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16  
17 **UNITED STATES DISTRICT COURT**  
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 **Paula Norton**, individually and on behalf  
20 of all similarly situated individuals,

21 Plaintiff,

22 vs.

23 **Strategic Staffing Solutions-S3, L.L.C.**, a  
24 Florida limited liability company; **Cynthia**  
25 **J. Pasky**, an individual; and **Does 1-100**,  
26 inclusive;

27 Defendants.

CASE NO. 3:23-cv-06648-JSC

Assigned to Hon. Jacqueline Scott Corley

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR ATTORNEYS'  
FEES, EXPENSES, AND SERVICE  
AWARD**

*[Declarations of Elliot Siegel, Xavier Villegas,  
and Paula Norton and [Proposed] Order filed  
concurrently]*

Date: April 24, 2025

Time: 10:00 a.m.

Ctrm.: 8

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that, on April 24, 2025 at 10:00 a.m., in the United States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 8 – 19<sup>th</sup> Floor, San Francisco, CA 994102, Plaintiff Paula Norton (“Plaintiff”), on behalf of herself and all others similarly situated, will and hereby does move the Court for an order awarding attorneys’ fees, litigation expenses, and Plaintiff’s service award, in accordance with the Parties’ November 22, 2024 Stipulation of Class Action Settlement Agreement and Release of Claims (the “Settlement” or the “Agreement”).

This Motion is brought pursuant to the January 27, 2025 Order Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 44), paragraphs 52 and 53 of the Agreement, and Federal Rule of Civil Procedure 23(h). The Motion is based on this Notice of Motion and Motion for Payment of Attorneys’ Fees, Expenses, and Service Award; the Declarations of Elliot Siegel, Xavier Villegas, and Paula Norton filed concurrently herewith; and such other matters as the Court may consider.

Defendants Strategic Staffing Solutions-S3, L.L.C. and Cynthia J. Pasky (collectively, “Defendants”) do not oppose this Motion. Nor has the LWDA objected to the Settlement, including the requested fees and costs.

Dated: February 14, 2025

Respectfully submitted,  
**KING & SIEGEL LLP**

By: *Elliot J. Siegel*  
Elliot J. Siegel  
Attorneys for Plaintiff and the Settlement Class

Dated: February 14, 2025

Respectfully Submitted,  
**LAW OFFICE OF XAVIER VILLEGAS, APC**

By: *Xavier Villegas*  
Xavier Villegas  
Attorney for Plaintiff and the Settlement Class

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

After more than fifteen months of hard-fought litigation, Class Counsel secured a Gross Settlement Fund of \$5,250,000 for the Class. In light of the substantial risks and complex issues in this litigation, as well as the substantial settlement fund created, Plaintiff respectfully requests: (1) an award of \$1,750,000.00 in attorneys' fees—one-third of the common fund; (2) reimbursement of expenses incurred in connection with this litigation, totaling \$27,870.34; and (3) service award of \$35,000 for the Class Representative.

Plaintiff requests approval of attorneys' fees in the amount of one-third of the Gross Settlement Fund—an amount squarely within the accepted range of comparable cases brought under California law.

The attorney's fees sought are justified by the significant recovery secured for the Classes by Class Counsel, with Settlement Class Members being entitled to an average individual gross recovery of \$11,904.76 per Class Member. To obtain this positive result, Plaintiff and Class Counsel vigorously prosecuted the case and obtained an excellent result in the face of significant risks to both Classes' potential recovery. That difficulty was compounded by a well-funded corporate defendant that, predictably, retained experienced counsel and mounted a vigorous and contentious defense. Class Counsel also litigated this case entirely on contingency—for over a year—shouldering the financial risk entirely on their own should Plaintiff not prevailed. These factors all support the reasonableness of fee request.

The reasonableness of the requested award is further confirmed by a lodestar cross-check. Based on Class Counsel's total lodestar for the case of \$324,430.00 as of February 12, 2025, the requested award would lead to a multiplier of 5.4—a multiplier that will get smaller as Class Counsel works to obtain final settlement approval and, when approved, to implement and enforce the Settlement.

Beyond fees, the requested expenses were all critical to representation of the Class. The service award likewise is reasonable given the substantial commitment to the Class and investment of time provided to this case by the plaintiff Paula Norton.

Plaintiff respectfully requests that their Motion be granted.

