [Class Notice] at § 17.) To date, there have been no objections to this settlement or the requested  
14 award of attorney’s fees and costs. (Hague Decl. at ¶9.)

15 For the reasons set forth herein, Plaintiff respectfully requests that the Court grant final  
16 approval of the requested award of attorneys’ fees and costs.

17 **II. CLASS COUNSEL’S FEES AND COST REQUEST SHOULD BE GRANTED**

18 Courts typically consider the following factors when determining the reasonableness of a  
19 request for attorneys’ fees in a class action: “(1) the result obtained for the class; (2) the effort expended  
20 by counsel; (3) counsel’s experience; (4) counsel’s skill; (5) the complexity of the issues; (6) the risks  
21 of non-payment assumed by counsel; (7) the reaction of the class; and (8) comparison with counsel’s  
22 lodestar.” *In re Heritage Bond Litigation* (C.D. Cal. 2005) 2005 WL 1594403 at \*18 (exercising  
23 discretion to award 1/3 of the class fund as fee).

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

26 Recovery of attorneys’ fees under the “percentage of fund” doctrine, the validity of which is  
27 recognized and is the preferred method of fee calculation in common fund cases in California courts,  
28 has long been recognized to be within the province of the Court’s equitable jurisdiction. *See Serrano*

1 *v. Priest* (1977) 20 Cal. 3d 25, 38–39 [“*Serrano III*”]; *In re Pacific Enterprises Securities Litigation*  
2 (9th Cir. 1995) 47 F.3d 373, 379; *In re AT&T Corp. Secs. Litig.* (3rd Cir. 2006) 455 F.3d 160, 164;  
3 *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal. App. 4th 19, 49–50 (appropriate for courts to evaluate  
4 lodestar amount as a percentage of recovery and adjust it accordingly if it differs from the range of  
5 percentage fees freely negotiated in comparable litigation).

6 This theory also rests on the understanding that attorneys should normally be paid by their  
7 clients and that unless attorneys’ fees are paid out of the common fund, those who benefited from the  
8 fund would be unjustly enriched. *See Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23  
9 Cal. 3d 917, 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal. App. 3d 544, 548–49. To prevent this  
10 unfair result, courts exercise their inherent equitable powers to assess attorneys’ fees against the entire  
11 fund, thereby spreading the cost of those fees among all those who benefited. *See Serrano III*, 20 Cal.  
12 3d at 35. “A court, in the exercise of its equitable discretion, may decree that those receiving the benefit  
13 should contribute to the costs of its production.” *Save El Toro Ass’n*, 98 Cal. App. 3d at 548. As this  
14 approach “better approximates the workings of the marketplace than the lodestar approach,” there is  
15 “a greater judicial willingness to evaluate a fee award as a percentage of the recovery” in common  
16 fund cases. *Lealao*, 82 Cal. App. 4th at 31, 48.

17 In *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480, the California Supreme Court  
18 held that trial courts may grant attorneys’ fees in a common fund case based on a percentage of the  
19 recovery. The *Laffitte* Court explained:

20 We join the overwhelming majority of federal and state courts in holding that when  
21 class action litigation establishes a monetary fund for the benefit of the class members,  
22 and the trial court in its equitable powers awards class counsel a fee out of that fund,  
23 the court may determine the amount of a reasonable fee by choosing an appropriate  
24 percentage of the fund created. The recognized advantages of the percentage method—  
25 including relative ease of calculation, alignment of incentives between counsel and the  
26 class, a better approximation of market conditions in a contingency case, and the  
27 encouragement it provides counsel to seek an early settlement and avoid unnecessarily  
28 prolonging the litigation . . .—convince us the percentage method is a valuable tool that  
should not be denied our trial courts.

*Id.* at 503. In a case affirming the denial of fees to a successful objector to a class action settlement,  
*Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal. App. 4th 387, the

1 court discussed the common fund doctrine developed by the U.S. Supreme Court: “The common fund  
2 doctrine, frequently applied in class actions when the efforts of the attorney for the named class  
3 representatives produce monetary benefits for the entire class, is rooted in the ‘historic power of equity  
4 to permit . . . a party preserving or recovering a fund for the benefit of others in addition to himself, to  
5 recover his costs, including his attorneys’ fees, from the fund or property itself or directly from the  
6 other parties enjoying the benefit.” *Id.* at 397.

