

1
2 GUSTAFSON GLUEK PLLC
3 DENNIS STEWART, SBN: 99152
4 600 W. Broadway, Suite 3300
5 San Diego, CA 92101
6 Telephone: (619) 595-3299
7 Facsimile: (612) 339-6622

8 COLEMAN & HOROWITT, LLP
9 DARRYL J. HOROWITT, SBN: 100898
10 SHERRIE M. FLYNN, SBN: 240215
11 499 West Shaw, Suite 116
12 Fresno, CA 93704
13 Telephone: (559) 248-4820
14 Facsimile: (559) 248-4830

E-FILED
4/18/2024 1:47 PM
Superior Court of California
County of Fresno
By: Valerie Renteria, Deputy

Attorneys for Plaintiffs
[Additional Counsel on Signature Page]

15 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF FRESNO**

17 MANMOHAN DHILLON, dba RANCHOS
18 VALERO, SATNAM PABLA, dba GMG
19 FOOD STORE 101 and MADERA AVE.
20 MARKET, SERGE HAITAYAN, dba 7-11
21 NUMBER 17906b, DALJIT SINGH, dba
22 LIQUOR MAX, and PAR VENTURES, LLC,
23 dba, QUICK PICK, on Their Own Behalves
24 and on Behalf of All Others Similarly Situated
25 and on Behalf of the General Public,

26 Plaintiffs,

27 v.

28 ANHEUSER-BUSCH, LLC, DONAGHY
SALES, LLC, a California Corporation;
ANHEUSER-BUSCH DOES 1-5 and DOES
6 through 50, inclusive,

Defendants.

CASE NO. 14CECG03039 JMS

**SUPPLEMENTAL DECLARATION OF
DENNIS STEWART IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND FOR
AWARD OF ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS
FOR THE REPRESENTATIVE
PLAINTIFFS**

JUDGE: Honorable Jon M. Skiles

DATE: May 21, 2024

TIME: 3:30PM

DEPT: 403

1
2
3 I, DENNIS STEWART, declare as follows:

4 1. I am an attorney licensed to practice before all courts of the State of California. I
5 am an attorney with Gustafson Gluek PLLC (“Gustafson Gluek”), one of the counsel of record for
6 Plaintiffs, and the attorney who has been principally involved for my firm in the litigation of this
7 matter from approximately June 2018 to the present. Gustafson Gluek first appeared in this action
8 in April 2016 prior to my joining the firm. I previously was the attorney principally involved in
9 this case for my former firm, Hulett Harper Stewart LLC (“Hulett Harper Stewart”), which acted
10 as counsel for Plaintiffs from the outset of this case through June of 2018, when I joined Gustafson
11 Gluek. I make this Declaration in further support of Plaintiffs’ Motion for Preliminary Approval
12 of Class Action Settlement and in support of Plaintiffs’ Motion for Award of Attorneys’ Fees,
13 Expenses, and Service Awards to the Representative Plaintiffs. I have personal knowledge of the
14 matters set forth in this Declaration and incorporate my Declaration of Dennis Stewart in Support
15 of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, which was
16 filed with this court in this same matter, on November 14, 2023.

17
18 2. During the pendency of this litigation, both Hulett Harper Stewart and Gustafson
19 Gluek acted as one of the counsel of record for Plaintiffs Manmohan Dhillon, Satnam Pabla, Serge
20 Haitayan, Daljit Singh, and Parminder Singh dba Par Ventures (“Plaintiffs”). They, along with the
21 law firms of Freedman Boyd Hollander & Goldberg and Coleman & Horowitz, LLP, through
22 Messrs. Joseph Goldberg and Darryl Horowitz, have represented the Plaintiffs in this matter
23 continually since its inception.

24 3. As set forth in detail in this Declaration and the accompanying Declarations of Mr.
25 Goldberg and Mr. Horowitz, collectively, the four firms have expended over 10,900 hours at a
26 collective lodestar (hours times usual hourly rates) of \$3,981,931.92 on this matter. The requested
27

1 fee of \$625,000 thus represents approximately 16% of the time value of the work expended on the
2 case. None of that time has been compensated. Plaintiffs Counsel's work on this case was on a
3 wholly contingent basis. If the settlement is approved, the firms will certainly incur more time
4 overseeing and assisting in the Notice and Administration phase of the case.

5 4. As further shown in this Declaration and the accompanying Goldberg and Horowitz
6 Declarations, collectively the four firms incurred expenses totaling \$748,147.66. Of that amount,
7 \$200,901.68 was advanced by certain of the proposed class members including all of the
8 Representative Plaintiffs. The remaining \$547,245.98 was advanced by the law firms on behalf of
9 the class with no provision for reimbursement or recovery should the lawsuit not be successful.

10 5. Plaintiffs' damages theory centered on a claim for restitution of alleged overcharges
11 incurred by class members in their purchases of Anheuser Busch Beer from distributor Donaghy
12 Sales during the class period. Plaintiffs' damages expert, Marianne DeMario, calculated two
13 alternative estimates of those overcharges to the proposed class; \$12.4 million under one
14 calculation and \$5.8 million under the other based respectively on two different data sets. *See*
15 Supplemental Expert Report of Marianne L. DeMario¹ dated 09/25/20, at P. 4, ¶ 6 attached as
16 Exhibit "A" to this Declaration. The \$2.5 million dollar proposed settlement represents,
17 respectively, approximately 20% of her higher damages figure and 43% of her lower figure. The
18 legal and factual bases for these damages calculations were hotly contested by the Defendants
19 supported by their own experts. The theoretical legal bases for liability and recovery in this case
20 were both untested and disputed. There existed the possibility that the theoretical, methodological
21 and/or legal bases underlying these damages calculations would have been rejected by the trier of
22 fact. The Defendants asserted and raised in a motion for summary judgment defenses to the
23 applicability and validity of Plaintiffs' legal theories and claims as well as Plaintiffs' experts'
24

25
26 _____
27 ¹ This is the public version of the Further Supplemental Declaration and Expert Report of
28 Marianne L. DeMario, without exhibits A – D.

1 opinions and claims for restitution and damages. In many ways this was a case of first impression
2 representing untested theories on the applicability of beer pricing statutes and the Business and
3 Professions Code law which Plaintiffs invoked in the case.

4 6. Attached hereto as Exhibit B, is a detailed summary showing the amount of time
5 spent by the partners, attorneys, and paralegals at Hulett Harper Stewart, my former firm, who
6 were involved in this litigation.

7 7. The total number of hours expended on this litigation by the Hulett Harper Stewart
8 firm from this case's inception, is 3,060.55 hours. The total lodestar for Hulett Harper Stewart for
9 that time is \$1,405,828.75.

10 8. As detailed in Exhibit C attached hereto, Hulett Harper Stewart incurred a total of
11 \$421,286.27 in expenses.

12 9. Attached as Exhibit D is a detailed summary showing the amount of time spent by
13 the partners, attorneys, and paralegals at Gustafson Gluek who have been involved in this
14 litigation.

15 10. The total number of hours expended on this litigation by Gustafson Gluek is
16 1041.25 hours. The total lodestar for Gustafson Gluek is \$680,575.00.

17 11. As detailed in Exhibit E attached hereto, Gustafson Gluek incurred a total of
18 \$46,959.82 in unreimbursed expenses.

19 12. Both firms' lodestar figures are based on the firms' historic hourly billing rates.
20 The hourly rates for the partners, attorneys, and professional support staff in both firms are their
21 usual and customary hourly rates.

22 13. The expenses incurred in this litigation are reflected on the books and records of
23 the respective firms. These books and records were prepared from expense vouchers, check
24 records, and other source materials and represent an accurate record of the expenses incurred.
25
26

1 14. All of the time and expenditures were reasonable and necessary to prosecute this
2 litigation and to obtain the valuable settlement with Defendants, and the time and expenditures
3 were made for the direct benefit of the Class. These expenses were incurred by the firms for such
4 things as photocopying, messenger services, document depository, deposition costs, telephone
5 and facsimile charges, filing and witness fees, computer-assisted legal research, expert fees and
6 consultants, mediation fees, and meal, hotel, and transportation charges for travel.

7 15. With respect to both firms, the total hours were determined by the examination of
8 time records regularly prepared and maintained by the firms.

9 16. None of the time incurred in the preparation of the motion for attorneys' fees and
10 expenses are reflected in the lodestar reported herein.

