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7 Attorneys for Plaintiff: Julian Smothers, Asa Dhadda, and Aggrieved Employees

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 * * *

11 JULIAN SMOTHERS, ET AL.,

Case No. 2:17-CV-00548-KJM-KJN

12 Plaintiffs,

**DECLARATION OF S. BRETT
SUTTON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS AND
ENHANCEMENT AWARD**

13 vs.

14 NORTHSTAR ALARM SERVICES, LLC,

15 Defendant(s).

Date: December 6, 2019
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller

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1 I, S. BRETT SUTTON, declare:

2 1. I am an attorney licensed to practice law in the States of California and Nevada,
3 and before this Court. I am an attorney for the law firm of Sutton Hague Law Corporation,
4 attorneys for Plaintiffs and the Class. The facts set forth herein are personally known to me and,
5 unless otherwise noted, are based on my firsthand knowledge and/or observation. If called as a
6 witness, I could and would competently testify thereto under oath.

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

9 3. I have nearly thirty-years of experience as a practicing attorney, most of which
10 has focused on issues of employment and labor law. I graduated summa cum laude and
11 Valedictorian from Pepperdine University in 1986, and graduated cum laude from Pepperdine
12 University School of Law in 1989. While in law school, I was on the Pepperdine Law Review
13 and Moot Court Honors Board, and was a Roger J. Traynor California Moot Court Champion
14 (1989) and Pepperdine Trial Advocacy Tournament Champion (1988). I have authored a number
15 of articles on various legal topics for law reviews and journals.

16 4. I am currently a member of the Fresno County, Los Angeles County, Clark
17 County (NV) and Washoe County (NV) Bar Associations.

18 5. I began my career as a litigation attorney at Mitchell, Silberberg & Knupp LLP in
19 Los Angeles. While working in the litigation department, I worked on complex litigation matters.
20 I then became associated with and later a partner of the Fresno law firm of Kimble, MacMichael
21 & Upton, where I successfully tried cases to verdict in both state and federal court, including
22 employment law matters. I then was a partner at the Fresno firm of Sagaser, Franson & Jones,
23 where I continued my practice, focused primarily on employment law, including the litigation of
24 a number of wage and hour class action defense cases. I thereafter founded the Fresno firm of
25 Sutton Hatmaker Law Corporation, again focusing on employment law, and a continuing focus
26 on wage and hour class action cases for both plaintiffs and defendants.

27 6. I founded Sutton Hague Law Corporation, P.C. in 2014. Our firm specializes in
28 employment and labor law, and represents both plaintiffs and defendants in such matters. Mr.

1 Hague and I worked closely together on a number of wage and hour class action cases at Sutton
2 Hatmaker Law Corporation, where we successfully recovered millions of dollars on behalf of
3 plaintiffs. I have served as lead counsel on both the plaintiff and defense side of a number of
4 wage and hour class action cases in both federal and state court, including: *Hufferd, et al. v.*
5 *SolutionOne, et al.*, Case No. 06CECG03644 (Fresno Sup. Ct.); *Packard, et al. v. SolutionOne,*
6 *et al.*, Case No. 07CECG00071 (Fresno Sup. Ct.); *Gesberg, et al. v. LinkUs Enterprises, Inc.,*
7 Case No. 163180 (Shasta Sup. Ct., removed to Eastern District of California, Case No. 08-cv-
8 02428-MCE-CMK); *Bermejo, et al. v. Ro's Precise Painting, et al.*, Case No. 10CECG01318
9 (Fresno Sup. Ct.); *Gonzalez, et al. v. California Dairies, Inc.*, Case No. 08-226450 (Tulare Sup.
10 Ct.); *Valdez, et al. v. Dish Network Corporation et al.*, Case No. A-09-604830-C (Nevada, Clark
11 Sup. Ct., removed to Nevada District, Case No. 2:10-cv-00023-RLH-PAL); *Wood, et al. v. Vie-*
12 *Del Company*, Case No. 08CECG01289; *Hernandez, et al. v. Target Corp., et al.*, Case No.
13 1089837 (Santa Barbara Sup. Ct.); *Wright, et al. v. LinkUs Enterprises, Inc.*, Case No. 2:07-cv-
14 01347-MCE-CMK (California Eastern District); *Heinz v. Pacific Gas & Electric Company., et*
15 *al.*, Case No. CGC-10-503452 (San Francisco Sup. Ct.); *Meza v. LinkUs Enterprises, Inc.*, Case
16 No. S-1500-CV-274733 LHB (Kern County Sup. Ct.); *Gutierrez v. LinkUs Enterprises, Inc.*,
17 Case No. MCV065774 (Madera County Sup. Ct.); *Buck v. Saputo Cheese USA, Inc.*, Case No.
18 256347 (Tulare County Sup. Ct.); *Torchia v. W.W. Grainger, Inc.*, Case No. 1:13-CV-01427-
19 LJO-JLT (California Eastern District); *Farnsworth v. California Transplant Donor Network,*
20 Case No. RG13669714 (Alameda County Sup. Ct.); *Hildebrand v. LinkUs Enterprises, Inc.*,
21 Case No. Dr150155 (Humboldt County Sup. Ct.); *Garcia v. Gordon Trucking, Inc.*, Case No.
22 1:10-cv-00324-OWW-SKO (California Eastern District); *Van Kempen v. Matheson Tri-Gas,*
23 *Inc.*, Case No. 15-cv-00660-HSG (California Northern District); *Gonzalez-Garcia et al. v.*
24 *Firefly Westside, LLC*, Case No. A-15-717966-C (Eighth Judicial District Court of Nevada);
25 *Nickeson v. Pacific Distributing, Inc. et al*, Case No 15CECG00314 (Fresno County Sup. Ct.);
26 *Aguirre v. Mariani Nut Company, Inc.*, Case No. RG15784733 (Alameda County Sup. Ct.);
27 *Brewer v. Saputo Dairy Foods USA, LLC*, Case No. VCU266443 (Tulare County Sup. Ct.); *Turk*
28 *v. Gale/Triangle, Inc. et al.*, Case No. 2:16-cv-00783-MCE-DB (California Eastern District);

1 *Snipes v. Dollar Tree Distribution, Inc.*, Case No. 2:15-cv-00878-MCE-DAD (California Eastern
2 District); *Slattery et al. v. Boot Barn, Inc.*, Case No. 30-2016-00877430-CU-OE-CXC (Orange
3 County Sup. Ct.); *Payne v. Pros, Inc. et al.*, Case No. BCV-16-100356DRL (Kern County Sup.
4 Ct.); *Blithe v. A&A Concrete Supply, Inc. et al.*, Case No. 34-2016-00190795 (Sacramento
5 County Sup. Ct.); *Haugen v. Big League Dreams Cathedral City, LLC et al.*, Case No.
6 RIC1515377 (Riverside County Sup. Ct.); *Sadler v. Ensignal, Inc.*, Case No. MCV073249
7 (Madera County Sup. Ct.); *Easley v. Institute of Technology, et al.*, Case No. 9000308
8 (Stanislaus County Sup. Ct.); *Uribe et al. v. Conduit Language Specialists, Inc.*, Case No.
9 BC589744 (Los Angeles County Sup. Ct.); and *Mikuta, et al. v. Swift Pork Company, et al.*, Case
10 No. BC618624 (Los Angeles County Sup. Ct.). I have also handled numerous cases on behalf of
11 plaintiffs and defendants involving wage and hour-related claims brought on a representative
12 basis under the Private Attorneys' General Act of 2004 ("PAGA").

13 7. To my knowledge, I was the first attorney in Central California invited to serve as
14 a Contributing Editor to the Rutter Group Employment Litigation treatise at the invitation of
15 Justice Rebecca A. Wiseman of the California Fifth District Court of Appeal. I have served in
16 this capacity for approximately the past seven years.

17 8. I have also been retained and formally designated as an expert witness in
18 employment law by the McCormick Barstow firm in *Stovall v. Veroff*, et al., Fresno County
19 Superior Court Case No. 07CECG03270 and by the Wilkins, Drolshagen & Czesinski firm in
20 *Hun & Lau, Inc. et al. v. Travelers Casualty and Surety Company of America*, et al., Case No.
21 13CECG03502 (Fresno County Superior Court).

22 9. I have been asked to serve as an Early Neutral Evaluator in employment law cases
23 by the United States District Court Eastern District of California (Fresno Division), and agreed to
24 do so.

25 10. I am regularly asked to speak on employment law and wage and hour matters and
26 have done so for many years, to groups such as: The Society for Human Resource Management,
27 the Employer Advisory Council, the Employment Development Department, California State
28 University – Fresno, the Tulare County Bar Association, California Association of Workplace

1 Investigators, and various industry groups, such as the California CPA Society, California
2 Dietetic Association, the Northern Nevada Human Resource Association, California Council of
3 School Attorneys, American Association of School Personnel Administrators, Agricultural
4 Personnel Management Association and others. I have been joined in some of these presentations
5 by prominent members of the bench, from both state and federal courts. Through these
6 presentations as well as monthly webinars on Employment Law I have conducted for many years
7 in both California and Nevada, I have trained thousands of people including on wage and hour
8 law.

9 11. I have been selected for inclusion on the list of Northern California Super
10 Lawyers from 2011 to present.

11 12. I am peer review rated as an AV-rating, Martindale-Hubbell's highest possible
12 rating through its peer review rating system.

13 13. In June 2016 I was elected by the Governors of the College of Labor and
14 Employment Lawyers as a Fellow. An attorney may only be considered for election as a Fellow
15 by invitation of existing members, followed by a rigorous review process before a vote of the
16 board. My formal induction took place on November 12, 2016 in Chicago, Illinois.

17 14. In 2019, I completed intensive weeklong courses and received certificates from
18 both the Straus Institute for Dispute Resolution (Pepperdine School of Law) and the Harvard
19 Negotiation Institute (Harvard Law School).

20 15. My base hourly billing rate for this type of case is \$800.00. Based on my years of
21 experience in litigating complex wage and hour class actions, this rate is reasonable for this type
22 of case and well within the market rates for lawyers of similar practices and experience. I
23 calculated this rate by reference to the Laffey Matrix, available at <http://laffeymatrix.com>, which
24 several courts have recognized as one measurement of attorneys' fees in the context of wage and
25 hour class actions and lodestar cross-checks. Under the Laffey Matrix, an attorney with more
26 than twenty years of practice could have charged an hourly rate of between \$826 and \$894
27 during the pendency of this litigation.

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1 16. I have spent a total of 118.65 hours on this case amounting to attorneys’ fees in
 2 the amount of ninety-four thousand nine hundred and twenty dollars (\$94,920) using the \$800
 3 per hour rate. I have reviewed my time expended in this matter as well as all attorneys’ time and
 4 staff time, and all such fees billed in this case were reasonably necessary to conduct his
 5 litigation. The amount of attorneys’ fees incurred is reasonable because the rates are reasonable
 6 given the years of experience of the attorneys and the fact that this firm has offices throughout
 7 California and Nevada.

8 17. The total attorneys’ fees incurred in this matter by Sutton Hague Law Corporation
 9 are as follows:

Attorney	Hours Worked	Rate	Total Fees
S. Brett Sutton	118.65	\$800.00	\$94,920
Jared Hague	164.10	\$650.00	\$106,665
Anthony E. Guzman	304.55	\$300.00	\$91,365
Brady Briggs	40.20	\$300.00	\$12,060
Totals	627.50		\$305,010

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 17 18. With the exception of Jared Hague, who is a Partner, none of the other attorneys
 18 and staff who billed for this matter billed their work at a rate greater than \$300.00 per hour. Mr.
 19 Hague’s qualifications and rate are set forth in his declaration filed under separate cover.

20 19. Brady Briggs has been practicing law since 2016. Mr. Briggs graduated with a
 21 degree in International Studies with a minor in French from the University of Utah in 2011. Mr.
 22 Briggs received his Juris Doctor from the University of Nevada – Las Vegas in May 2015 and
 23 admitted to the California State Bar in October 2016. Mr. Briggs graduated summa cum laude,
 24 was first in his law school class academically, and was a recipient of the James E. Rogers
 25 Outstanding Scholastic Achievement Award, Lead Articles Editor of the Nevada Law Journal
 26 and a member of the Phi Kappa Phi National Honor Society. Under the Laffey Matrix, an
 27 attorney with one to three years of practice could have charged an hourly rate of between \$343
 28 and \$371 during the pendency of this litigation.

1 20. Anthony E. Guzman, an attorney formerly employed by this firm, has been
2 practicing law since 2016. Mr. Guzman graduated summa cum laude from California State
3 University, Fresno, with a degree in philosophy in 2013. Mr. Guzman received his Juris Doctor
4 from University of California, Berkeley, School of Law in May 2016. Mr. Guzman was a
5 participant of the National Moot Court Championship, Western Regional Moot Court
6 Tournament, Regional Labor and Employment Trial Tournament, and the Regional Intellectual
7 Property Negotiations Tournament. He is a member of the California Bar Association and the
8 State Bar of Nevada. Under the Laffey Matrix, an attorney with one to three years of practice
9 could have charged an hourly rate of between \$343 and \$371 during the pendency of this
10 litigation.