7 Thus, California cases, including the recent California Supreme Court ruling in *Laffitte, supra*,  
8 have affirmed the continued validity of percentage fee awards in class action cases. Here, Class  
9 Counsel requests an amount that equates to the percentage of the common fund traditionally approved  
10 by courts. In practice, an award equal to or greater than one-third of the common fund is commensurate  
11 with judicial precedent. *See, e.g., In re Pacific Enter. Sec. Litig.*, 47 F.3d at 379 (affirming award equal  
12 to 33% of the common fund); *Parker v. City of Los Angeles* (1974) 44 Cal. App. 3d 556, 557–68  
13 (affirming award equal to one-third of recovery achieved). Courts generally recognize that a number  
14 of factors determine whether the attorneys’ fees requested out of a common fund are reasonable. Based  
15 thereon, Class Counsel’s request of \$154,984, amounting to one-third (33.3%) of the Gross Settlement  
16 Amount of \$465,000, clearly falls within the appropriate parameters of a “reasonable” award.

17 **B. Other Factors of the Case Justify an Award of Attorney Fees Under the Common Fund**  
18 **Doctrine**

19 In addition to the foregoing, courts generally recognize a number of other factors as  
20 determinative of whether a request for fees from a common fund is reasonable.

21 **(1) The Result Obtained By Class Counsel for the Settlement Class**

22 Given the fact that each Settlement Class Member in this case is receiving an estimated average  
23 recovery of approximately \$603.20, the Settlement provides a significant benefit to the Class  
24 Members. (*See* Hague Decl. at ¶10.) The favorable nature of the Settlement is further evidenced by  
25 the fact that as of the filing of this Motion, no objections to the settlement have been filed and none of  
26 the Class Members have elected to exclude themselves from the Settlement. (*Id.* at ¶9.) Based on  
27 these factors, the result obtained for the Class Members is very favorable.

28 ///

1                   **(2) Class Counsel Undertook Significant Financial Risk in Agreeing to Represent the**  
2                   **Class**

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

12                   The present case provides an effective illustration of the financial risk undertaken by counsel  
13 in contingency fee cases. This case has now been pending for over two years, and has had no guarantee  
14 of payment, despite dedicating over 320 hours of attorney work time to this matter as of the filing of  
15 this Motion and \$8,268.91 in costs. As a result, Class Counsel has been required to forego significant  
16 other work and advance significant costs at a time when routine business expenses still had to be met.  
17 (*See Sutton Decl.* at ¶¶20-21.) Through the investment of substantial effort and resources, Class  
18 Counsel has secured a highly favorable settlement on behalf of the Class Members. An attorneys’ fee  
19 award that represents one-third (33.3%) of the settlement fund reflects the economics that have been  
20 passed on to the members of the Settlement Class and the true risks of the case and is therefore  
21 consistent with the market value for work fully performed. (*See Sutton Decl.* at ¶¶15-20.)

22                   Accordingly, this percentage requested fairly accounts for the risks undertaken by Class  
23 Counsel in litigating this case, both in terms of the distinct possibility of non-recovery and of non-  
24 payment.

25                   **(3) Class Counsel Provided Valuable Class Action Experience to the Class**

26                   Class Counsel’s request is further bolstered by the significant experience and skill Class  
27 Counsel provided to the immediate litigation. As detailed among their numerous accomplishments in  
28 the declarations submitted herewith, Class Counsel brings combined decades of wage and hour class



1 action litigation experience, including from the defense perspective. Class Counsel have been  
2 appointed as class counsel in numerous wage and hour class actions and have recovered millions of  
3 dollars for plaintiffs in such cases throughout the years. (See Sutton Decl. at ¶¶1-15; Declaration of  
4 Jared Hague at ¶¶1-6.) In other recent wage and hour class action cases, the hourly rates of the  
5 attorneys and staff of Class Counsel have received court approval. (See Sutton Decl. at ¶19.) Class  
6 Counsel’s skill and experience was a significant contributing factor in their ability to provide the  
7 Settlement Class with real and immediate monetary relief given the complexity and potential duration  
8 of the case and supports the reasonableness of the requested award.