11 17. During this litigation, a group of Fresno and Madera County merchants who
12 believed themselves to be affected by the alleged practices at issue advanced a portion of the
13 litigation expenses incurred in the case to counsel in the total amount of \$200,901.68. The
14 remainder of the expenses were advanced entirely by counsel. To the extent counsel is
15 reimbursed for the requested reimbursement of litigation expenses, the advances made by those
16 merchants will be reimbursed to the firms which advanced them to counsel.

17 18. The Court raised questions in its March 24, 2024 Ruling customarily fully
18 addressed in Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, which is
19 filed if preliminary approval to the settlement is granted. In order to fully address those
20 questions, in addition to the detailed Declarations submitted herewith addressing those issues, we
21 attach as Exhibit "F" Plaintiffs' Memorandum in Support of Attorneys' Fees, Expenses, and
22 Service Awards.
23
24
25
26
27
28

1 I declare under penalty of perjury that the foregoing is true and correct. Executed this
2 18th day of April 2024, at San Diego, California.

3 

4
5

DENNIS STEWART

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO

DHILLON MANMOHAN, dba
RANCHO VALERO, PABLA SATNAM,
dba GMG FOOD STORE 101 and
MADERA AVE. MARKET, SERGE
HAIYTAYAN, dba 7-11 NUMBER
17906b, DALJIT SINGH, dba LIQUOR
MAX, and PAR VENTURES, LLC, dba,
QUICK PICK, on Their Own Behalves
and on Behalf of All Others Similarly
Situated and on Behalf of the General
Public

Plaintiffs,

v.

ANHEUSER-BUSCH, LLC, DONAGHY
SALES, LLC, a California Corporation;
ANHEUSER-BUSCH, DOES 1-5 and
DOES 6 through 50, inclusive,

Defendants.

Case No. 14CECG03039 MBS

SUPPLEMENTAL EXPERT REPORT
of
MARIANNE L. DEMARIO

INTRODUCTION

1. I have been retained by the law firms of Gustafson Gluek PLLC, Coleman & Horowitz, LLP and Freedman Boyd Hollander Goldberg Urias & Ward PA to analyze a viable methodology to quantify the damages incurred by Plaintiffs Manmohan Dhillon, dba Rancho

Valero, Satnam Pabla, dba GMG Food Store 101 and Madera Ave. Market, Serge Haiytayan, dba 7-11 Number 17906b, Daljit Singh, dba Liquor Max, and Par Ventures, LLC, dba, Quick Pick (the “Named Plaintiffs”) and persons and entities similarly situated in Fresno and Madera Counties (the “Class”) resulting from their purchase of beer manufactured by Anheuser-Busch, LLC (“Anheuser-Busch”) and distributed by Donaghy Sales, LLC (“Donaghy”) for the period from October 2010 through December 2014 (the “Class Period”), resulting from the conduct set forth in the Second Amended Class Action Complaint for Violations of California Business and Professions Code Section 17200 and Unfair Practices Act filed on May 18, 2015.¹ I have also been asked to investigate whether the conduct alleged in the Second Amended Complaint impacted all or nearly all members of the proposed Class.

2. I submitted an initial report dated August 3, 2016 (my “Initial Report”). On October 6, 2016 Stuart H. Harden, expert for Anheuser-Busch and Donaghy, submitted an expert report (the “Harden Report”) responding to my Initial Report. The Harden Report was submitted with Defendants’ Memorandum of Points and Authorities in Opposition to Plaintiffs’ Motion for Class Certification (“Defendants’ Opposition Memorandum”). I submitted a reply report on November 3, 2016 (my “Reply Report”) to respond to the criticisms of Mr. Harden and update my analyses reflecting the data I had available at that point. I understand that the denial of Plaintiffs’ motion for class certification was reversed by the appellate court and remanded to the trial court on May 29, 2020.² In this supplemental report, I update my Initial and Reply Reports

¹ As stated in my Reply Report, the Class is defined as “All persons who own retail business establishments in Fresno and Madera Counties classified in the Donaghy sales database within one of the following channel descriptions and channel id numbers (“Cid#”): a) Convenience/ Cid# 190; b) Oil and service/ Cid# 195; c) Grocery/ Cid# 265; d) Gas and convenience/ Cid# 294 ; e) Package Liquor/ Cid# 200; f) Mom and Pop/ Cid# 175; g) Deli/ Cid# 180; h) Bodega/Cid# 185; and i) Package Liquor/Cid# 290 and which purchased from Defendant Donaghy beer manufactured and/or sold by Defendant Anheuser-Busch during the period from October 2010 through December 31, 2014 excluding Vikram and Vinay Vohra and Hardeep Singh and all entities owned, controlled by or affiliated with any of them.”

² May 29, 2020 Opinion in the Court of Appeal of the State of California Fifth Appellate District.

to reflect additional information that has come to my attention subsequent to my Initial and Reply Reports (see Exhibit A for a supplemental list of documents, data and other information I have relied on in formulating my opinions). I confirm the same basic methodologies I described in my Initial and Reply Reports. In this report, I have updated the results of those methodologies with additional data. If I get additional data or information, I can apply the methodologies I applied in my Initial and Reply Reports and this supplemental report to those additional data and further update my results, in which event I will issue a supplemental report.

I. Summary of Opinions

3. As I did in my Initial and Reply Reports, I confirm my opinions that a) evidence common to the proposed Class shows that the Named Plaintiffs and all or nearly all the Class members have been injured by the conduct of Anheuser-Busch and Donaghy alleged in the Complaint; and b) aggregate damages incurred by the Class can be calculated using common evidence and a class-wide formula. I update these opinions in Sections II and III of this report.

4. The Class consists of 808 retailers. The channel descriptions and Cid identification numbers set out in the Class definition are found in Donaghy's sales records and transaction data produced in this case and reviewed by me. Donaghy's sales records contain information sufficient to allow me to identify each Class member based on the Donaghy channel id numbers described in the class definition and Donaghy sales transaction data of Anheuser-Busch beer.

5. A certain group of retailers, whom I refer to in this report and in my previous reports as the "Favored Retailers," received discounts that were up to nine times greater than the discounts received by members of the Class. Favored Retailers are those outlets that are located

in Fresno or Madera Counties and were owned by the co-conspirators identified in the Second Amended Complaint and plaintiffs initial motion for class certification in 2016, Vikram and Vinay Vohra and Hardeep Singh, for all or part of the Class Period.

6. Using the two alternative methodologies described in my Initial Report, which I have updated to reflect additional information as discussed below, I calculated that Overcharge Damages for the Class are at least approximately \$12.4 million under alternative one and approximately \$5.8 million under alternative two. Each of my two alternative methodologies reasonably quantifies the harm incurred by the Named Plaintiffs and the Class from the conduct alleged in the Complaint.

II. All or Nearly All the Class Members Have Been Injured

7. My analysis under each of the alternative methodologies shows that all or nearly all the Class members have been injured by the conduct of Anheuser-Busch and Donaghy alleged in the Complaint. Each of the Named Plaintiffs has been harmed and I have quantified damages for each.

8. Under alternative one, the disparity between the Favored Retailers and the Class is on average 4.46%, the difference between a 5.05% average reduction in the wholesale price paid for Anheuser-Busch products for the Favored Retailers compared to a 0.59% average reduction for the Class. Of the 327 retailers (310 Class members and 17 Favored Retailers) for which I have coupon redemption data from Inmar,³ 11 class members received a reduction in the wholesale price paid for Anheuser-Busch products in excess of the 5.05% average received by

³ I am not surprised that the Inmar data does not contain coupon redemption data for all 808 Class Members as the Donaghy data show that only 372 Class members received any coupons during the Class Period.

the Favored Retailers.⁴ This shows that under alternative one, only approximately 1% of Class members were not impacted or less than 4% of the 310 Class members for which I have Inmar coupon redemption data.

9. Under alternative two, of the 808 Class members that purchased Anheuser-Busch products from Donaghy during the Class Period, 436 received no manual scan coupons at all from Donaghy. Of the Class members that did receive some coupons, only four received more than the average amount of manual scan coupons distributed to the Favored Retailers during the Class Period.⁵ In other words, less than ½ of a percent of all Class members received more than the average amount of manual scan coupons distributed to the Favored Retailers under alternative two. In my experience, it is not unusual for a small number of Class members to be identified in statistical methodologies as unharmed.

