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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE,  
  
Plaintiff,  
  
v.  
  
FOREVER RESORTS, LLC; LAKE  
OROVILLE MARINA, LLC; BILL  
HARPER; and REX MAUGHAN,  
  
Defendants.

No. 2:16-cv-01595-MCE-EFB

**MEMORANDUM AND ORDER**

Before the Court is a Motion for Settlement Approval, ECF No. 10, under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code §§ 25249.5–.13, otherwise known as Proposition 65. Because the Court finds that the attorney’s fees awarded in the settlement are unreasonably high, the Motion is DENIED.<sup>1</sup>

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<sup>1</sup> Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefing. E.D. Cal. L. R. 230(g).

1 **BACKGROUND<sup>2</sup>**

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3 Defendants operate a marina on Lake Oroville in California. Plaintiff alleges that  
4 Defendants violated a provision of Proposition 65 by knowingly discharging lead and  
5 lead compounds into Lake Oroville. On May 27, 2016, Plaintiff issued a Proposition 65  
6 “60-Day Notice of Violation” detailing the alleged violations to the Office of the California  
7 Attorney General, the District Attorney of Butte County, the City Attorney of Oroville, and  
8 Defendants. After the 60-day period required by Proposition 65, Plaintiff filed suit in this  
9 Court. The parties then pursued settlement options, reaching agreement on all terms on  
10 December 2, 2016.

11 The settlement agreement consists of four parts: (1) improvements Defendants  
12 are to make at their facility; (2) a civil penalty of \$20,000, plus a stipulated civil penalty of  
13 \$2,500 for each discharge of storm water measured to contain lead in a concentration  
14 greater than 0.5 micrograms/liter; (3) an additional payment of \$15,000 to Plaintiff, to be  
15 used to prevent, reduce, or eliminate discharges of Proposition 65-listed substances to  
16 sources of drinking water; and (4) investigative, expert, and attorney’s fees and costs in  
17 the amount of \$67,500.

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19 **DISCUSSION**

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21 California Health and Safety Code § 25249.7(f)(4) requires parties to submit  
22 Proposition 65 settlements between private parties to the court for approval. The statute  
23 sets out three express requirements for approval of such settlements:

24 [T]he court may approve the settlement only if the court  
25 makes all of the following findings:

26 (A) The warning that is required by the settlement complies  
27 with this chapter.

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<sup>2</sup> Unless otherwise noted, the facts in this section are drawn directly, and in some cases verbatim,  
from the Plaintiff’s Memorandum of Points and Authorities in Support of the Motion.

1 (B) The award of attorney's fees is reasonable under  
2 California law.

3 (C) The penalty amount is reasonable based on the criteria  
4 set forth in paragraph (2) of subdivision (b).

5 Id.; see also Consumer Advocacy Grp., Inc. v. Kintetsu Enter. of Am., 141 Cal. App. 4th  
6 46, 61 (2006). The "trial court must look at the three factors and if any of those factors  
7 are not present it can't approve the settlement." Consumer Def. Grp. v. Rental Hous.  
8 Indus. Members, 137 Cal. App. 4th 1185, 1207 (2006) (emphasis removed); see also  
9 Leeman v. Adams Extract & Spice, LLC, 236 Cal. App. 4th 1367, 1376 (2015) (reversing  
10 a trial court's unilateral modification of the amount of attorney's fees awarded in a  
11 Proposition 65 settlement). The Court here finds the attorney's fee unreasonable, and  
12 thus cannot approve the settlement.

13 Under California law, "the fact that the defendant agreed to pay the fee does not  
14 automatically render the fee reasonable." Cal. Code Regs. tit. 11, § 3291; see also  
15 Leeman, 236 Cal. App. 4th at 1376 n.2. "Hourly fees should be those reasonable for  
16 attorneys of similar skill and experience in the relevant market area." Cal. Code Regs.  
17 tit. 11, § 3291(d). In support of Plaintiff's motion, it provides a fee summary chart  
18 detailing the hours and rates of the attorneys who worked on the case. See Mem. of P &  
19 A in Supp. of Mot., ECF No. 15, at 12. That chart shows that three attorneys provided  
20 services for Plaintiff at three different hourly rates; the law firm's principal charged a rate  
21 of \$795 per hour, while his two associates billed at \$375 per hour and \$225 per hour.  
22 Decl. of Andrew Packard, ECF No. 13, Ex. B.

23 In the Eastern District of California, these rates are well above the usually  
24 accepted rates. See, e.g., Millan v. Cascade Water Servs., Inc., No. 1:12-cv-01821-  
25 AWI-EPG, 2016 WL 3077710, at \*12 (E.D. Cal. Jun. 2, 2016) (rejecting \$725 per hour for  
26 a partner and \$610 per hour for an associate in favor of \$375 per hour and \$325 per  
27 hour, respectively); Ontiveros v. Zamora, 303 F.R.D. 356, 373–74 (E.D. Cal. 2014)  
28 (rejecting \$650 per hour and \$495 per hour for partners and between \$325 per hour and  
\$425 per hour for associates in favor of \$400 per hour for partners and \$175 per hour for

1 associates); Khanna v. Intercon Sec. Sys., Inc., No. 2:09-CV-2214 KJM EFB, 2014 WL  
2 1379861, at \*15 (E.D. Cal. Apr. 8, 2014) (approving \$300 per hour for partners, \$200 per  
3 hour for associates, and \$100 per hour for legal assistants); Adoma v. Univ. of Phoenix,  
4 Inc., 913 F. Supp. 2d 964, 984 (E.D. Cal. 2012) (approving \$425 per hour for principals);  
5 Murillo v. Pac. Gas & Elec. Co., No. CIV. 2:08-1974 WBS GGH, 2010 WL 2889728, at  
6 \*11 (E.D. Cal. Jul. 21, 2010) (\$300 per hour for a principal). Indeed, this Court recently  
7 rejected an FLSA settlement due to the unreasonableness of attorney’s fees in which the  
8 plaintiff’s lodestar calculation was based on rates of \$650 per hour for principals and  
9 between \$350 and \$400 for associates. See Mar v. Genuine Parts Co., No. 2:15-cv-  
10 01405-MCE-AC, 2017 WL 68287, at \*2–3 (E.D. Cal. Jan. 6, 2017).

11 Plaintiff fails to provide any evidence that its counsel’s high fees are appropriate  
12 in this case. Plaintiff’s counsel only avers generally that he “managed” the investigation  
13 of Defendants’ facilities and conducted “[i]ntensive negotiations.” Mem. of P & A in  
14 Supp. of Mot., at 12 (citing Decl. of Andrew Packard, ¶¶ 19, 21). Further, Plaintiff’s  
15 counsel provides no support for his averment that “[his] understanding of the rates  
16 charged by other attorneys (including those rates charged by leading Proposition 65  
17 defense counsel) with experience and expertise similar to mine, is that these rates are  
18 at, or substantially below, the prevailing rates charged by the majority of such lawyers.”  
19 Decl. of Andrew Packard, ¶ 15. Absent any evidence that such high rates are warranted  
20 in this case, the Court finds rates of \$425 per hour for principals and \$225 per hour for  
21 associates to be more appropriate.

22 Applying these rates renders the settlement’s \$67,500 of attorney’s fees more  
23 than 50% greater than the proper lodestar calculation. Accordingly, the Court finds the  
24 settlement’s attorney’s fees unreasonable and the settlement must be rejected.

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**CONCLUSION**

For the reasons provided above, Plaintiff's Motion for Settlement Approval, ECF No. 10, is DENIED.

IT IS SO ORDERED.

Dated: February 9, 2017

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE