

THE LAW OFFICE OF JACK FITZGERALD, PC

JACK FITZGERALD (SBN 257370)

jack@jackfitzgeraldlaw.com

TREVOR M. FLYNN (SBN 253362)

trevor@jackfitzgeraldlaw.com

MELANIE PERSINGER (SBN 275423)

melanie@jackfitzgeraldlaw.com

2341 Jackson Street, Suite 200

San Diego, California 92110

Phone: (619) 215-1741

Fax: (619) 331-2943

JACKSON & FOSTER, LLC

SIDNEY W. JACKSON, III (*pro hac vice*)

sid@jacksonfosterlaw.com

75 St. Michael Street

Mobile, Alabama 36602

Phone: (251) 433-6699

Fax: (251) 433-6127

Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DEBBIE KROMMENHOCK and STEPHEN
HADLEY, on behalf of themselves, all others
similarly situated, and the general public,

Plaintiffs,

v.

POST FOODS, LLC,

Defendant.

Case No. 3:16-cv-04958-WHO

**DECLARATION OF JACK FITZGERALD
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

Judge: Hon. William H. Orrick
Hearing Date: June 23, 2021, 2:00 p.m.
Location: Courtroom 2

1 I, Jack Fitzgerald, declare:

2 1. I am a member in good standing of the State Bars of California and New York; and of the
3 United States District Courts for the Northern, Central and Southern Districts of California, the Southern
4 and Eastern Districts of New York, and the Western District of Wisconsin; and of the United States Courts
5 of Appeal for the Second, Eighth, and Ninth Circuits. I make this declaration based on my own personal
6 knowledge, in support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards.

7 2. My firm has conducted research in an effort to identify any class action settlements entered
8 into by any cereal company. As shown below, based on that research, the Settlement Agreement's \$15
9 million common fund appears to be the largest amount any cereal company has ever paid to settle any class
10 action (and so far as we are aware, Post itself has *never* previously settled a class action on a classwide
11 basis).

| Case | Claims | Date of Settlement | Monetary Terms |
|--|---|--------------------|---|
| <i>Johnson v. Gen. Mills, Inc.</i> , 10-cv-61-CJC (C.D. Cal.) | False advertising of Yoplait yogurt as regulating digestive health | February 2013 | \$8.5 million non-reversionary common fund |
| <i>Weninger v. Gen. Mills Operations, LLC</i> , 18-cv-321-JPS (E.D. Wisc.) | Violations of Fair Labor Standards Act | January 2019 | Approximately \$6.4 million for individual class member claims and attorneys' fees |
| <i>Astiana v. Kashi Co.</i> , No. 11-cv-1967-H (S.D. Cal.) | False advertising of Kashi cereals as "All Natural" | May 2014 | \$5 million non-reversionary common fund |
| <i>Weeks v. Kellogg Co.</i> , 9-cv-8102-MMM (C.D. Cal.) | False advertising of Rice Krispies and Cocoa Krispies cereals as improving children's health and immune systems | November 2010 | \$5 million comprised of \$2.5 million in cash and <i>cy pres</i> donation of food with retail value of \$2.5 million. |
| <i>Dennis v. Kellogg Co.</i> , 9-cv-1786-L (S.D. Cal.) | False advertising of Frosted Mini-Wheats cereal as promoting attentiveness | November 2013 | \$4 million non-reversionary common fund |

| Case | Claims | Date of Settlement | Monetary Terms |
|--|--|--------------------|----------------------------------|
| <i>In re Quaker Oats Labeling Litig.</i> , 10-cv-502-RS (N.D. Cal.) (granted final approval) | Misleading health claims on Quaker Granola Bars and Oatmeal made with artificial trans fat | December 2015 | \$760,000 attorney's fees |
| <i>Rooker v. Gen. Mills Operations, LLC</i> , 17-cv-467-PA (C.D. Cal.) | Violation of labor laws (wage and hour) | June 2017 | \$390,000 common fund |

3. Moreover, based on my firm's research, the Settlement Agreement's \$15 million common fund appears to be one of the largest settlements in United States history resolving any food false advertising class action (in which I do not include cases involving pet food or dietary supplements), and the second-largest non-reversionary common fund. The table below sets forth and places in order the largest food false advertising class action settlements we were able to identify. Each of the settlement listed here are outliers because the vast majority of such cases are settled well below these amounts, often below seven figures. Moreover, based on their coupon or in-kind (product) aspects, it is likely that the actual settlement values in the *Gemelas*, *Burcham*, *Carethers*, and *Ferron* cases identified below are less—even substantially less—than \$15 million common fund here, in which case the settlement here is the second-highest food false advertising settlement ever, in real value, after *Suchanek*. Moreover, several of these cases are based on damages models that are more straightforward and typically greater than the damages measured in a price premium case based on a misleading labeling statement, like this. For example, *Ferron* and *Henderson* were based on underfill theories, in which measuring the *amount* of product promised but not delivered is straightforward, and typically more than the single-digit damage amounts relating to price premia from labeling claims. Similarly, *Suchanek's* damages model, which was based on the amount of coffee in a K-cup advertised as premium and fresh-ground that was actually freeze-dried, was over 94% of the purchase price. Accordingly, it appears as though the Settlement in this case is the largest non-reversionary common fund settlement of a food false advertising class action with a price premium damages model.

| Case | Claims | Date of Settlement | Monetary Terms |
|--|---|--------------------|--|
| <i>Gemelas v. The Dannon Co., Inc.</i> No. 08-cv-236 (E.D. Ohio) | False advertising of health benefits associated with probiotics in Activia and DanActive yogurts | January 2009 | Up to \$45 million to pay attorneys' fees of \$10 million, notice, administration, and claims, provided that if all costs and claims totaled less than \$35 million, Dannon would donate the difference <i>cy pres</i> , up to \$35 million, in product |
| <i>Burcham v. Welch Foods Inc.</i> , No. 09-cv-5946 (C.D. Cal.) | False advertising of juice as a white grape and pomegranate juice blend | February 2011 | \$30 million in coupons distributed in newspapers ; full refunds with proof of purchase or a product replacement coupon without proof; and donations of food and juice products worth \$350,000 |
| <i>Suchanek v. Sturm Foods, Inc.</i> , No. 11-cv-565-NJR (S.D. Ill.) | False advertising of "K-Cup" instant coffee pods as premium and fresh-brewed despite containing over 94% freeze dried coffee. | May 2019 | \$25 million non-reversionary common fund |
| <i>Careathers v. Red Bull N. Am. Inc.</i> , No. 13-cv-369 (S.D.N.Y.) | False advertising regarding overstating functional benefits of Red Bull vs. other sources of caffeine | July 2014 | \$17.5 million comprised of \$11.25 million in cash and \$6.5 million in product |
| <i>Ferron v. Kraft Heinz Foods Co.</i> , No. 20-cv-62136-RAR (S.D. Fla.) | Underfilled Maxwell House coffee products (overstating number of cups made). | January 2021 | Up to \$16 million to pay attorneys' fees and costs of up to \$3.9 million, notice and administration costs, and claims made (maximum of \$4.80 per household without proof of purchase, \$25 with proof of purchase). |
| <i>Krommenhock v. Post Foods, LLC</i> , No. 15-cv-4958-WHO (N.D. Cal.) | False advertising of high-sugar cereals and bars with health claims | December 2020 | \$15 million non-reversionary common fund |

| Case | Claims | Date of Settlement | Monetary Terms |
|---|---|--------------------|--|
| <i>Hadley v. Kellogg Sales Co.</i> , No. 12-cv-4955-LHK (N.D. Cal.) | False advertising of high-sugar cereals and bars with health claims | March 2021 | \$13 million non-reversionary common fund (pending preliminary approval) |
| <i>Clay v. Cytosport, Inc.</i> , No. 15-cv-165-L (S.D. Cal.) | Overstatement of amount of protein in “Muscle Milk” protein shakes | January 2020 | \$12 million non-reversionary common fund plus notice and administration estimated at \$500,000 |
| <i>Hendricks v. StarKist Co.</i> , No. 13-cv-729 (N.D. Cal.) | Underfilled tuna cans | April 2015 | \$12 million , comprised of \$8 million in cash and \$4 million in vouchers |
| <i>Pappas v. Naked Juice Co.</i> , No. 11-cv-8276 (C.D. Cal.) | False Advertising of Juices as “100% Juice,” “All Natural,” “100% Fruit,” and “Non-GMO” | July 2013 | \$9 million non-reversionary common fund |
| <i>Townsend v. Blue Diamond</i> , No. 14-cv-958-4 (D. Ark.) | False advertising of nut milk products as “natural” | April 2015 | \$8.995 million non-reversionary common fund |

4. When my firm filed this case and the similar ones against Kellogg and General Mills in August 2016, there was a significant amount of public commentary from members of the bar expressing doubt about the cases’ theory and prospects.

5. Attached hereto as Exhibit 1 is a true and correct copy of an article by Elaine Watson published on September 20, 2016 on FoodNavigator-USA.com, titled “Kellogg, Post & General Mills hit with wave of lawsuits as plaintiff’s bar turns up the heat on sugar.”¹ The article notes that “legal experts predict the plaintiffs face an uphill battle,” and that “[a]ll three defendants have described the lawsuits as

¹ Available at <https://www.bakeryandsnacks.com/Article/2016/09/20/Kellogg-Post-General-Mills-sued-over-sugar-content-in-cereals>.

1 meritless[.]” It quotes one member of the food defense bar as saying, “[t]he lawsuit is problematic in
2 numerous ways,” and another as saying the lawsuits “do[] not strike me as particularly strong on the merits.”

3 6. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from a February 2017
4 publication of the U.S. Chamber Institute for Legal Reform, titled, “The Food Court: Trends in Food and
5 Beverage Class Action Litigation.”² In a section on “Developing Litigation,” the publication describes the
6 lawsuits and opines, “[t]hese class actions are more sophisticated, but no less absurd than past lawsuits
7 against cereal makers, such as those alleging consumers are misled to believe that FrootLoops contain real
8 fruit (dismissed in 2007 and 2009) and Cap’n Crunch’s Crunch Berries are real berries, providing nutritional
9 value (dismissed in 2009 and 2010).

10 7. Attached hereto as Exhibit 3 is a true and correct copy of an article by Elaine Watson
11 published on January 3, 2018 on FoodNavigator-USA.com, titled “Court should dismiss ‘absurd’ added
12 sugar lawsuits, argues Mondelez, while Post Foods cites first amendment rights.”³ The article quotes a
13 member of the food defense bar as expecting the lawsuits to “face serious challenges to certification as a
14 class action.”

15 8. Attached hereto as Exhibit 4 is a true and correct copy of the biography of Mr. Angel A.
16 Garganta, who was initially Post’s lead counsel in the case (*see* Dkt. No. 11).

17 9. Attached hereto as Exhibit 5 is a true and correct copy of the biography of Ms. Sarah Brew,
18 one of Post’s lead counsel throughout the majority of the litigation.

19 10. Attached hereto as Exhibit 6 is a true and correct copy of the biography of Mr. Aaron Van
20 Oort, one of Post’s lead counsel throughout the majority of the litigation.

21 11. I established my law firm in 2013 and it has never been larger than a handful of attorneys.
22 Throughout almost the entire litigation, there were only three attorneys at my firm: me, Trevor M. Flynn,
23 and Melanie R. Persinger. During most (but not all) of the litigation, we were supported by one paralegal,
24 either Val Erze or Julie Hinton. Collectively, the three attorneys and paralegals performed over 95% of the
25

26 ² Available at [https://instituteforlegalreform.com/wp-](https://instituteforlegalreform.com/wp-content/uploads/2020/10/TheFoodCourtPaper_Pages.pdf)
27 [content/uploads/2020/10/TheFoodCourtPaper_Pages.pdf](https://instituteforlegalreform.com/wp-content/uploads/2020/10/TheFoodCourtPaper_Pages.pdf).

28 ³ Available at [https://www.foodnavigator-usa.com/Article/2018/01/03/Court-should-dismiss-absurd-](https://www.foodnavigator-usa.com/Article/2018/01/03/Court-should-dismiss-absurd-added-sugar-lawsuits-argues-Mondelez-while-Post-Foods-cites-first-amendment-rights)
[added-sugar-lawsuits-argues-Mondelez-while-Post-Foods-cites-first-amendment-rights](https://www.foodnavigator-usa.com/Article/2018/01/03/Court-should-dismiss-absurd-added-sugar-lawsuits-argues-Mondelez-while-Post-Foods-cites-first-amendment-rights).

1 work on the case (with Mr. Sid Jackson and his associate, Mr. Christian Harben contributing the additional
2 time after they joined in approximately October 2019).

3 12. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from Post’s Petition for
4 Permission to Appeal Pursuant to Fed. R. Civ. P. 23(f).

5 13. Obtaining Post’s agreement to the injunctive relief in this case was not easy. In fact, the
6 parties spent far more time and effort negotiating that aspect of the settlement than its monetary component
7 (which, for the most part, was negotiated during a single-day settlement conference with Chief Magistrate
8 Judge Spero). Initially, this was challenging because each of the three cereal companies seemed wary of
9 being at a potential competitive disadvantage if it agreed to make some label change to which its competitors
10 were not bound. It took some work to alleviate these concerns, but that was just the beginning. The parties
11 then had to negotiate, first, the structure of the injunctive relief, and second, the specific provisions. This
12 took multiple rounds sending proposals and mark-ups back-and-forth. And even by the time the parties
13 agreed to the \$15 million common fund, their negotiations on injunctive relief were not yet complete.

14 14. Attached hereto as Exhibit 8 is a true and correct copy of a November 15, 2019 article by
15 attorney Creighton Magid, published on the website of the Washington Legal Foundation, wlf.org, titled,
16 “Developments in Added-Sugar Food-and-Beverage Litigation: Cause for Hope, Cause for Concern.”⁴

17 15. Attached hereto as Exhibit 9 is a true and correct copy of a March 1, 2021 article titled, “\$15
18 Million Settlement in Post Cereal Lawsuit,” published on NationalLawReview.com.⁵

19 16. Attached hereto as Exhibit 10 is a true and correct copy of a March 2, 2021 article by Lauren
20 Manning, published on FoodDive.com, titled “Post settles sugary cereal lawsuit for \$15M and agrees to
21 drop health-focused label claims.”⁶

22 17. Attached hereto as Exhibit 11 is a true and correct copy of a November 14, 2019 article by
23 Lindsey Heinz and Elizabeth Fessler published on Law360.com, titled “Kellogg’s Deal Highlights Sugar
24 Focus In Label Class Actions.”

25 ⁴ Available at <https://www.wlf.org/2019/11/15/publishing/developments-in-added-sugar-food-and-beverage-litigation-cause-for-hope-cause-for-concern>.

26 ⁵ Available at <https://www.natlawreview.com/article/15-million-settlement-post-cereal-lawsuit>.

27 ⁶ Available at <https://www.fooddive.com/news/post-settles-sugary-cereal-lawsuit-for-15m-and-agrees-to-drop-health-focus/595931>.

1 18. My firm prosecuted this action entirely on a contingency basis, advancing all out-of-pocket
2 costs, which have not yet been reimbursed by anyone. The firm had no financing or other assistance in
3 funding the litigation, and the nearly \$1 million of expenses in this case represented a substantial portion of
4 the firm's revenue during the pendency of the litigation.

5 19. As a result of the time, attention, and investment this action required of my firm, its ability
6 to file and prosecute other cases during the pendency of the litigation was substantially affected. For
7 example, my firm filed 15 cases in 2015, and 22 cases in 2016 (including *Krommenhock*, *Hadley*, and
8 *Truxel*), but, due largely to the press of work in this case, filed only 8 cases in 2017, 5 cases in 2018, 4 cases
9 in 2019, and 2 cases in 2020.

10 20. To reduce costs and mitigate risk, my firm's typical practice when moving for class
11 certification given the present state of the case law (e.g., *Comcast* and its progeny) is to offer an expert
12 declaration describing a damages study that has been designed, but not yet implemented. This permits us to
13 tweak the design before running the survey if some problem becomes apparent.⁷ And because actually
14 fielding the survey typically accounts for a large portion of the costs associated with a case's damages
15 model, ensuring the model is suitable to measure classwide damages before running it mitigates the risk of
16 losing out-of-pocket costs if a class is not certified. In this case, however, the schedule had the parties
17 briefing class certification and summary judgment essentially concurrently, so that Plaintiffs' damages
18 models had to be completed by the time of class certification (*see* Dkt. No. 147, Weir Decl. ¶¶ 64 & Table
19 3). Given the need to run so many models in light of all the challenged products and claims, this cost the
20 firm hundreds of thousands of dollars that were at risk if the Court did not certify the class.

21 21. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from a November 12,
22 2020 hearing on *Hadley v. Kellogg Sales Co.*, No. 16-cv-4955-LHK.

23 22. In connection with Plaintiffs' Motion for Preliminary Approval, I submitted a declaration on
24 January 18, 2021, Dkt. No. 286 ("PA Fitzgerald Decl."), which attached as Exhibits 24 and 25 Class
25 Counsel's detailed billing records through January 15, 2021, organized both chronologically and by

26 _____
27 ⁷ In a similar action against Mondelez, for example, our motion for class certification was initially denied
28 without prejudice because of a problem the Court found with the proposed model. *See McMorrow v.*
Mondelez Int'l, Inc., 2020 WL 1157191 (S.D. Cal. Mar. 9, 2020). Once that issue was addressed, the Court
granted certification. *See McMorrow v. Mondelez Int'l, Inc.*, 2021 WL 859137 (S.D. Cal. Mar. 8, 2021).

1 category, which totaled 4,590.3 hours. *See* PA Fitzgerald Decl. ¶ 72.

2 23. Attached hereto as Exhibits 13 & 14 are updated billing records (by time and category) for
3 the time period of January 16 through April 13, 2021, reflecting an additional 103.1 hours, as follows:

| Timekeeper | Previous Hours | Additional Hours | Total Hours |
|-------------------|-----------------------|-------------------------|--------------------|
| Jack Fitzgerald | 1,480.2 | 21.4 | 1,501.6 |
| Trevor Flynn | 572.5 | 17.4 | 589.9 |
| Melanie Persinger | 1,364.5 | 63.8 | 1,428.3 |
| Tran Nguyen | 23.7 | - | 23.7 |
| Sid Jackson | 139.4 | 0.5 | 139.9 |
| Christian Harben | 66.3 | - | 66.3 |
| Val Erze | 693.2 | - | 693.2 |
| Julie Hinton | 250.5 | - | 250.5 |
| Total = | 4,590.3 | 103.1 | 4,693.4 |

4 24. Class Counsel's hours can be broken down into the categories set forth in the following table
5 (which is updated from the "Hours by Category" table appearing on page 27 of the PA Fitzgerald Decl.).

| Category | Hours | % of Work |
|---|----------------|------------------|
| Investigation & Complaint | 240.5 | 5.1% |
| Rule 12 Briefing | 276.9 | 5.9% |
| Case Management | 94.6 | 2% |
| Discovery & Related Motions | 666.7 | 14.2% |
| Fact Witness Depositions | 324.5 | 6.9% |
| Expert Witness Depositions | 314.8 | 6.7% |
| Work with Plaintiffs' Experts | 199.9 | 4.3% |
| Class Certification, Summary Judgment & Related Motions | 1,517.2 | 32.3% |
| Pre-Trial Work | 441.2 | 9.4% |
| Mediation and Settlement | 326.1 | 7% |
| Motion for Preliminary Approval | 174.5 | 3.7% |
| Motion for Attorneys' Fees, Costs, and Service Awards | 111.5 | 2.4% |
| Motion for Final Approval | 5 | 0.1% |
| Total = | 4,693.4 | 100% |

25. We have researched other recent food false advertising class action settlements to evaluate our hours into this case in comparison to similar matters. In doing so, it appears our prosecution of this action was quite efficient, as shown in the below table, especially considering settlement dollars obtained per hour worked.

| Case | Months Worked ⁸ | Hours | Hours Per Year | Hours Per Month | Hours Per Week | Settlement | Settlement Dollars Per Hour Worked |
|--------------------------------|----------------------------|---------|----------------|-----------------|----------------|--------------------------------|--|
| <i>Krommenhock</i> | 56.5 | 4,633.4 | 983.7 | 82.0 | 19.2 | \$15M | \$3,195.98 |
| <i>Hadley</i> ⁹ | 55 | 5,457.7 | 1,191.6 | 99.2 | 23.2 | \$13M | \$2,381.96 |
| <i>Schneider</i> ¹⁰ | 48.5 | 4,568.3 | 1,130.8 | 94.2 | 21.9 | \$6.5M | \$1,422.85 |
| <i>Clay</i> ¹¹ | 68 | 5,532.6 | 975.8 | 81.4 | 18.9 | \$12.5M | \$2,259.3 |
| <i>Hendricks</i> ¹² | 32.5 | 3,366.8 | 1,242.4 | 103.6 | 24.0 | \$8M cash, \$4M vouchers | \$2,376.14 (cash) \$2,970.18 (cash + vouchers @ 50% face value) |

26. As noted in my January 18 declaration, the current billing rates for timekeepers on this matter are as follows:

| Timekeeper | Position | Rate |
|-------------------|-----------|-------|
| Jack Fitzgerald | Principal | \$825 |
| Trevor Flynn | Associate | \$625 |
| Melanie Persinger | Associate | \$600 |
| Tran Nguyen | Associate | \$400 |
| Sid Jackson | Principal | \$825 |

⁸ This is calculated based on the date the case was filed, and the date counsel moved for attorneys fees in connection with final approval of a class action settlement, rounded to the nearest half-month.

⁹ See *Hadley v. Kellogg Sales Co.*, No. 16-v-4955-LHK (N.D. Cal.), Dkt. No. 378, Decl. of Jack Fitzgerald in Support of Mot. for Prelim. Approval ¶ 51.

¹⁰ See *Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 592-93, 601 (N.D. Cal. Nov. 4, 2020) (allegations that Chipotle falsely advertised food as “non-GMO”).

¹¹ See *Clay v. Cytosport, Inc.*, 2020 WL 6361874, at *1, *4 (S.D. Cal. Oct. 29, 2020) (allegations that Cytosport falsely labeled “Muscle Milk” as containing “lean protein” and “lean lipids”).

¹² See *Hendricks v. Starkist Co.*, 2016 WL 5462423, at *5, *12 (N.D. Cal. Sept. 29, 2016) (allegations that defendant underfilled canned tuna).

| Timekeeper | Position | Rate |
|------------------|-----------|-------|
| Christian Harben | Associate | \$400 |
| Val Erze | Paralegal | \$205 |
| Julie Hinton | Paralegal | \$205 |

27. These rates are consistent both with previous fee awards, and with prevailing rates in this district for attorneys of similar experience, skill, and reputation.

28. First, the requested rates are consistent with rates recently approved for the above timekeepers as follows.¹³ Last month, slightly lower rates were approved for myself and Mr. Flynn in the Southern District of California, *Loomis v. Slendertone Distribution, Inc.*, 2021 WL 873340, at *10 (S.D. Cal. Mar. 9, 2021) (approving rates of \$750 per hour for me and \$575 per hour for Mr. Flynn). A little more than a year ago, similar rates were approved for me, Mr. Flynn, and Ms. Persinger in *Hunter v. Nature's Way Prod., LCC*, 2020 WL 71160, at *7 (S.D. Cal. Jan. 6, 2020) (approving rates of \$750 per hour for me, \$575 per hour for Mr. Flynn, and \$510 per hour for Ms. Persinger).

29. Nearly three years ago, in May 2018, the Honorable Audrey G. Fleissig, District Court Judge for the Eastern District of Missouri, approved rates of \$925 for Mr. Jackson, \$715 for me, \$550 for Mr. Flynn, and \$485 for Ms. Persinger, for work performed in the Los Angeles market. *See Rawa v. Monsanto Co.*, 2018 WL 2389040, at *5 (E.D. Mo. May 25, 2018 (accepting counsel's proposed lodestar); *compare* PA Fitzgerald Decl. Ex. 26 (excerpts of Supplemental Declaration of Jack Fitzgerald in Support of Motion for Attorneys' Fees, Costs, and Incentive Awards in *Rawa* showing rates and lodestar). The rates requested here, nearly three years later, represent a modest annual approximately 5% increase to account for the fact that "hourly attorney fee rates generally increase over time with inflation," *Tehachapi Unified Sch. Dist. v. K.M. by & Through Markham*, 2019 WL 331153, at *6 (E.D. Cal. Jan. 25, 2019).

30. Second, the requested rates are consistent with prevailing rates in the community for attorneys of similar experience, skill, and reputation.

¹³ *See Johnson v. Quantum Learning Network, Inc.*, 2017 WL 747462, at *6 (N.D. Cal. Feb. 27, 2017) (that other courts had approved class counsel's requested hourly rate "support[ed] granting Class Counsel's [fee] request").

31. Nearly six months ago, in a food false advertising class action against Chipotle, a Northern District of California court approved rates that compare favorably to those requested here. For example, the Court awarded partner rates of between \$830 and \$1275, associate rates of between \$425 and \$695, and paralegal and legal assistant rates of between \$125 and \$290, as follows:

| Timekeeper | Position | Year | Rate |
|------------|-----------------|------|---------|
| Fox | Partner | 1984 | \$990 |
| King | Partner | 1994 | \$910 |
| Hall | Partner | 1998 | \$830 |
| George | Of Counsel | 2005 | \$735 |
| Choi | Associate | 2006 | \$660 |
| Howe | Associate | 2006 | \$425 |
| Powley | Paralegal | N/A | \$290 |
| Gomes | Paralegal | N/A | \$270 |
| Lee | Paralegal | N/A | \$125 |
| Kobre | Partner | 1993 | \$1,275 |
| Menchel | Partner | 1987 | \$1,275 |
| West | Partner | 1997 | \$995 |
| Dockery | Associate | 2011 | \$695 |
| Pak | Legal Assistant | N/A | \$195 |
| McGuffee | Legal Assistant | N/A | \$195 |

See Schneider, 336 F.R.D. at 601. Attached hereto as Exhibit 15 is a true and correct copy of *Schenider* Dkt. No. 224-2, Ex. A to the King Decl. in Supp. of Mot. for Attorneys' Fees, at 2, 4 (showing hourly rates). The court concluded these rates were "in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation." 336 F.R.D. at 601 (citing *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018) (rates from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for associates); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals)). The requested rate for myself and Mr. Jackson is reasonable because it is lower than all of the above approved partner rates, and the hourly rates requested for each of my associates is below that awarded to timekeeper Dockery, despite that Mr. Flynn has an

1 additional four years of experience, and Ms. Persinger has an additional one year of experience. Lastly,
 2 LOJF's requested paralegal rates are significantly below some of those awarded in *Schnieder*, and only
 3 slightly above those awarded to the legal assistants in that matter. Ex. 15 at 2, 4.