III. Updated Calculation of Damages

10. In my Initial Report, I set forth two alternative methodologies for calculating aggregate Class-wide damages, each using a common damages formula. Each approach is more fully set forth in my Initial and Reply Reports. I continue to apply the formulas set forth in those earlier reports. Below I describe the updates I have made based on additional information. First, I have updated the list of Favored Retailers to reflect the outlets that I now understand were owned by or affiliated with Vikram and Vinay Vohra and Hardeep Singh for all or part of the

⁴ Based on data provided by Inmar (see para. 13). Broadway Liquors, Fair Price Food Store, Fresno Liquor Store, Cargo Mart, Abby Arco, Super Liquor #1, Peacock Market, El Campesino Meat Mkt, RTS Investments, Ranchos Town & Country and Primo Mini Mart.

⁵ Based on the Coupon Redemption Agreements. Fastrip Food #357, Fastrip Food #922, Liquor King #2 and Shop n Rite. The average amount of manual scan coupons distributed to the Favored Retailers is based on the Inmar Reports since Donaghy's production of Coupon Redemption Agreements for the Favored Retailers is so limited (see paras. 19-20).

Class Period (see Table 4 for the list of Favored Retailers). I have confirmed the ownership of each Favored Retailer by checking each outlet's license history with the California Department of Alcoholic Beverage Control. Second, I updated the calculation of the discounts received by the Favored Retailers in excess of the discounts received by the Class in alternative one to reflect the receipt of additional information from Inmar.

A. Alternative One

11. The first approach I use in estimating the aggregate damages to the Class is to calculate the total amount of the coupons redeemed by the Favored Retailers –in excess of those provided to the Class. I then calculate this total excess of coupons as a percentage of the total purchases of Anheuser-Busch products made by those Favored Retailers. I call this percentage the “Favored Retailer Discount %”. This Favored Retailer Discount % reflects the excess price discount (in percentage terms) obtained by the Favored Retailers over that received by Class members. I multiply the Favored Retailer Discount % by the total purchases of Anheuser-Busch products made by the members of the proposed Class (the “Actual Purchases”). I perform this calculation annually for each year during the Class Period. Alternative one can be expressed by the following equation:

$$\text{OVERCHARGE DAMAGES} = (\text{ACTUAL PURCHASES OF ANHEUSER-BUSCH PRODUCTS}) * (\text{FAVORED RETAILER DISCOUNT \%})$$

12. Following is a table of the dollar volume of Actual Purchases of Anheuser-Busch products purchased by the Class during the Class Period.

Table 1	
Class Purchases of Anheuser-Busch Products	
Year	Actual Purchases of Anheuser-Busch Products
2010 (partial year)	██████████
2011	██████████
2012	██████████
2013	██████████
2014	██████████
Total	██████████

13. I calculated the Favored Retailer Discount % based on data provided by Carolina Manufacturer’s Services, Inc. (“Inmar”). Inmar initially provided a report (the “Inmar Report”) for a subset (300 retailers) of retailers in Fresno and Madera counties (DS024403-7) and subsequently submitted an additional report for an additional 27 retailers (the “Inmar Supplemental Report,” collectively the “Inmar Reports”). Based on the Inmar Reports, the Class received a weighted average price discount of 0.59% during the Class Period, compared to a weighted average price discount of 5.05% for the Favored Retailers.⁶ In other words, the Favored Retailers received, on average, almost 9 times the amount of coupons and hence 9 times the price discount received by the Class. The following table summarizes the Favored Retailer Discount % by year (see Exhibit B).

⁶ In calculating the weighted average discount, I include all purchases for the Class and the Favored Retailers.

Table 2			
Favored Retailer Discount %			
Year	% Discount - Favored Retailers	% Discount – Class	Favored Retailer Discount %
2010	5.36%	0.86%	4.50%
2011	6.56%	0.73%	5.83%
2012	8.29%	0.89%	7.40%
2013	4.15%	0.53%	3.62%
2014	1.62%	0.15%	1.47%

14. The Favored Retailer Discount % I derived from the Inmar Reports is understated as it does not include Bar Bucks,⁷ which would also have the effect of increasing the Favored Retailer Discount %.

15. Damages under alternative one are \$12.4 million, as summarized below (see Exhibit C).

⁷ Bar Bucks (also referred to as checkpons and retailer checks) are a combination coupon/check given to retailers (May 12, 2016 deposition of Ryan Donaghy at pp. 21-25, Donaghy Dep. Exh. 1). [REDACTED] (July 20, 2016 deposition of Cindy Jones at pp. 106-107, 146-147).

Table 3			
Alternative One Damages			
Year	Actual Purchases of Anheuser-Busch Products	Favored Retailer Discount %	Overcharge Damages
2010		4.50%	
2011		5.83%	
2012		7.40%	
2013		3.62%	
2014		1.47%	
Total			

B. Alternative Two

16. The second approach I use in estimating the aggregate damages to the Class is to take the maximum discount offered by Defendants for each Anheuser-Busch product for each relevant time period and provide that maximum discount to all members of the Class that paid more than the effectively lowered wholesale price. Alternative two can be expressed by the following equation:

$$\begin{aligned}
 & \text{OVERCHARGE DAMAGES} = \\
 & (\text{ACTUAL UNITS PURCHASED OF ANHEUSER-BUSCH PRODUCTS} * \text{FAVORED DISCOUNTS}) - \text{DISFAVORED DISCOUNTS}
 \end{aligned}$$

17. This alternative method uses the Coupon Redemption Agreements produced by Donaghy. Based on the Coupon Redemption Agreements, the 372 Class members that did receive manual scan coupons (436 received no manual scan coupons) received on average \$1,202 of manual scan coupons during the Class Period, compared to \$7,257 worth of manual

scan coupons, on average, for the Favored Retailers. In other words, the Favored Retailers received, on average, 6 times the manual scan coupons received by the few Class members that even received manual scan coupons.

18. Damages under alternative two based on the more limited Donaghy data available are \$5.8 million as summarized below (see Exhibit D).

Alternative Two Damages	
Year	Overcharge Damages
2010	\$28,897
2011	\$1,081,196
2012	\$3,473,300
2013	\$1,776,081
2014	\$444,438
Total	\$6,803,912
Less: Disfavored Discounts	(\$978,592)
Total Damages	\$5,825,320

19. As I describe more fully in my Initial and Reply Reports, the Favored Discounts I determined from the Coupon Redemption Agreements represent a conservative estimate of the discounts actually provided by Donaghy.

20. The Coupon Redemption Agreements Donaghy produced that contain information about the distribution of manual scan coupons to the Favored Retailers reflect less than 40% (see Table 4) of the manual scan coupons redeemed during the period 2011-2014 as reflected in the Inmar Reports. This discrepancy suggests that the Coupon Redemption Agreements produced by Donaghy do not reflect the full extent of discriminatory couponing engaged in by Defendants during the relevant period, thereby explaining the lower damages number as conservative.

Moreover, the Coupon Redemption Agreements do not include cross-merchandising coupons or Bar Bucks, which would also have the effect of increasing the Favored Discount.

Favored Retailer	2011 -2014 Discounts from Coupon Redemption Agreements	2011-2014 Discounts (Manual Scan Coupons) from Inmar
FAST N ESY #4	\$15,652.30	\$57,123.00
FAST N ESY #10	\$816.00	\$2,988.00
FAST N ESY #5	\$20,343.85	\$69,058.00
FAST N ESY #11	\$11,573.25	\$23,285.00
FAST N ESY #15	\$320.00	\$10,817.00
FAST N ESY #18	\$453.00	\$0.00
FAST N ESY #7	\$8,881.80	\$36,488.00
FAST N ESY #9	\$3,305.00	\$9,738.00
FAST N EZY #6	\$35.00	\$818.00
FRESNO CENTRAL	\$5,264.00	\$13,902.00
MANN'S LIQUOR	\$32,598.95	\$39,761.00
MGA LIQUOR	\$4,710.40	\$0.00
MGA LIQUOR #4	\$8,940.00	\$49,781.00
MGA LIQUOR 3 (2)	\$0.00	\$964.00
PALM BLUFF LIQUOR	\$10,829.05	\$25,835.00
U-SAVE LIQUOR	\$1,892.00	\$0.00
U-SAVE LIQUOR MARKET	\$27,444.65	\$34,722.00
FAST N ESY #17	\$0.00	\$104.00
FAST N ESY 20	\$0.00	\$0.00
FAST N ESY 21	\$0.00	\$0.00
MGA LIQUOR 2 (2)/JIFFY MART	\$5,744.00	\$35,628.00
MANNS LIQUOR 3	\$0.00	\$0.00
FAST N ESY #14	\$0.00	\$11,417.00
Total Discounts Favored Retailers	\$158,803.25	\$422,429.00
Coupon Redemption Agreements as a % of Inmar		37.59%

CONFIDENTIAL

A handwritten signature in black ink, appearing to read 'M. DeMario', is written over a solid horizontal line.