9 **(4) Class Counsel Addressed Complex Issues on Behalf of the Class**

10 With this case, as in many other wage and hour class actions cases, there is substantial  
11 complexity and skill required in the analysis of voluminous time records and internal policy documents  
12 to develop an accurate framework for potential settlement. Were this case to proceed through  
13 certification and trial, Defendant would have a strong incentive to litigate tenaciously. Further, the  
14 nature of the claims at issue in this case required Plaintiff’s Counsel to vigilantly investigate the claims  
15 and thoroughly analyze hundreds of pages of policy documents and sample timekeeping and pay  
16 records to determine the scope and the extent of alleged violations.

17 As detailed in Plaintiff’s Motion for Preliminary Approval, there are significant and difficult  
18 legal and factual questions for which Class Counsel had to account. For example, although *Brinker*  
19 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, clarified California’s meal and rest break  
20 standards, the legal issues presented herein are by no means settled law, as wage-and-hour law and  
21 class certification requirements in California are frequently in a state of flux. See, e.g., *Duran v. U.S.*  
22 *Bank Nat’l Ass’n* (2014) 59 Cal. 4th 1, 34; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th  
23 257; *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858; *Donohue v. AMN Services, LLC*  
24 (2021) 11 Cal. 5th 58. Plaintiff also navigated this case through removal to federal court and remand  
25 to State court under the specter of potential preemption issues under the federal Labor Management  
26 and Relations Act, which rights Defendants retain the ability to assert should the Settlement not receive  
27 final approval, and which could significantly impact the scope and trajectory of the case. See e.g. Cal.  
28 Labor Code §§ 512, 514; *Curtis v. Irwin Indus.* (9th Cir. 2019) 913 F.3d 1146, 1152-53; *Parker v.*

1 *Cherne Contracting Corporation* (N.D. Cal. 2019) 2019 WL 359989 at \*4.

2 **(5) Class Counsel Expended Significant Time and Resources Pursuing the Class**  
3 **Claims**

4 Class Counsel also dedicated a significant amount of time and resources attempting to secure  
5 the vindication of class interests. Courts regularly recognize that the length and expense of this  
6 relationship bears proportional relationship to the “reasonable” nature of fee awards. *See Six Mexican*  
7 *Workers v. Ariz. Citrus Growers* (9th Cir. 1990) 904 F.2d 1301. This factor particularly supports Class  
8 Counsel’s request in the immediate case insofar as Class Counsel has worked with Plaintiff for nearly  
9 two years in the immediate litigation—advancing considerable fees and costs in the process. (*See*  
10 *Sutton Decl.* at ¶21.)

11 **C. Class Counsel’s Fee Request Is Reasonable Under the Lodestar Method**

12 While trial courts need not conduct a lodestar cross-check, they have discretion to do so.  
13 (*Laffitte, supra* at 506.) Only when the lodestar multiplier is “far outside the normal range” would the  
14 Court “have reason to reexamine its choice of a percentage.” (*Id.*) “[T]rial courts conducting lodestar  
15 cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but  
16 have instead used information on attorney time spent to focus on the general question of whether the  
17 fee award appropriately reflects the degree of time and efforts expended by the attorneys.” (*Id.*)  
18 (internal quotations omitted.). The court may then enhance the lodestar with a multiplier. *See Wershba*  
19 *v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Rebney v. Wells Fargo Bank* (1991) 232  
20 Cal. App. 3d 1344, 1347; *Serrano III*, 20 Cal. 3d at 49. The multiplier typically references the  
21 following factors: 1) novelty and difficulty of the issues involved; 2) skill displayed in presenting  
22 them; 3) extent to which the litigation precluded other employment; and 4) the contingent nature of  
23 the fee award owing to the uncertainty of prevailing on the merits and establishing eligibility for the  
24 award. *Serrano III*, 20 Cal. 3d at 48–49; *Bihun v. AT&T Information Systems* (1993) 13 Cal. App. 4th  
25 976, 997.