4 32. About ten months ago, in a case alleging the false advertising of laptops, a court in this district
 5 approved hourly rates higher than those requested here, as shown below:

| Timekeeper | Position | Year ¹⁴ | 2020 Hourly Rate |
|-------------------|-----------------|--------------------|------------------|
| Seth Safier | Attorney | 1998 | \$1,050 |
| Adam Gutride | Attorney | 1994 | \$1,050 |
| Marie McCrary | Attorney | 2008 | \$950 |
| Matthew McCrary | Attorney | 2009 | \$925 |
| Todd Kennedy | Attorney | 2003 | \$900 |
| Anthony Patek | Attorney | 2003 | \$850 |
| Stephen Raab | Attorney | 2005 | \$850 |
| Kristen Simplicio | Attorney | 2007 | \$850 |
| Tekesha Geel | Attorney | 2009 | \$750 |
| Jessica Kagansky | Attorney | 2016 | \$500 |
| Kyle Wilson | Attorney | 2018 | \$450 |
| Ashely Garcia | Legal Assistant | N/A | \$275 |
| Jennifer Gardner | Legal Assistant | N/A | \$225 |

19 *See Carlotti v. ASUS Computer Int'l*, 2020 WL 3414653, at *5 (N.D. Cal. June 22, 2020); compare Exhibit
 20 16, *Carlotti*, Dkt. No. 80, Third Suppl. Gutride Decl. at 4. For example, while I have more experience than
 21 both Marie McCrary and Matthew McCrary, my requested rate of \$825 is considerably lower than their
 22 rates of \$950 and \$925, respectively. Likewise, Mr. Flynn's experience is on par with Kristen Simplicio,
 23 yet his requested rate of \$625 is significantly less than Ms. Simplicio's approved rate of \$850. Similarly,
 24 *Krommenhock* counsel Mr. Christian Harben, a 2018 graduate, has equal experience to Mr. Wilson, but is
 25 requesting an hourly rate of \$400 compared to Mr. Wilson's approved hourly rate of \$450. And since Ms.
 26 Persinger's experience falls between that of Ms. Kagansky and Ms. Geel, it makes sense that her requested
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28 ¹⁴ See <https://www.gutridesafier.com/attorneys>.

1 rate of \$600 falls between the \$500 and \$750 rates approved for those attorneys. Finally, both of the rates
2 approved for the legal assistants in *Carlotti* were higher than the \$205 rate requested here.

3 33. A little over a year ago, in *Broomfield v. Craft Brew All., Inc.*, 2020 WL 1972505 (N.D. Cal.
4 Feb. 5, 2020), another food false advertising class action, the Northern District again approved hourly rates
5 similar to those requested here. Most notably, the court approved a partner rate of \$825 and, although
6 “[p]laintiffs ha[d] not offered an explanation for the paralegals’ requested rate[s],” which “rang[ed] from
7 \$375 to \$400 per hour,” the court nevertheless awarded an hourly paralegal rate of \$250—substantially
8 higher than the \$205 requested here. *See id.* at *11-12. The court also awarded an hourly rate of \$600 to a
9 solo practitioner who received his Juris Doctorate one year after Ms. Persinger and four years after Mr.
10 Flynn. *Id.* at *11; *compare* <https://www.wandlawfirm.com/about#aboutaubrywand> (Aubry Wand, J.D.
11 2011). The court also approved hourly rates of \$400 and \$450 for associates that graduated in 2017 and
12 2015, *i.e.* with experience similar to Mr. Harben given that more than a year has passed since the court’s
13 decision in *Broomfield*. This also demonstrates the reasonableness of Mr. Flynn and Ms. Persinger’s
14 requested rates given their additional experience of 8 to 10 years, and 5 to 7 years respectively. *See*
15 *Broomfield*, 2020 WL 1972505, at *11; *compare* <https://www.faruqilaw.com/attorney/17/ben-heikali> (Ben
16 Heikali, J.D. 2015); <https://www.faruqilaw.com/attorney/7/joshua-nassir> (Joshua Nassir, J.D. 2017). The
17 court concluded the requested “rates for the attorneys are reasonable and comparable to the fees generally
18 charged by attorneys with similar experience, ability, and reputation for work on similar matters in this
19 judicial district.” *Broomfield*, 2020 WL 1972505, at *11 (citations omitted).