Marianne DeMario
September 25, 2020

Exhibit B - TIME REPORT

Firm Name: Hulett Harper Stewart LLC

Reporting Period: Inception through 10/31/2020

PROFESSIONAL	TITLE	CUMULATIVE HOURS	HISTORIC HOURLY RATE	CUMULATIVE LODESTAR*
Dennis Stewart	P	586.00	\$675.00	\$395,550.00
Karen Stefano	A	1,413.80	\$525.00	\$742,245.00
Bridget Gramme	A	57.25	\$475.00	\$27,193.75
Katie Gonzalez	SPL	1,003.50	\$240.00	\$240,840.00
TOTAL		3,060.55		\$1,405,828.75

** Based on historic hourly rates.*

Title:

- (P) Partner**
- (A) Associate**
- (LC) Law Clerk**
- (SPL) Senior Paralegal**
- (PL) Paralegal**
- (CR) Contract Reviewer**

*MANMOHAN DHILLON, et al. v. Anheuser-Busch, LLC et al., Case
No. 14CECG03039 JMS*

Exhibit C - EXPENSE REPORT

FIRM NAME: Hulett Harper Stewart LLC

REPORTING PERIOD: Inception through 10/31/2020

CATEGORY	DESCRIPTION (If necessary)	CUMULATIVE COSTS
Litigation Assessment		\$0.00
Court Costs - Filing Fees		\$1,882.20
Experts/consultants		\$311,814.68
Federal Express / UPS /Ontrac		\$1,347.03
Postage / U.S. Mail		\$0.00
Service of Process		\$2,282.05
Depositions		\$24,437.70
Hearing Transcripts		\$222.00
E-Discovery/Data Storage		\$14,857.70
Lexis/westlaw		\$36,183.12
Photocopies - in House		\$0.00
Photocopies - Outside		\$5,867.22
Telephone/telecopier		\$561.02
Travel - Transportation (Airplanes - Coach Fares Only)		\$13,704.05
Travel - Meals		\$1,171.04
Travel - Hotels		\$6,956.46
Miscellaneous		
TOTAL EXPENSES		\$421,286.27

Exhibit D - TIME REPORT

Firm Name: Gustafson Gluek PLLC

Reporting Period: Inception through 08/31/2023

PROFESSIONAL	TITLE	CUMULATIVE HOURS	HISTORIC HOURLY RATE	CUMULATIVE LODESTAR*
Daniel E. Gustafson	P	0.25	\$950.00	\$237.50
Daniel E. Gustafson	P	8.50	\$1,200.00	\$10,200.00
Karla M. Gluek	P	0.25	\$1,050.00	\$262.50
Dennis J. Stewart	P	55.75	\$1,000.00	\$55,750.00
Dennis J. Stewart	P	323.50	\$1,025.00	\$331,587.50
Dennis J. Stewart	P	22.50	\$1,100.00	\$24,750.00
Dennis J. Stewart	P	36.50	\$1,200.00	\$43,800.00
Daniel C. Hedlund	P	1.25	\$750.00	\$937.50
Daniel C. Hedlund	P	26.50	\$800.00	\$21,200.00
Daniel C. Hedlund	P	0.25	\$875.00	\$218.75
Daniel C. Hedlund	P	0.50	\$900.00	\$450.00
Daniel C. Hedlund	P	0.50	\$925.00	\$462.50
Daniel C. Hedlund	P	0.50	\$1,025.00	\$512.50
Michelle J. Looby	A	3.50	\$450.00	\$1,575.00
Michelle J. Looby	A	14.50	\$500.00	\$7,250.00
Michelle J. Looby	P	0.50	\$650.00	\$325.00
Michelle J. Looby	P	4.25	\$675.00	\$2,868.75
Michelle J. Looby	P	0.50	\$775.00	\$387.50
Michelle J. Looby	P	0.50	\$900.00	\$450.00
Raina C. Borrelli	A	56.25	\$400.00	\$22,500.00
Joshua J. Rissman	A	121.75	\$425.00	\$51,743.75
Joshua J. Rissman	A	0.25	\$450.00	\$112.50
Joshua J. Rissman	A	0.75	\$475.00	\$356.25
Joshua J. Rissman	A	1.00	\$500.00	\$500.00
Joshua J. Rissman	P	1.25	\$525.00	\$656.25
Joshua J. Rissman	P	2.75	\$600.00	\$1,650.00
Joshua J. Rissman	P	0.75	\$800.00	\$600.00
Mary M. Nikolai	A	7.00	\$325.00	\$2,275.00
Mary M. Nikolai	A	68.75	\$400.00	\$27,500.00
Mary M. Nikolai	A	0.25	\$475.00	\$118.75
Sara J. Payne	A	1.50	\$425.00	\$637.50
Brittany N. Resch	A	3.50	\$425.00	\$1,487.50
Mickey L. Stevens	A	15.50	\$350.00	\$5,425.00
Mickey L. Stevens	A	0.75	\$375.00	\$281.25
Sarah A. Moen	PL	8.00	\$225.00	\$1,800.00
Sarah A. Moen	PL	0.75	\$350.00	\$262.50
Jamie L. Holzer	PL	0.75	\$175.00	\$131.25
Jamie L. Holzer	PL	171.00	\$200.00	\$34,200.00
Jamie L. Holzer	PL	5.75	\$300.00	\$1,725.00
Jamie L. Holzer	PL	71.25	\$325.00	\$23,156.25
Tracey D. Grill	ADMIN	0.25	\$125.00	\$31.25
Tracey D. Grill	ADMIN	1.00	\$200.00	\$200.00
TOTAL		1,041.25		\$680,575.00

* Based on historic hourly rates.

Title:

(P) Partner

(A) Associate

(LC) Law Clerk

(SPL) Senior Paralegal

(PL) Paralegal

(CR) Contract Reviewer

(ADMIN) Administrative

*MANMOHAN DHILLON, et al. v. Anheuser-Busch, LLC et al., Case
No. 14CECG03039 JMS*

Exhibit E - EXPENSE REPORT

FIRM NAME: Gustafson Gluek PLLC

REPORTING PERIOD: Inception through 08/31/2023

CATEGORY	DESCRIPTION (If necessary)	CUMULATIVE COSTS
Litigation Assessment		\$0.00
Court Costs - Filing Fees		\$1,665.92
Experts/consultants		\$33,618.75
Federal Express / UPS /Ontrac		\$187.52
Postage / U.S. Mail		\$3.90
Mediation		\$3,000.00
Depositions		\$1,074.00
E-Discovery/Data Storage		\$1,706.88
Investigation		\$0.00
Lexis/westlaw		\$3,518.96
Photocopies - in House		\$215.50
Photocopies - Outside		\$0.00
Telephone/telecopier		\$26.04
Travel - Transportation (Airplanes - Coach Fares Only)		\$1,721.10
Travel - Meals		\$74.31
Travel - Hotels		\$146.94
Miscellaneous		\$0.00
TOTAL EXPENSES		\$46,959.82

EXHIBIT F

1 GUSTAFSON GLUEK PLLC
2 DENNIS STEWART, SBN: 99152
3 600 W. Broadway, Suite 3300
4 San Diego, CA 92101
5 Telephone: (619) 595-3299
6 Facsimile: (612) 339-6622

7 COLEMAN & HOROWITT, LLP
8 DARRYL J. HOROWITT, SBN: 100898
9 SHERRIE M. FLYNN, SBN: 240215
10 499 West Shaw, Suite 116
11 Fresno, CA 93704
12 Telephone: (559) 248-4820
13 Facsimile: (559) 248-4830

14 Attorneys for Plaintiffs
15 [Additional Counsel on Signature Page]

16 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
17 **IN AND FOR THE COUNTY OF FRESNO**

18 MANMOHAN DHILLON, dba RANCHOS
19 VALERO, SATNAM PABLA, dba GMG
20 FOOD STORE 101 and MADERA AVE.
21 MARKET, SERGE HAITAYAN, dba 7-11
22 NUMBER 17906b, DALJIT SINGH, dba
23 LIQUOR MAX, and PAR VENTURES, LLC,
24 dba, QUICK PICK, on Their Own Behalves
25 and on Behalf of All Others Similarly Situated
26 and on Behalf of the General Public,

27 Plaintiffs,

28 v.