26 In determining the attorneys’ fee award that would have been reached using the lodestar  
27 method, California courts uniformly acknowledge that lodestar figures, “may . . . be adjusted, based  
28 on consideration of factors specific to the case, in order to fix the fee at the fair market value for the

1 legal services provided.” *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095. Specifically,  
2 “it has long been recognized . . . that the contingent and deferred nature of the fee award in a civil  
3 rights or other case with statutory attorney fees requires that the fee be adjusted in some manner to  
4 reflect the fact that the fair market value of legal services provided on that basis is *greater than the*  
5 *equivalent non-contingent hourly rate.*” *Horsford v. Board of Trustees of California State University*  
6 (2005) 132 Cal. App. 4th 359, 394 (citing *Ketchum*, 24 Cal. 4th at 1132) (emphasis added).

7 The *Horsford* court further noted that the court must consider the years that may pass before a  
8 contingency fee attorney can begin collecting fees from the client, and that the demands of those  
9 contingency fee cases preclude the attorney from other work during those years, “which makes the  
10 ultimate risk of not obtaining fees all the greater.” *Id.* The court reinforced the public policy  
11 considerations requiring a “risk-of-delay enhancement,” stating:

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

15 Applied to the instant case, a lodestar cross-check confirms that the percentage requested is  
16 reasonable. Here, the attorneys of Sutton Hague Law Corporation billed a total of 320.65 hours of  
17 attorney work resulting in a total lodestar figure of \$216,555. (Sutton Decl. at ¶¶15-20.) Class Counsel  
18 estimates spending another 20-30 hours on this case through final approval, which would yield a final  
19 lodestar figure of approximately \$231,000. In comparison with the attorneys’ fees sought of \$154,984,  
20 the Court would not need to apply a multiplier at all to award the requested fees. The fact that Class  
21 Counsel invested more fees in this case than it is even requesting also confirms that Class Counsel  
22 have acted at all times with the interests of the Settlement Class in mind.

23 **(1) The Number of Hours Claimed Is Reasonable**

24 Plaintiff’s counsel are entitled to be compensated “for all time reasonably expended in pursuit  
25 of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a  
26 fee-paying client for all time reasonably expended on a matter.” *Hensley v. Eckerhart* (1983) 461 U.S.  
27 424, 431 (internal quotations omitted); *accord Serrano v. Unruh* (1982) 32 Cal. 3d 621, 633 [“*Serrano*  
28

1 IV”] (parties should recover for all hours reasonably spent); *Meister v. Regents of Univ. of Cal.* (1998)  
2 67 Cal. App. 4th 437, 447–48 (same).

3 The Declarations of Class Counsel offered in support of this Motion show that the attorneys  
4 representing the Plaintiff spent a total of 320.65 hours litigating this matter, excluding time spent on  
5 the preparation and filing of this Motion. (Sutton Decl. at ¶¶15-20.) All of these hours were necessary  
6 to achieve the highly favorable result attained for the Class Members. (*Id.*) This figure is also  
7 reasonable given the complexity and novelty of the issues involved, the vigorous defense, the length  
8 of the case, including pre-litigation efforts, the mediations, extensive informal discovery, and the  
9 intensive documentary review and analysis that supported Plaintiff’s settlement position. Accordingly,  
10 Plaintiff is entitled to full compensation for the hours claimed by Class Counsel.

11 **(2) The Hourly Rates Requested Are Reasonable**

12 Class Counsel is entitled to be compensated at hourly rates that reflect the reasonable market  
13 value of their legal services, based on their experience and expertise. *See Serrano IV, supra*, 32 Cal.  
14 3d at 640–43, n.31. “The reasonable hourly rate is that prevailing in the community for similar work.”  
15 *PLCM Group*, 22 Cal. 4th at 1095. Payment at full market rates is essential to entice well-qualified  
16 counsel to undertake difficult cases, such as this one. *San Bernardino Valley Audubon Society v.*  
17 *County of San Bernardino* (1984) 155 Cal. App. 3d 738, 755. Additionally, calculation of a lodestar  
18 based on current hourly rates is appropriate as a means of compensating for delay in payment. *Missouri*  
19 *v. Jenkins by Agyei* (1989) 491 U.S. 274, 283–84.

