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8 Class Counsel

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 NISHA BROWN and KATHY WILLIAMSON,
14 individually and on behalf of all others similarly
15 situated,
16 Plaintiffs,

16 vs.

17 WAL-MART STORES, INC., and DOES 1 through
18 50 inclusive,
19 Defendants.

CASE NO.: 5:09-CV-03339-EJD

**NOTICE OF MOTION AND MOTION
FOR ENHANCEMENT AWARDS**

Date: March 28, 2019

Time: 10:00 AM

Location: Courtroom 4 (5th Floor)

Judge: Honorable Edward J. Davila

1 PLEASE TAKE NOTICE that on March 28, 2019 at 10:00 a.m., or as soon thereafter as the
2 matter may be heard, in Courtroom 4 of this Court, located at 280 S. 1st Street in San Jose,
3 California, Class Counsel, will and hereby do, move this Court for enhancement awards in the
4 amounts of \$25,000 for Class Representative Kathy Williamson and \$5,000 for Plaintiff Nisha
5 Brown. This motion is based on this Notice of Motion and Motion; the accompanying
6 Memorandum of Points and Authorities; the Memoranda in support of the unopposed Motions for
7 Preliminary Approval and supporting declarations (ECF Nos. 282, 282-1, 288); The “Settlement
8 Agreement” (ECF No, 288-2); the declarations of Class Counsel Charles A. Jones (“Jones Decl.”)
9 and Matthew Righetti (“Righetti Decl.”); the declarations of Kathy Williamson (“Williamson
10 Decl.”), and Nisha Brown (“Brown Decl.”); the Motion for Final Approval of Class Action
11 Settlement, which will be filed on March 11, 2019; the Court’s record of this action; all pleadings
12 and papers on file with this Court; and such arguments as may be heard by the Court.
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15 MEMORANDUM OF POINTS AND AUTHORITIES

16 The class representative, Kathy Williamson and Plaintiff Nisha Brown, seek \$25,000 and
17 \$5,000, respectively for their time and effort assisting in the prosecution of this case. The proposed
18 enhancement awards are justified based on their roles in participating in this action, taking the risks
19 of serving as plaintiffs and the class representative, their involvement in assisting counsel in
20 prosecuting this case, responding to discovery and being deposed. In this instance, the efforts of
21 the named Plaintiffs in pursuing this litigation have conferred a substantial economic benefit on the
22 State of California and over 100,000 current and former employees of Wal-Mart. Their efforts
23 have also resulted in a change in Wal-Mart policy and practice under which Wal-Mart will now
24 provide stools to its front-end cashiers. Without the efforts of the Named Plaintiffs, these absent
25 class members and the State of California would have received no economic benefit whatsoever
26 and no change in policy would likely have occurred.
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1 It is widely recognized among attorneys handling these types of cases that both current and
2 former employees are extremely hesitant to assert claims against major employers. Both of the
3 named Plaintiffs risked adverse financial consequences in agreeing to pursue this litigation. Had
4 this case not been certified, or had plaintiffs not prevailed on liability, the Named Plaintiffs may
5 have been liable for the substantial costs incurred by the Defendant in defending this action. In
6 addition, the named Plaintiffs were extremely helpful to counsel throughout all stages of this case,
7 including pre-filing investigation, discovery, and settlement. Righetti Decl. ¶¶27-28. Both of the
8 named Plaintiffs also submitted to lengthy depositions and responded to Interrogatories and
9 Requests for Admissions. *Id.*; Williamson Decl. ¶7; Brown Decl. ¶6 The fact that a favorable
10 award for a large class has been obtained, is due in large part to the commitment of the Named
11 Plaintiffs.
12 Plaintiffs.

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14 **I. The Requested Enhancement Awards Are Reasonable**