ANHEUSER-BUSCH, LLC, DONAGHY
SALES, LLC, a California Corporation;
ANHEUSER-BUSCH DOES 1-5 and DOES
6 through 50, inclusive,

Defendants.

CASE NO. 14CECG03039 JMS

**[PROPOSED] PLAINTIFFS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS TO THE
REPRESENTATIVE PLAINTIFFS**

JUDGE: Honorable Jon M. Skiles

DATE: TBD

TIME: TBD

DEPT: 403

TABLE OF CONTENTS

1

2

3 I. INTRODUCTION6

4 II. THE COURT SHOULD AWARD ATTORNEYS' FEES USING THE

5 PERCENTAGE METHOD9

6 A. The Common Fund Doctrine Allows Courts to Assess the Beneficiaries of

7 the Fund with the Costs of Creating That Fund.....9

8 B. The Requested Fee is Reasonable.....10

9 C. The Result Achieved.....10

10 1. The Time and Effort Required.....11

11 2. A Lodestar Cross-Check Strongly Supports the Reasonableness of

12 the Fee Request12

13 3. The Contingent Nature of the Case, Risk of Loss, and the Delay in

14 Payment to Plaintiffs’ Counsel12

15 4. Awards Made in Similar Cases.....13

16 5. Experience, Reputation, Ability, and Quality of Counsel, and the

17 Skill they Displayed in Litigation.....14

18 6. Continuing Obligations of Plaintiffs’ Counsel15

19 III. Plaintiffs’ Counsel’s Litigation Expenses Are Reasonable and Should be

20 Approved.....15

21 IV. The Service Awards to Representative Plaintiffs Are Reasonable and Should be

22 Approved.....16

23 V. Conclusion18

24

25

26

27

28

TABLE OF AUTHORITIES

Page(s)

Cases

21st Century Ins. Co. v. Superior Court,
47 Cal. 4th 511 (Cal. 2009)..... 8

Amaro v. Anaheim Arena Management, LLC,
69 Cal. App. 5th 521 (2021) 13

Barbosa v. Cargill Meat Solutions, Corp.,
297 F.R.D. 431 (E.D. Ca. 2013) 13

Berkeley Cement, Inc. v. Regents of University of California,
30 Cal. App. 5th 1133 (2019) 14

Cellphone Termination Fee Cases,
(2010) 186 Cal.App.4th 1380 15

Chavez v. Netflix, Inc.,
162 Cal. App. 4th 43 13

City and County of San Francisco v. Sweet,
12 Cal. 4th 105 (Cal. 1995)..... 8

Dunk v. Ford Motor Co.,
48 Cal. App. 4th 1794 (1996) 9

Dunk v. Ford Motor Co.,
48 Cal. App. 4th (1996) 8

*Environmental Protection Information Center v. Dept. of Forestry & Fire,
Prevention*, 190 Cal.App.4th 217 (2010)..... 9

Golba v. Dick’s Sporting Goods, Inc.,
238 Cal. App. 4th 1251 (2015) 15, 16

Harris v. Marhoefer,
24 F.3d 16 (9th Cir. 1994) 15

Hensley v. Eckerhart,
461 U.S. 424 (1983)..... 9

1	<i>In re Activision Sec. Litig.</i> ,	
2	723 F.Supp. 1373 (N.D.Cal.1989)	13
3	<i>In re Equity Funding Corp. of Am. Sec. Litig.</i> ,	
4	438 F. Supp. 1303 (C.D. Cal. 1977)	14
5	<i>In re Omnivision Technologies, Inc.</i> ,	
6	559 F. Supp. 2d 1036 (2008)	11
7	<i>In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.</i> ,	
8	295 F.R.D. 438 (C.D. Cal. 2014)	16
9	<i>In re Vitamin Cases</i> ,	
10	110 Cal. App. 4th 1041 (2003)	11
11	<i>In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.</i> ,	
12	364 F. Supp. 2d 980 (D. Minn. 2005)	12
13	<i>Laffitte v. Robert Half Int'l Inc.</i> ,	
14	1 Cal. 5th 480 (2016)	9, 11
15	<i>Laffitte v. Robert Half Int'l Inc.</i> ,	
16	231 Cal. App. 4th 860 (2014)	9
17	<i>Lealao v. Beneficial California, Inc.</i> ,	
18	82 Cal. App. 4th 19	13
19	<i>Low v. Trump University, LLC</i> ,	
20	246 F. Supp. 3d 1295 (S.D. Cal. 2017)	16
21	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> ,	
22	186 Cal. App. 4th 399 (2010)	15, 16
23	<i>Nishiki v. Danko Meredith, APC</i> ,	
24	25 Cal. App. 5th 883 (2018)	12
25	<i>Rider v. Cnty. of San Diego</i> ,	
26	11 Cal. App. 4th 1410 (1992)	14
27	<i>Serrano v. Priest</i> ,	
28	20 Cal. 3d 25 (1977)	9
	<i>Six Mexican Workers v. Arizona Citrus Growers</i> ,	
	904 F.2d 1301 (9th Cir. 1990)	13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

State of California v. Meyer,
(1985), 174 Cal. App. 3d 1061 11

Other Authorities

Newberg on Class Actions § 17:1 (5th Ed. 2015) 15

1 Plaintiff Manmohan Dhillon, Satnam Pabla, Serge Haitayan, Daljit Singh, and Par
2 Ventures, LLC (together, “Representative Plaintiffs”) respectfully submit this Proposed
3 Memorandum in Support of their Motion for an Award of Attorneys’ Fees, Expenses, and Service
4 Awards.

5 **I. INTRODUCTION**

6 Before this Court for approval is a settlement of \$2,500,000. As described more fully in the
7 supporting Declarations¹, this recovery was achieved only through persistent effort by the class
8 representatives and class counsel in long and hard-fought litigation. This effort included pre-filing
9 investigation, motion practice, extensive percipient and expert discovery in the trial court, and the
10 successful pursuit of two interlocutory appeals reversing denials of motions for class certification, one
11 of them to the Supreme Court of California. The result was obtained in the face of substantial risk and
12 determined opposition and is the product of nearly 10 years of contentious litigation and arm’s-length
13 settlement negotiations before an experienced mediator. *See generally*, Stewart Decl. 11/24/23 at ¶¶
14 5-7, 10-25.

15 If the proposed settlement is approved, Plaintiffs’ Counsel² will respectfully move this Court
16 for an award of attorneys’ fees in the amount of twenty five percent (25%) of the Settlement Amount,
17 *i.e.* \$625,000. Plaintiffs also seek recovery of their reasonable out-of-pocket expenses incurred in the
18 litigation, totaling \$748,147.66. The nature and extent of Plaintiffs’ counsel’s work in the case as
19

20 ¹ Declaration of Dennis Stewart in Support of Plaintiffs’ Unopposed Motion for Preliminary
21 Approval of Class Action Settlement, dated November 14, 2023 (“Stewart Decl. 11/24/23”) and the
22 Supplemental Declaration of Dennis Stewart in Support of Plaintiffs’ Motion For Approval of Class
23 Action Settlement and For Award of Attorneys’ Fees, Expenses, and Service Awards for the
24 Representative Plaintiffs (“Stewart Suppl. Decl.”); Declaration of Joseph Goldberg in Support of
25 Plaintiffs’ Motion for Approval of Class Action Settlement and for Award of Attorneys’ Fees,
26 Expenses, and Service Awards for the Representative Plaintiffs (“Goldberg Decl.”), and Declaration
27 of Darryl J. Horowitz in Support of Plaintiffs’ Motion For Approval of Class Action Settlement and
28 for Award of Attorneys’ Fees, Expenses, and Service Awards for the Representative Plaintiffs
29 (“Horowitz Decl.”).

² Plaintiffs’ counsel in the case are comprised of the law firms of Gustafson Gluek PLLC, Hulett
Harper Stewart LLP, Freedman Boyd Hollander & Goldberg P.A., and Coleman and Horowitz
LLP.

1 well as the expenses incurred are detailed in their Declarations filed in support of this motion.³
2 Finally, Plaintiffs' seek reasonable service (incentive) awards of \$5,000, to each of the five (5)
3 representative Plaintiffs: Manmohan Dhillon, Satnam Pabla, Daljit Singh, Parminder Singh, and
4 Serge Haitayan for their invaluable assistance and service in initiating and prosecuting this action for
5 the benefit of the class.