**II. THE WORK UNDERTAKEN BY COUNSEL WAS SIGNIFICANT AND NECESSARY TO SECURE THE SETTLEMENT**

**A. Class Counsel Spent Significant Time Preparing and Amending the Complaint, as well as Participating in Case Management Efforts**

Class Counsel undertook substantial efforts to investigate the Class's claims before filing. This work included numerous conversations with Plaintiff, factual investigation Plaintiff's claims, researching and analyzing the applicable law related to Plaintiff's claims, determining the appropriate defendants, filing PAGA notices, contacting employee witnesses, drafting and filing the Complaint and PAGA Notice. Siegel Decl., ¶ 17.

Counsel also participated in multiple court proceedings, including the initial status conference and other case management conferences, as well as preparing case management statements for the Court and meeting and conferring with opposing counsel regarding those statements and/or appearances. Siegel Decl., ¶ 18.

Counsel also met and conferred with—and prepared draft motion papers—to seek remand of this case after removal by Defendants, although Class Counsel ultimately chose not to file the motion after multiple meet and confer efforts with counsel regarding the residence of the various Defendants. Siegel Decl., ¶ 19.

Class Counsel prepared and filed an amended complaint to add an additional cause of action and to add a second, proposed class of non-exempt, non-misclassified employees. This had the impact of significantly enlarging the group of employees who stood to gain from this litigation, and who ultimately will receive payment under the Settlement, by over 100 additional Class Members.<sup>1</sup> Siegel Decl., ¶ 20.

**B. Counsel Spent Significant Time Preparing for Mediation In Order to Obtain the Best Possible Result for the Classes, Including Obtaining Documents and Testimony for Use At Mediation**

After filing the complaint in State Court, Plaintiff's Counsel served numerous formal

<sup>1</sup> This required additional correspondence with opposing counsel, as well as the negotiation of a joint stipulation requesting leave from the Court to file the amended complaint. *Id.*



discovery requests and a proposed *Belair* notice on Defendants. However, Defendant removed prior to their responses being due. After removal, the Parties exchanged initial disclosures as required by the Federal Rules of Evidence and Plaintiff served an additional set of Requests for Production of Documents seeking critical information relating to the nature and identity of the Class, the Class's time and payroll records, and Defendants' policies governing the Class's employment, including, but not limited to, policies as to time keeping, payment of wages, commissions and bonuses, employee training, meal and rest periods, exemption compliance, job duties, and scheduling.

While Defendants provided responses to RFP Set One, these responses were not satisfactory in all cases, and Plaintiff's counsel met and conferred with Defendants regarding supplemental responses and potential motion practice. *Id.*, ¶22. Defendants also produced several hundred pages of documents along with their first set of responses.

As part of these communications, the parties also drafted and filed a stipulated protective order to govern the exchange of documents in this case, including mediation. *Id.*

Prior to the need for formal motion practice to obtain further responses, Plaintiff's and Defendants' counsel engaged in comprehensive discussions regarding the Class's claims. Siegel Decl., ¶ 24. This included discussions regarding the scope of the proper class, Plaintiff's adequacy, and the underlying merits of the claims. Initially, Defendants were unwilling to mediate as to any Class outside of the position held by Plaintiff, which was substantially smaller than the two Classes preliminary approved for Settlement.<sup>2</sup>

The Parties exchanged information and support for their respective positions by zoom and email. On June 24, 2024, after additional authority provided by Plaintiff's Counsel as part of these continued discussions, Defendants agreed to mediate the case as to *both* exempt and non-exempt employees, and all putative aggrieved employees under PAGA.

Plaintiff's Counsel then secured agreement from Defendants' counsel that they would produce documents sufficient to permit a full and fair evaluation of the claims alleged on behalf of both Classes. This included per-shift time data and payroll information for all Class

<sup>2</sup> If the Class had been limited to Plaintiff's and similar positions as initially demanded by Defendants, it would have been fewer than 100 persons.

1 Members from both Classes, plus representative itemized wage statements; a list of all Class  
 2 Members containing individual pay rates, classifications, location, and start and end dates of  
 3 employment; and all relevant policy documents, including policies regarding compensation,  
 4 security, payroll, time-keeping, time tracking, PTO, and meal/rest periods, in effect during  
 5 the relevant period; as well as information relevant to potential damages, including  
 6 Defendant's positions as to shifts worked and total pay periods of the Class and other  
 7 aggregate data and information related to their defenses. Siegel Decl., ¶ 26.