15 “[N]amed plaintiffs . . . are eligible for reasonable payments” as part of a class action
16 settlement. *Staton v. Boeing*, 327 F.3d at 977 (9th Cir. 2003). Service or enhancement payments
17 constitute “an essential ingredient of any class action,” because they provide an incentive to bring
18 important cases that have a broad impact benefiting a class of individuals, not just the plaintiff.
19 *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). These payments also recognize the Plaintiffs’
20 time, effort, and inconvenience, as well as the risk they are exposed to in asserting their and others’
21 rights in a particularly public and powerful manner. By bringing the litigation on behalf of others in
22 addition to themselves, class representatives in employment class actions provide a valuable
23 service to their fellow workers. More broadly, they promote the public policy goals set forth by the
24 legislatures that enacted the underlying substantive regulation at issue.
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26 For these reasons, Ninth Circuit courts routinely approve the award of service/enhancement
27 payments to class representatives for their assistance to a plaintiff class. *See, e.g., Glass v. UBS*
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1 *Financial Services, Inc.*, 2007 WL 221862, at *16-17 (N.D. Cal. Jan. 26, 2007) (\$25,000 each to
2 four class representatives); *Van Vranken v. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995)
3 (\$50,000 to one class representative); *Dandan Pan v. Qualcomm Inc.*, 2017 U.S. Dist. LEXIS
4 120150 at *42, 2017 WL 3252212, at *14 (S.D. Cal. July 31, 2017) (“[A] \$50,000.000-per-Class-
5 Representative award is reasonable. There can be little doubt that in the present case the Plaintiffs
6 have helped secure substantial relief for the class...”). Moreover, the proposed enhancement
7 payments of \$25,000 to Ms. Williamson and \$5,000 to Ms. Brown are commensurate with the
8 amount of enhancement awards awarded to class representatives and named Plaintiffs in other
9 recent settlements of suitable seating cases such as this. For instance, in *Hall v. Rite Aid*, (San
10 Diego Superior Court Case No. 37-2009-00087938), the Honorable Joan M. Lewis approved the
11 payment of \$50,000 to the named plaintiff in a suitable seating case that settled for \$18,000,000.
12 See, Exhibit 3, to Jones Declaration. Similarly, in *Enombang v. Target*, (Alameda County Superior
13 Court Case No. RG17853948) the court awarded the four (4) named Plaintiffs \$20,000 each in a
14 suitable seating case that settled for \$9,000,000. See, Ex. 2, to Jones Declaration.

17 When evaluating the reasonableness of an enhancement award, courts may consider factors
18 such as “the actions the plaintiff has taken to protect the interests of the class, the degree to which
19 the class has benefited from those actions, ... the amount of time and effort the plaintiff expended
20 in pursuing the litigation and reasonabl[e] fear[s of] workplace retaliation.” *Staton*, 327 F.3d at
21 977 (quoting *Cook*, 142 F.3d at 1016); see also *Van Vranken*, 901 F. Supp. at 299; *Silberblatt v.*
22 *Morgan Stanley*, 524 F. Supp. 2d 425, 435 (S.D.N.Y. 2007) (“A class representative ... whose
23 future employability has been impaired may be worthy of receiving an additional payment, lest
24 others be dissuaded.”).

26 Here, the enhancement awards sought under the proposed settlement of \$25,000 to Ms.
27 Williamson (the Class Representative) and \$5,000 to Ms. Brown (named Plaintiff in this action)
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1 reflect their considerable efforts in making possible a valuable settlement for over 100,000 other
2 Class Members. Each Plaintiff expended significant time and effort since inception of the case,
3 exposed themselves to a risk of a cost award in the event the case was unsuccessful and subjected
4 themselves to the risk of unfavorable treatment by future employers. Williamson Decl. ¶¶5-16;
5 Brown Decl. ¶¶5-12. For over 9 years, Ms. Williamson and Ms. Brown have actively participated
6 in the case by, for example, regularly discussing the facts of the case with Class Counsel, providing
7 documents and information to Class Counsel, submitting to day long depositions, responding to
8 voluminous discovery requests, assisting in crafting document requests and understanding
9 documents and data produced by Wal-Mart Stores, Inc. in discovery, and assisting Class Members
10 seeking information about the case. Righetti Decl. ¶¶27-28. Their participation was particularly
11 critical in helping Class Counsel understand the nature of their co-worker's job duties, and Wal-
12 Mart Stores, Inc.'s policies and practices regarding the same. Ms. Williamson and Ms. Brown
13 were in regular contact about the progress of the litigation and strategic issues as they arose. *Id.*
14 Furthermore, Ms. Williamson travelled to and attended mediations. *Id.* During the second
15 mediation, she participated by responding to interview questions presented by the Hon. Layn
16 Phillips and by evaluating Wal-Mart Stores, Inc.'s arguments with Class Counsel. Ms.
17 Williamson's assistance was helpful in enabling Class Counsel to assess the strengths and
18 weaknesses of Defendant's positions. *Id.* Lastly, all of Ms. Williamson and Ms. Brown's actions
19 were taken against the background of their concern about future retaliation by potential employers.
20 In short, their participation in the litigation was critical to its success. It literally would not have
21 existed without them. The requested service payment is reasonable, especially in light of the
22 substantial Class recovery and applicable precedent.
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1 Finally, the notice sent to Class Members stated that Class Counsel would apply to the
2 Court for services awards of \$25,000 and \$5,000 for Kathy Williamson and Nisha Brown,
3 respectively, for a total of \$30,000. (Dkt. 288, Ex. 1-A, Class Notice).
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5 Respectfully Submitted,

6 JONES LAW FIRM
7 RIGHETTI GLUGOSKI, P.C.

8 Dated: January 21, 2019

9 /s/ Matthew Righetti
10 Matthew Righetti
11 Class Counsel
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