6 As explained below, and in their Memoranda of Points and Authorities in Support of their
7 Motion for Preliminary Approval filed on November 14, 2023, and as supplemented concurrently
8 herewith, as well as the supporting Declarations of counsel and the Representative Plaintiffs and
9 in the record of this case, this Settlement represents a solid recovery for the Class, particularly in
10 light of the risks, costs, and duration of continued litigation. The requested 25% fee is fair and
11 reasonable under the applicable standards and is well within the range of fees approved in other class
12 actions.

13 In awarding fees, courts consider several factors, including the quality and quantity of work
14 as reflected in the results obtained. Here, Plaintiffs' Counsel devoted over 10,900 hours and a
15 collective lodestar of roughly \$3.98 million without pay over the nearly 10 years in which this case
16 was pending in order to obtain a favorable settlement for the Class⁴. The 25% requested fee,
17 \$625,000 dollars, at about 16% of lodestar, falls well below compensating Class Counsel for their
18 time under their normal hourly rates.⁵

19 At the same time, the amount achieved represents a significant percentage of the claimed
20 damages sought in the case. Plaintiffs' damages theory centered on a claim for restitution of
21 alleged overcharges incurred by class members in their purchases of Anheuser Busch Beer from
22 distributor Donaghy Sales during the class period. Stewart Suppl. Decl. ¶ 5. Plaintiffs' damages
23

24 _____
25 ³ See, Stewart Decl. 11/24/23 at ¶¶ 10-25; Stewart Suppl. Decl. at ¶¶ 3-4, 7-8, 10-11; Goldberg
Decl. at ¶¶ 3,5; and Horowitz Decl. at ¶¶ 6-7.

26 ⁴ See Stewart Suppl. Dec. ¶3, 7, 10; Goldberg Decl. ¶ 3; Horowitz Decl. ¶ 6.

27 ⁵ Counsel's collective lodestar in the case (hours times their hourly rates) is \$3,978,878.35. The
28 requested 25% fee of \$625,000.00 thus represents approximately 16% of that lodestar or an 84%
discount off of their standard hourly rate fees. Stewart Suppl. Decl. ¶ 5.

1 expert, Marianne DeMario, calculated two alternative estimates of those overcharges; \$12.4
2 million under one calculation and \$5.8 million under the other. *See* Stewart Suppl. Decl., Exh. A
3 (Supplemental Expert Report of Marianne L. DeMario 09/25/20, at p. 4, ¶ 6). The \$2.5 million
4 dollar proposed settlement represents, respectively, approximately 20% of her higher damages
5 figure and 43% of her lower figure.⁶ The legal and factual bases for these damages calculations
6 were hotly contested by the Defendants and supported by their own experts. The theoretical legal
7 bases for liability and recovery in this case were both untested and disputed. There existed the real
8 possibility that, even had Plaintiffs succeeded on liability, the theoretical, methodological and/or
9 legal bases underlying these damages calculations could have been rejected by the trier of fact.
10 Stewart Suppl. Decl. ¶ 5.

11
12 As a point of reference, the amount achieved is well within the range of recoveries, indeed
13 at the higher end of recoveries, studied in connection with securities and antitrust class actions in
14 state and federal courts. These compilations show approved settlements ranging between 4.5% and
15 23.2% of claimed damages in one study and a weighted mean of 19% of claimed damages in
16 another study.⁷ At between 20% and 43% of the claimed damages in this case, the current
17 settlement is well within those ranges.

18 Had counsel not vigorously litigated the merits of the case and succeeded in obtaining the
19 reversal of the two denials of class certifications in the Court of Appeal and the California Supreme
20 Court, it is a certainty that there would be no recovery to the class at all. As evidenced in the
21 supporting Declarations, the \$2.5 million all-cash recovery was achieved through the experience,
22 and thorough representation by Plaintiffs' Counsel whose contingent efforts have not yet been
23

24 ⁶ The difference in the estimated damages amounts results from each being based on different
25 data sets.

26 ⁷ "Securities Class Action Settlements 2023 Review and Analysis" at pp. 8-9. Available at
27 "Cornestone.com/wp-content/uploads/2024/03/Securities-Class-Action-Settlements-2023-
28 Review-and-Analysis.pdf." Conner and Lande, "Not Treble Damages Cartel Recoveries are
Mostly Less Than Single Damages" 100 Iowa L. Rev. 1997 (2015) available at
"scholarworks.law.ubalt.edu/all_fac/364/".

1 compensated in any way. Fee awards are designed to encourage counsel to obtain the best possible
2 result for the class and as such, the amount requested in this case is warranted given the recovery
3 obtained and the significant obstacles and risks Plaintiffs' Counsel faced in bringing and
4 prosecuting this case.

5 Plaintiffs' Counsel's expenses in the amount of \$748,147.66, which are described in the
6 accompanying Declarations⁸, are likewise reasonable in amount and were necessarily incurred in the
7 successful prosecution of the Action. As such, they should be awarded as well.

8 **II. THE COURT SHOULD AWARD ATTORNEYS' FEES USING THE**
9 **PERCENTAGE METHOD**

10 **A. The Common Fund Doctrine Allows Courts to Assess the Beneficiaries of the**
11 **Fund with the Costs of Creating That Fund**

12 “The common fund doctrine originated in the class action context.” *21st Century Ins. Co. v.*
13 *Superior Court*, 47 Cal. 4th 511, 520 (Cal. 2009). It “recognizes the common law ‘historic power of
14 equity to permit...a party preserving or recovering a fund for the benefit of others in addition to
15 himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly
16 from the other parties enjoying the benefit.” *City and County of San Francisco v. Sweet*, 12 Cal. 4th
17 105, 110 (Cal. 1995) (internal citations omitted).

18 There are two primary methods of determining a reasonable attorneys fee in class action
19 litigation – the percentage method and the lodestar method. The percentage method is used “where
20 the amount was a ‘certain or easily calculable sum of money.’” *Dunk v. Ford Motor Co.*, 48 Cal.
21 App. 4th 1974, 1809 (1996) (internal citation omitted). The alternate lodestar approach requires the
22 court to “calculate[] base amounts from a compilation of time spent and reasonable hourly
23 compensation of each attorney and then may adjust the base amounts in light of various factors.” *Id.*
24 at 1810. California courts have long accepted the percentage approach for awarding fees in
25

26
27 ⁸ See Stewart Suppl. Decl. ¶¶ 8, 11 and Exs. C and E.; Goldberg Decl. ¶ 5 and Ex. B; and
28 Horowitz Decl. ¶ 7 and Ex. B.

1 common fund cases and the California Supreme Court has explicitly identified its preference
2 towards using the percentage method. *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 503 (2016).

3 **B. The Requested Fee is Reasonable**

4 California courts have observed that “the trial court’s use of a percentage of 33-1/3 percent of
5 the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
6 *Laffitte v. Robert Half Int'l Inc.*, 231 Cal. App. 4th 860, 878 (2014), *aff’d*, 1 Cal. 5th 480 (2016). That
7 court also quoted authority noting that “[e]mpirical studies show that, regardless of whether the
8 percentage method or the lodestar method is used, fee awards in class actions average around one-
9 third of the recovery.” *Id.* The requested fee here is, in fact, far below that “average” (*id.*) and is fully
10 appropriate under the circumstances presented.

11
12 In determining the reasonableness of a fee request, California courts typically consider the
13 following “basic factors”: (1) the result class counsel obtained; (2) the time and labor required of the
14 attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent
15 to which the nature of the litigation precluded other employment by class counsel; (5) the experience,
16 reputation, and ability of the attorneys who performed the services, the skill they displayed in the
17 litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the
18 clients to the fee agreement. *See, e.g., Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor*
19 *Co.*, 48 Cal. App. 4th 1794, 1810 n.21 (1996).

20 **C. The Result Achieved**

21 Courts have consistently recognized that the result achieved is a crucial factor to be
22 considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *see also*
23 *Environmental Protection Information Center v. Dept. of Forestry & Fire Prevention*, 190
24 Cal.App.4th 217, 238 (2010). Here, the \$2.5 million Settlement Amount recovered for the Class
25 through the efforts of Plaintiffs’ Counsel is significant given the risks of succeeding on class
26 certification, the risk of an adverse outcome given Defendants’ defenses on the applicability and
27 validity of Plaintiffs’ legal theories and claims, and the risk of no award or an award of a lesser
28

1 sum should the parties proceed to trial, and the similarly vigorous efforts of Defendants⁹. But for
2 Plaintiffs' Counsel's persistent litigation effort including obtaining the reversal of two trial court
3 rulings denying class certification on two separate appeals (one of which reached the Supreme
4 Court of California) there would be no recovery for the class. Rather, the settlement amount
5 represents approximately 20% to 43% of Plaintiffs' expert's alternative damages estimates¹⁰. It
6 provides an immediate and certain recovery for Class Members without the risk, expense, and
7 inevitable further delay of the completion of discovery, renewed opposition to a litigated motion
8 for class certification, summary judgment, trial, and appeals. Given the nearly ten-year duration of
9 this case so far, the reasonableness of a certain amount sooner, rather than the possibility of a larger
10 amount later, is especially compelling. It is well within the range of settlements approved in past
11 cases. *See*, fn. 6, *supra* (and accompanying text).