8 Defendants complied with their agreement and provided this information to Class  
 9 Counsel in several rolling productions. These documents were reviewed by Class Counsel,  
 10 and Class Counsel's expert, and formed the foundation of Class Counsel's exposure analysis  
 11 for mediation. Siegel Decl., ¶ 27. Defendant's production was sufficient to allow Plaintiff's  
 12 counsel to develop a sound understanding of the merits of the claims; their value; and the  
 13 viability of the defenses asserted by Defendants. Siegel Decl., ¶ 27.

14 Plaintiff's counsel analyzed all of the data provided by Defendants and retained the  
 15 services of an expert from EconOne Research, Inc., who conducted numerous data analyses,  
 16 including but not limited to, identifying the number of impacted work weeks; average rate of  
 17 pay; average hours worked; breakdown of workweeks by employee classification; identifying  
 18 employees underpaid the statutory minimum wage requirements for exemption; PTO  
 19 accrual, usage, and loss; the amounts of all underpayments of regular and overtime wages; the  
 20 amount of hours that qualified for overtime treatment; the number of late, short, and missed  
 21 meal periods based on time punch data; the value of missed meal and rest period premium  
 22 payments; and the maximum and realistic exposure for each claim alleged in the Complaint.  
 23 Siegel Decl., ¶ 28. Class Counsel reviewed the analyses, and following up with the expert  
 24 regarding the analysis to be prepared for all potential outcomes at mediation. *Id.*

25 Class counsel also engaged in efforts to locate potential witnesses and putative Class  
 26 Members, and spent many hours interviewing these witnesses for additional factual support  
 27 of the claims at mediation. Siegel Decl., ¶ 29.

28 Class Counsel then prepared a detailed mediation brief that was provided to the

1 Mediator and opposing counsel (in a redacted form). Siegel Decl., ¶ 30.

2 All told, Plaintiff's Counsel engaged in an extensive factual and legal investigation of  
 3 the Class's claims in advance and in preparation for mediation. As discussed, this included,  
 4 without limitation, (a) numerous telephonic conferences with Plaintiff regarding her  
 5 experiences as Defendants' employee and interpretation of the data provided; (b) inspection  
 6 and analysis of the thousands of pages of time records, payroll, policy documents, and other  
 7 information produced by Defendants in formal and informal discovery; (c) analysis of the legal  
 8 positions taken by Defendants; (d) investigation into the viability of class treatment of the  
 9 claims asserted in the operative Complaint; (e) analyses of potential class-wide damages,  
 10 including information sufficient to understand Defendants' potential defenses to Plaintiff's  
 11 class-wide and individual claims; (f) research of the applicable law with respect to the claims  
 12 asserted in the operative Complaint and the potential defenses thereto; (g) assembly and  
 13 analysis of data for calculating damages; (h) contacting and interviewing multiple  
 14 witnesses/Class Members regarding the claims at issue and to obtain declarations signed  
 15 under penalty of perjury for use at mediation; (i) hiring the services of an expert to analyze  
 16 and prepare Defendants' exposure; and (j) multiple communications and teleconferences  
 17 with Defendants' Counsel regarding Defendants' continuing production of pre-mediation  
 18 data, as well as the underlying factual and legal issues in dispute. *Id.*, ¶ 31.

19 On September 6, 2024, the Parties and their counsel attended mediation with Judge  
 20 Peter D. Lichtman (Ret.) of Signature Resolution, a well-respected mediator of wage and hour  
 21 class actions and employment litigation. *Id.*, ¶ 32. Negotiations lasted all day and were  
 22 conducted at arm's length. *Id.* At the end of the mediation, the Parties agreed to settle the  
 23 entire action, subject to Court approval, for the MSA of \$5,250,000.00. *Id.*, ¶ 33.

24 After that agreement, Class Counsel prepared a "short form" settlement document to  
 25 memorialize the Parties' agreement so that it would be enforceable before the Court in case  
 26 any issues arose post-mediation with Defendants.

27 Once the Parties had signed that document, Class Counsel prepared the "long form"  
 28 settlement, which was significantly more detailed and set forth the specific manner in which

the settlement and settlement administration would be performed by the Parties. The Parties negotiated the language of that draft for several weeks until final agreement could be reached.