11 21. The invoices for the attorneys' fees are kept in the regular course of Sutton Hague
12 Law Corporation, P.C.'s business. It is customary in the business of Sutton Hague Law
13 Corporation, P.C. to retain invoices issued to its contingency clients, including the Plaintiffs in
14 this case. I would be happy to provide the Court with the actual billings in this case upon request.
15 All the hourly rates requested in thus case have been previously approved as reasonable in the
16 wage and hour class action context. For example, these rates were approved by state courts in the
17 aforementioned cases entitled *Aguirre et al. v. Mariani Nut Company*, Case No. 34-2016-
18 00190252-CU-OE-GDS (Sacramento County Sup.Ct.), *Slattery et al. v. Boot Barn, Inc.*, Case
19 No. 30-2016-00877430-CU-OE-CXC (Orange County Sup. Ct.); *Payne v. Pros, Inc. et al.*, Case
20 No. BCV-16-100356DRL (Kern County Sup. Ct.); *Blithe v. A&A Concrete Supply, Inc. et al.*,
21 Case No. 34-2016-00190795 (Sacramento County Sup. Ct.); *Haugen v. Big League Dreams*
22 *Cathedral City, LLC et al.*, Case No. RIC1515377 (Riverside County Sup. Ct.); *Uribe et al. v.*
23 *Conduit Language Specialists, Inc.*, Case No. BC589744 (Los Angeles County Sup. Ct.); *Sadler*
24 *v. Ensignal, Inc.*, Case No. MCV073249 (Madera County Sup. Ct.); and *Mikuta, et al. v. Swift*
25 *Pork Company, et al.*, Case No. BC618624 (Los Angeles County Sup. Ct.), as well as in the
26 Eastern District of California in the aforementioned case entitled *Turk v. Gale/Triangle, Inc. et*
27 *al.*, Case No. 2:16-cv-00783-MCE-DB (California Eastern District).

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1 22. In addition to their requests for fees, Class Counsel further request reimbursement
2 of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with
3 this litigation, in the amount of \$13,822.30. The costs are all litigation-related costs including
4 filing and Motion fees, mediation fees and travel costs associated with mediation and deposition,
5 copy charges, postage charged, and delivery fees. The authority for the court to award the costs
6 set forth below is the parties' Stipulation and Agreement for Class Action Settlement. Class
7 counsel requests that the court approve the request for reimbursement of costs. Should Class
8 Counsel's costs increase prior to the submission of the Motion for Final Approval of Settlement,
9 I will submit a supplementary declaration in support of same.

10 23. During the time this case was pending, I turned down dozens of potential cases
11 due to, among other reasons, the fact that it was unclear how this case was going to be resolved
12 and the amount of time and expense that might be involved to prosecute this case. I know from
13 my experience that class action cases can be very expensive to prosecute and take a long time to
14 resolve. This case was formally filed on February 3, 2017. However, investigation of this matter,
15 commenced approximately two months prior to that date, during which time our office
16 informally investigated Plaintiffs' claims and began the process of drafting Plaintiffs' initial
17 Complaint. This means my firm has gone without any compensation for our work on this case
18 for approximately three years. In short, this case has required me to forego significant other
19 work, required the advancement of costs, and required the advancement of costs, and required a
20 significant investment in time and resources, including the advancement of \$13,822.30 in costs at
21 a time when routine business expenses still had to be met.

22 24. In light of the inherent expense, delay, uncertainty of trial, and potential issues
23 raised by this case, I believe the Settlement Agreement is fair and equitable for all concerned. I
24 believe this settlement Agreement is in the best interest of all involved.

25 25. Based on all of the facts set forth herein, and as articulated by the Motion for
26 Attorneys' Fees, Costs and Enhancement Award, the award is justified and is well within the
27 range of fee awards that are routinely awarded by California and federal courts in cases of this
28 type.

1 26. In summary, Plaintiffs' attorney fees and costs request is reasonable in light of the
2 highly favorable settlement that was obtained on behalf of the Class Members in this case. The
3 Settlement provides a very favorable gross recovery of \$1,800,000 to those Class Members who
4 worked under the Defendant. None of the Class Members have objected to the Settlement or
5 opted-out of the Settlement on any basis. The award request is fair and should be approved

6 I declare under penalty of perjury under the laws of California that the foregoing is true
7 and correct and that this declaration was executed on this 4th day of November, 2019, at Fresno,
8 California.

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S. BRETT SUTTON