12 **1. The Time and Effort Required**

13 Plaintiffs' Counsel vigorously investigated and prosecuted this litigation for nearly ten
14 years, and counsel, among other things: 1) conducted an extensive pre-filing investigation of the
15 factual and legal basis for the claims; 2) engaged in significant motion practice, including motions
16 directed to the adequacy of the Complaint; 3) handled extensive party and third-party fact and
17 expert informal and formal discovery (both written and deposition) and extensive meet and confers
18 on discovery disputes; 4) undertook significant discovery motion practice; 5) retained and worked
19 with experts to analyze, report on and testify about liability, damages and impact; 6) litigated two
20 motions for class certification in the Superior Court, both of which were then litigated in the Fifth
21 District Court of Appeal (one of them twice) and one in the California Supreme Court; and 7)
22 prepared detailed mediation materials in advance of the mediation sessions and participated in
23 formal mediation sessions in 2016 and 2023. Stewart Decl. 11/24/23 at ¶¶ 10-25.

24
25
26
27 ⁹ *See generally*, Stewart Decl. 11/24/23 at ¶¶ 10-25.

28 ¹⁰ *See* Stewart Suppl. Decl. ¶ 5 and Exhibit A.

1 **2. A Lodestar Cross-Check Strongly Supports the Reasonableness of the**
2 **Fee Request**

3 Plaintiffs’ Counsel make this application on a percentage-of-recovery basis. Courts have
4 ensured the reasonableness of percentage-of-recovery fees by “checking the percentage result
5 against a lodestar-multiplier calculation.” *Laffitte* at 494-95 (internal citations omitted). The
6 lodestar method “calculates the fee ‘by multiplying the number of hours reasonably expended by
7 counsel by a reasonable hourly rate.’” *Laffitte* at 489. Plaintiffs’ Counsel spent over 10,900 hours
8 in the prosecution of this Action, resulting in a combined lodestar of \$3,978,878.35. The requested
9 25%, or \$625,000, fee represents a very small percentage (approximately 16%) of the lodestar
10 actually incurred by counsel. Requested fees in excess of lodestar are sometimes discussed in terms
11 of the “multiplier” they represent over lodestar and whether the amount over lodestar or multiplier
12 is reasonable in light of all relevant factors. *In re Vitamin Cases*, 110 Cal. App. 4th 1041, 1050-51
13 (2003). In this case the requested fee is actually an extreme discount (84%) off the lodestar.
14 Accordingly, the lodestar cross-check strongly reinforces the fairness of the requested 25% fee.

15 **3. The Contingent Nature of the Case, Risk of Loss, and the Delay in**
16 **Payment to Plaintiffs’ Counsel**

17 Plaintiffs’ Counsel undertook this litigation on a contingent-fee basis, assuming a significant
18 risk that the litigation would yield no recovery and leave them uncompensated. Counsel advanced
19 nearly \$550,000 in out-of-pocket litigation expenses. Plaintiffs’ Counsel have not been compensated
20 for any time or expense since their work on this case began prior to October 2014. Courts have
21 consistently recognized that the risk borne by attorneys is a factor in considering the reasonableness
22 of an award of attorneys’ fees. *State of California v. Meyer* (1985), 174 Cal. App. 3d 1061, 1074.
23 *See also In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1046-47 (2008) (“The risk that
24 further litigation might result in Plaintiffs not recovering at all...is a significant factor in the award
25 of fees.”).

1 Plaintiffs faced numerous challenges in the case¹¹. While Plaintiffs believe they could have
2 proven their claims as a matter of fact, success at trial was not certain. First, although both of the
3 class certification denials were ultimately reversed, it is likely that a renewal of the motion would be
4 opposed, and the outcome could not be guaranteed. Defendants asserted and raised in a motion for
5 summary judgment defenses to the applicability and validity of Plaintiffs’ legal theories and claims
6 as well as Plaintiffs’ experts’ opinions and claims for restitution and damages. In many ways this
7 was a case of first impression representing untested theories on the applicability of beer pricing
8 statutes and the application of the statutes on which the case was premised. Finally, even if Plaintiffs
9 did succeed on liability at trial, there is a risk that the trier of fact may have awarded a lesser sum
10 than the amounts estimated by their expert, Ms. DeMario. Given the novel nature of the claims, a
11 favorable result at trial would most likely have provoked an appeal, adding years to the already 10
12 year life of this case. As the court in *Xcel Energy* recognized, “[p]recedent is replete with situations
13 in which attorneys representing a class have devoted substantial resources in terms of time and
14 advanced costs yet have lost the case despite their advocacy.” *In re Xcel Energy, Inc. Sec.,*
15 *Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005).

17 The contingent nature of counsel’s representation and the sizable financial risks borne by
18 Plaintiffs’ Counsel (including their advancing of nearly \$550,000 in litigation expenses) support
19 the percentage fee requested. As the *Nishiki* court recognized, the contingent nature of an award.
20 “compensates the lawyer not only for the legal services he renders but for the loan of those services.
21 The implicit interest rate on such a loan is higher because the risk of default (the loss of the case,
22 which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.”
23 *Nishiki v. Danko Meredith, APC*, 25 Cal. App. 5th 883, 897-98 (2018) (internal citations omitted).

24 4. Awards Made in Similar Cases

25 Plaintiffs’ Counsel’s request for a fee award of 25% of the Settlement Amount falls within
26 the range of percentage fees awarded in other class action litigations in California. “Empirical studies

27 _____
28 ¹¹ See generally, Stewart Decl. 11/24/23 ¶¶ 10-25.

1 show that, regardless whether the percentage method or the lodestar method is used, fee awards in
2 class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th
3 43, 66 n. 11 (2008). Several other courts have awarded one-third fees in complex litigations, an
4 amount higher than what Plaintiffs’ Counsel is seeking. *See e.g., Lealao v. Beneficial California,*
5 *Inc.*, 82 Cal. App. 4th 19, 24 n. 1 (quoting *Six Mexican Workers v. Arizona Citrus Growers*, 904
6 F.2d 1301, 1311 (9th Cir. 1990)) (A fee award of 25 percent “[i]s the “benchmark” award that
7 should be given in common fund cases.”); *Amaro v. Anaheim Arena Management, LLC*, 69 Cal.
8 App. 5th 521, 584 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11
9 (2008)) (“[F]ee awards in class actions average around one-third of recovery” regardless of
10 “whether the percentage method or the lodestar method is used.”); *Barbosa v. Cargill Meat*
11 *Solutions, Corp.*, 297 F.R.D. 431, 450-451 (E.D. Ca. 2013) (Court awarding a 33% attorneys fee, an
12 amount higher than the 25% benchmark, because there were sufficient reasons to exceed that
13 marker); *In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1377–78 (N.D.Cal.1989) (“nearly all
14 common fund awards range around 30%”). It compares favorably to average recoveries in other
15 class action cases.¹² The fee requested is, therefore, consistent with the fees awarded in other class
16 actions.
17

18 **5. Experience, Reputation, Ability, and Quality of Counsel, and the Skill**
19 **they Displayed in Litigation**

20 The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this
21 case also support the requested fee award. Plaintiffs’ Counsel have earned reputations for
22 excellence through many years of litigating complex civil actions. As set forth in the firm résumés
23 attached as Exhibits B-D of the Stewart Decl. 11/24/23, Plaintiffs’ Counsel’s experience and
24 resources allowed them to persist in the litigation of this matter for nearly 10 years of trial court
25 and appellate litigation in order to obtain a significant recovery for the class.
26

27
28 ¹² *See*, p. 8-9 and fn. 6, *infra*.

1 Courts also assess the quality of opposing counsel to evaluate the quality of the Plaintiffs’
2 Counsel’s work. *See e.g., In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337
3 (C.D. Cal. 1977). Plaintiffs’ Counsel were opposed in this litigation by experienced and skilled
4 counsel from Cadwalader, Wickersham & Taft LLP, Chielpegian-Cobb, and Wanger Jones
5 Helsley PC, prominent law firms who, consistent with their reputations, vigorously defended their
6 clients in this matter. This factor also weighs in favor of the requested fee.