20 Here, the requested hourly rates in this case range from \$450 per hour to \$800 per hour. (*See*  
21 *Sutton Decl.* at ¶¶ 19.) Counsel’s hourly rates are fully supported by their experience and reputation  
22 in handling complex employment litigation, including wage and hour class actions, and actual trial  
23 experience. As detailed in the declarations submitted by Class Counsel, the reasonableness of Class  
24 Counsel’s hourly rates has been cited and approved by other judges in recent actions. (*See Sutton Decl.*  
25 *at ¶ 19.*) Class Counsel has made all reasonable attempts to avoid duplication of assignments and to  
26 assign tasks to timekeepers at the appropriate billing rates.

27 Counsel’s rates are also in line with the rates set forth in the Laffey Matrix, a “widely  
28 recognized compilation of attorney and paralegal rates used in the District of Columbia, and frequently

1 used in determining fee awards.” *Schiller v. David’s Bridal, Inc.* (E.D. Cal. 2012) 2012 WL 2117001  
2 at \*21. (*See* Sutton Decl. at ¶ 15.) All of Class Counsel’s respective skill and experience justify their  
3 requested rates. Class Counsel practice litigation with a focus on representing employees in  
4 employment matters on class action cases (*See* Sutton Decl. at ¶¶1-15.)

5 In sum, Class Counsel are attorneys who command a high rate. They have had success in wage  
6 and hour class actions, are held in high regard by the legal community, and their practice is an unusual  
7 niche area. This case required an attorney with great skills and financial backing as it involved a highly  
8 specialized area of employment law. To obtain such an attorney on the free market, a client must pay  
9 appropriate compensation. Therefore, Plaintiff’s attorneys’ requested rates are fair and reasonable.

10 The lodestar cross-check reveals that Class Counsel’s requested fees of \$154,984 would not  
11 require a multiplier. Class Counsel deemed all hours expended towards this case to be necessary to  
12 obtain the best possible outcome for the Class and were dedicated to seeing the case through to  
13 conclusion. The requested fees are therefore well within the range of reasonableness.

14 **D. The Request for Litigation Costs from the Common Fund Is Fair and**  
15 **Reasonable**

16 All costs set forth in Class Counsel’s declaration are litigation-related costs. (*See* Sutton Decl.  
17 ¶¶ 21-22.) The authority for the Court to award costs from the common fund is derived from the  
18 Settlement.<sup>1</sup> In the course of this litigation, Class Counsel incurred costs including, but not limited to,  
19 filing fees, mediation fees, copy charges and postage charges. (*Id.*) This request should be approved.  
20 As of the date of filing this Motion, Class Counsel has incurred unrecovered costs in the amount of  
21 \$8,268.91 (*Id.*) Therefore, Class Counsel requests \$8,268.91 in litigation costs permitted by the  
22 Settlement, which is substantially less than the maximum permissible litigation costs contemplated by  
23 the Settlement.

24 **III. CONCLUSION**

25 Based on all of the foregoing, Plaintiff respectfully requests that the Court grant the instant  
26 Motion and issue an order approving an award of attorneys’ fees in the amount of \$154,984 and costs

27 \_\_\_\_\_  
28 <sup>1</sup> Had Plaintiff succeeded at trial, he would have been entitled to recover his attorneys’ fees and costs  
under Labor Code §§ 226(e)(1), 226.7, 512, 1194, and/or 2699(g)(1).

1 in the amount of \$8,268.91. These awards are abundantly reasonable and fair in light of the highly  
2 favorable result achieved in the case on behalf of the Settlement Class, and are fully in line with the  
3 Settlement, which the Court has already preliminarily approved and to which none of the Class  
4 Members have objected.

5  
6 DATED: January 23, 2023

**SUTTON HAGUE LAW CORPORATION,  
P.C.**

7  
8 By:  \_\_\_\_\_

JARED HAGUE  
Attorneys for Plaintiff  
AARON DICKERSON

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