20 34. About a year and a half ago, in another food false advertising class action, another court in
21 this district approved rates similar or higher to those requested here, as follows.

| Timekeeper | Position | Year¹⁵ | 2019 Hourly Rate |
|-------------------|-----------------|--------------------------|-------------------------|
| Seth Safier | Attorney | 1998 | \$1,025 |
| Adam Gutride | Attorney | 1994 | \$1,025 |
| Marie McCrary | Attorney | 2008 | \$900 |
| Matthew McCrary | Attorney | 2009 | \$825 |
| Todd Kennedy | Attorney | 2003 | \$850 |

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¹⁵ *See* <https://www.gutridesafier.com/attorneys>.

| Timekeeper | Position | Year¹⁵ | 2019 Hourly Rate |
|-------------------|-----------------|--------------------------|-------------------------|
| Anthony Patek | Attorney | 2003 | \$825 |
| Stephen Raab | Attorney | 2005 | \$825 |
| Kristen Simplicio | Attorney | 2007 | \$825 |
| Rajiv Thairani | Attorney | 2013 | \$600 |
| Jessica Kagansky | Attorney | 2016 | \$500 |
| Kyle Wilson | Attorney | 2018 | \$450 |
| Ashely Garcia | Legal Assistant | N/A | \$275 |
| Jennifer Gardner | Legal Assistant | N/A | \$225 |

See *Fitzhenry-Russell v. Coca-Cola Co.*, 2019 WL 11557486, at *9 (N.D. Cal. Oct. 3, 2019); compare Exhibit 17, *Fitzhenry-Russell*, Dkt. No. 91-1, Suppl. Gutride Decl. at 4. Just as in *Carlotti*, discussed above, these rates approved in *Fitzhenry-Russell* compare favorably to those requested here because Class Counsel requests rates equal to or lower than those approved for attorneys with comparable or fewer years of experience. For example, Ms. Persinger has several more years of experience than Rajiv Thairani, but requests the same rate approved for Mr. Thairani a year and a half ago. Further, just as in *Carlotti*, discussed above, Mr. Flynn's requested rate of \$625 again compares favorably to Ms. Simplicio's approved rate of \$825 given they have equal experience, and although Mr. Harben has experience equal to Mr. Wilson whose hourly rate is \$450, he requests a lower rate of \$400.

35. In light of the rates and hours expended, Class Counsel's lodestar in this case thus far totals \$2,809,363.50, as set forth below.

| Timekeeper | Rate | Hours | Lodestar |
|-------------------|-------------|----------------|-----------------------|
| Jack Fitzgerald | \$825 | 1,501.60 | \$1,238,820.00 |
| Trevor Flynn | \$625 | 589.9 | \$368,687.50 |
| Melanie Persinger | \$600 | 1,428.30 | \$856,980 |
| Tran Nguyen | \$400 | 23.7 | \$9,480.00 |
| Sid Jackson | \$825 | 139.9 | \$115,417.50 |
| Christian Harben | \$400 | 66.3 | \$26,520.00 |
| Val Erze | \$205 | 693.2 | \$142,106.00 |
| Julie Hinton | \$205 | 250.5 | \$51,352.50 |
| Total = | | 4,693.4 | \$2,809,363.50 |

1 36. In addition to these hours already expended, we will spend time drafting the Motion for Final
2 Approval, preparing for and arguing the motion during the Final Approval Hearing, and overseeing post-
3 judgment proceedings, including the required post-distribution accounting. If there are objectors or appeals,
4 that time could be significant.

5 37. My January 18 declaration estimated case expenses at approximately \$986,400, PA
6 Fitzgerald Decl. ¶ 79, which I revised down to \$967,606 in a supplemental filing after receiving an invoice
7 for the California class notice, *see* Dkt. No. 291-1. My January 18 declaration attached as Exhibits 29 and
8 30 detailed expense reports, with expenses listed chronologically and by category. The firm has not incurred
9 any additional expenses for which it is seeking reimbursement. As the expense reports reflect, we always
10 chose standard or economy options when possible (e.g., no first-class flights, luxury hotels, Michelin star
11 restaurants, etc.).

12 38. In my opinion, Plaintiffs Debbie Krommenhock and Steve Hadley were ideal Class
13 Representatives in this action. Both volunteered because they were genuinely interested. Both remained
14 active throughout the litigation. In preparing this declaration, I noted more than 30 emails I had received
15 from Ms. Krommenhock during the litigation, and approximately 20 from Mr. Hadley. I also recall
16 periodically speaking to both on the phone for various reasons during the litigation. Both reviewed and
17 approved each version of the Complaint before filing. Both spent time with my firm going through Post's
18 document requests and two sets of interrogatories, including searching their emails and other locations for
19 responsive information. Both spent hours with me preparing, then sat for full-length depositions, and both
20 were willing to give trial testimony if necessary (even with Mr. Hadley having moved to Texas). Both were
21 aware of the status of settlement discussions, discussed with me what a settlement in this case might and
22 should look like, and discussed with me and approved the ultimate Settlement and Settlement Agreement.
23 Given the lengthy litigation, their attentiveness to and participation in the lawsuit, and the excellent result
24 they helped achieve, I believe \$7,500 service awards for each of Ms. Krommenhock and Mr. Hadley is well-
25 deserved and justified.

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