7 **6. Continuing Obligations of Plaintiffs’ Counsel**

8 If the settlement is approved, Plaintiffs’ Counsel will continue to finalize and complete
9 distribution of settlement funds, and will oversee and assist the Claims Administrator as needed.
10 More specifically, Plaintiffs’ Counsel will supervise the claims process and review and assist in the
11 resolution of any objections received from proposed Claimants.

12 **III. Plaintiffs’ Counsel’s Litigation Expenses Are Reasonable and Should be Approved.**

13 The creation of a common fund for the benefit of a class in a class action litigation entitles
14 the attorneys to payment of reasonable litigation expenses and costs from that fund. Common fund
15 fee and expense awards include counsel’s incurred expenses because those who benefit from their
16 effort should share in the cost. *See Rider v. Cnty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6
17 (1992). “All costs awarded must be ‘reasonable in amount’ and ‘reasonably necessary to the
18 conduct of the litigation rather than merely convenient or beneficial to its preparation.’” *Berkeley*
19 *Cement, Inc. v. Regents of University of California*, 30 Cal. App. 5th 1133, 1139 (2019) (quoting
20 Code Civ. Proc., § 1033.5, subd. (c)(2), (3)).

21 Here, Plaintiffs’ Counsel are seeking reimbursement of expenses and charges in an aggregate
22 amount of \$748,147.66. As itemized and explained in Counsels’ Declarations, counsel’s expenses
23 include: (1) expert fees; (2) mediator’s fees; (3) deposition and other discovery costs; 4) on-line legal
24 research; (5) transportation, meals, and hotels; (6) photocopying; and (7) eDiscovery database
25 hosting¹³. The case was expert-intensive both as to liability and damages and Plaintiffs retained
26

27 ¹³ *See* Stewart Suppl. Decl. ¶¶ 3-4, 8, 11 and Exs. C and E; Goldberg Decl. ¶ 5 and Ex. B; and
28 Horowitz Decl. ¶ 7 and Ex. B.

1 exceptional experts who testified through numerous reports and at deposition.¹⁴ The expenses for
2 which Plaintiffs’ Counsel seek payment are those which are normally charged to paying clients, over
3 and above hourly fees. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (allowing Plaintiff to
4 recover those out-of-pocket expenses that ‘would normally be charged to a fee paying client’
5 including, “service of summons and complaint, service of trial subpoenas, fee for defense expert at
6 deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and
7 employment record reproduction.”).

8
9 **IV. The Service Awards to Representative Plaintiffs Are Reasonable and Should be**
10 **Approved.**

11 “At the conclusion of a class action, the class representatives are eligible for a special
12 payment in recognition of their service to the class”, Newberg on Class Actions § 17:1 (5th Ed.
13 2015) commonly referred to as “incentive” or “service” awards. Representative Plaintiffs –
14 Manmohan Dhillon, Satnam Pabla, Daljit Singh, Parminder Singh, and Serge Haitayan – seek
15 awards of \$5,000 each, totaling \$25,000, in connection with their representation of the class.
16 “Incentive awards to class representatives are intended to compensate class representatives for the
17 work and risk undertaken on behalf of the class...and sometimes to recognize the willingness of
18 class representatives to act as a private attorney general.” *Golba v. Dick’s Sporting Goods, Inc.*,
19 238 Cal. App. 4th 1251, 1272 (2015) (citing to *Cellphone Termination Fee Cases* (2010) 186
20 Cal.App.4th 1380, 1393–1394). *See also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
21 186 Cal. App. 4th 399, 412 (2010) (“But it is established that named plaintiffs are eligible for
22 reasonable incentive payments to compensate them for the expense or risk they have incurred in
23 conferring a benefit on other members of the class.”) In determining such an award, a court may
24 consider: “(1) the risk, both financial and otherwise, the class representative faced in bringing the
25 suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the
26 amount of time and effort spent by the class representative; (4) the duration of the litigation; and

27
28 ¹⁴ Stewart Decl. 11/24/23 at ¶¶ 18-19.

1 (5) the personal benefit received by the class representative as a result of the litigation.” *Golba*,
2 238 Cal. App. 4th at 1272.

3 As detailed in their Declarations, the Class Representatives here were dedicated to
4 remedying for Fresno and Madera Counties beer retailers what they viewed as unfair pricing
5 practices. They pursued pre-litigation efforts and when those did not achieve their goals, selected
6 and engaged counsel and led the nearly 10-year prosecution of this litigation. They undertook
7 many hours of work to find counsel, educate counsel on the industry and practices at issue, consult
8 with counsel on issues and strategy throughout the case, produce documents, respond to numerous
9 discovery requests which included multiple rounds of interrogatories, requests for admissions and
10 for production of documents, review of pleadings and Court orders, provide deposition testimony
11 (in some cases more than once), and discuss settlement negotiations with Plaintiffs’ Counsel.¹⁵
12 Awards of \$5,000 for each of the five (5) Representative Plaintiffs is thus clearly reasonable.¹⁶ The
13 amount requested is reasonable in light of average potential recoveries. If all requested fees and
14 expenses are awarded, there will be a net settlement fund of approximately \$1.1 million dollars to
15 be shared by up to approximately 800 class members. Estimating an actual average recovery per
16 class member is impossible because the recovery is pro rata based on purchases and it is not known
17 how many allowed claims will be presented. Assuming, arguendo, the highly unlikely prospect of
18 100% equal claims the simple average dollar amount per claimant is in excess of \$1,300.00. An
19 award of \$5,000 is modest in absolute terms, consonant with the Plaintiffs’ 10-year involvement
20 in the case and reasonable given the range of likely class member recoveries. *See, Munoz*, 186 Cal.
21 App. 4th at 334-335 (\$5,000 award reasonable and not excessive as compared to rejected incentive
22

23 ¹⁵ Stewart Decl. 11/24/23 at ¶ 26; *see generally*, Declarations of Manmohan Dhillon, Daljit
24 Singh Satnam Pabla, Serge Haitayan, and Parminder Singh (Par Ventures) in Support of
25 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

26 ¹⁶ *See, e.g., Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412
27 (2010) (approving \$5,000 incentive awards to each of the two class representatives); *Low v.*
28 *Trump University, LLC*, 246 F. Supp. 3d 1295, 1316-17 (S.D. Cal. 2017) (approving \$15,000
incentive awards) for each of the five class representatives); *In re Toys R Us-Delaware, Inc.--*
Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438, 472 (C.D. Cal. 2014)
(approving \$5,000 incentive awards for each of the three class representatives).

1 awards which would have awarded a multiplier of 30 to 44 times the average payout to class
2 members). In light of the effort undertaken by the Representative Plaintiffs and the vital role they
3 played in this protracted litigation the requested service awards are reasonable.

4 **V. Conclusion**

5 Plaintiffs' Counsel respectfully submit that their requested attorneys' fees and expenses are
6 fair, reasonable, and appropriate and should be granted. Additionally, the awards to Class
7 Representatives in connection with their representation of the Class are reasonable and fully
8 supported and should be approved.

9
10 Respectfully submitted,

11
12 DATED: April 18, 2024

13 GUSTAFSON GLUEK PLLC
14 DENNIS STEWART
15 /s/ Dennis Stewart
16 DENNIS STEWART
17 600 W. Broadway, Suite 3300
18 San Diego, CA 92101
19 Telephone: (619) 595-3299
20 Facsimile: (612) 339-6622

21
22 COLEMAN & HOROWITT, LLP
23 DARRYL J. HOROWITT
24 SHERRIE M. FLYNN
25 499 West Shaw, Suite 116
26 Fresno, CA 93704
27 Telephone: (559) 248-4820
28 Facsimile: (559) 248-4830

FREEDMAN BOYD HOLLANDER &
GOLDBERG PA
JOSEPH GOLDBERG (admitted *pro hac*)
20 First Plaza, Suite 700
Albuquerque, NM 87102
Telephone: (505) 842-9960
Facsimile: (505) 842-0761

GUSTAFSON GLUEK PLLC
DANIEL C. HEDLUND (admitted *pro hac*)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MICHELLE J. LOOBY
JOSHUA J. RISSMAN
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Minneapolis, MN 55402
Telephone:(612) 333-8844
Facsimile:(612) 339-6622

Attorneys for Plaintiffs