The Parties ultimately executed the final version of the Settlement on November 22, 2024, which is the Settlement now pending before the Court for final approval. *Id.*, ¶ 36.

### **C. The Court Has Granted Preliminary Approval of the Settlement**

Once the long form settlement was finalized and signed, Class Counsel prepared the extensive briefing required to seek preliminary approval. Plaintiff filed an unopposed motion for preliminary approval of the Settlement on December 19, 2024. Dkt. 37.

The Court, by way of an Order, asked several questions about the Class Notice on January 14, 2025, which Plaintiff answered via a Supplemental Brief to the Motion for Preliminary Approval filed January 16, 2025. Dkt. 40.

The Court then held a hearing on the motion on January 23, 2025, in which it proposed a limited number of additional changes to the Class Notice during oral argument. Siegel Decl., ¶ 39. Plaintiff prepared and filed a Second Supplemental Brief with a revised Class Notice and Proposed Order on January 24, 2025. Dkt. 43. *Id.*

On January 27, 2025, the Court entered an Order granting preliminary approval of the Settlement and directing counsel for Plaintiff to file its Motion for Fees and Costs by February 17, 2025. **Exhibit 1**; Dkt. 44.

In the Settlement preliminarily approved by the Court, Defendant agreed to pay a *non-reversionary* gross settlement amount of \$5,250,000.00 (the “GSA”), with employer-side payroll taxes to be paid *outside* the GSA. *Id.*, ¶ 14. Dkt. 44-, Ex. 1 ¶ 14.

### **D. Current Status of Settlement Administration**

Defendants submitted the Class List to the Settlement Administrator on or before February 3, 2025. Siegel Decl., ¶ 43. Per the Settlement Administrator, while the class data appeared to accurately capture workweeks in the Class Period certain clarification was needed from Defense Counsel regarding the Class List. Additional information was provided by Defendants, which resolved the issues raised by the Administrator. Siegel Decl., ¶ 43.

As a result, Notice Packets were mailed and emailed on February 10, 2025. Siegel Decl.,

¶ 44. Implementation then proceeded per the deadlines set forth in the Court’s Order and Settlement, i.e., 35 days to object or opt out by Class Members. As of the date of this filing, no objections or opt-out requests have been returned to the Administrator, although Class Members have until March 17, 2025 to do so. *Id.*

The Settlement is now pending before the Court for final approval, which, if granted, will result in Class Members and Aggrieved Employees receiving their Individual Settlement Payments. *Id.*, ¶ 45.

### **III. The Court Should Award Attorneys’ Fees of One-Third of the GSA**

#### **A. Fees Are Properly Awarded as a Percentage of the Common Fund Recovered for the Classes**

In general, the parties may agree upon the reasonableness of a requested attorneys’ fee award as part of a settlement agreement; however, the Court is still required to assess the parties’ agreement for reasonableness and to act as a fiduciary of the class members. *Staton v. Boeing Co.*, 327 F.3d 938, 970 (9th Cir. 2003); *Evans v. Jeff D.*, 475 U.S. 717, 734-35 (1980).

Federal courts that exercise diversity jurisdiction, as in this case, apply State law to determine counsel’s right to fees, the class representative’s right to an incentive payment, and the methods for calculating them. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Mangold v. Cal. Public Utils. Comm’n*, 67 F.3d 1043, 1047 (9th Cir. 1995); *Dixon v. Cushman & Wakefield W., Inc.*, No. 18-CV-05813-JSC, 2022 WL 1189883, at \*9 (N.D. Cal. Apr. 21, 2022) (J. Corley). As such, California law applies to Counsel’s request.

The California Supreme Court has affirmed that trial courts properly grant attorneys’ fees in a class action resulting in a common fund based on a *percentage* of the total recovery.<sup>3</sup> *Laffitte v. Robert Half Int’l, Inc.*, 1 cal.5th 480, 503 (2016).

“The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and

<sup>3</sup> This approach aligns with the Ninth Circuit’s approach. *See Vizcaino*, 290 F.3d at 1047 (“Under Ninth Circuit law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method.”). *DiMercurio v. Equilon Enterprises LLC*, No. 3:19-CV-04029-JSC, 2024 WL 2113857, at \*8 (N.D. Cal. May 9, 2024) (J. Corley).

the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation . . . convince us the percentage method is a valuable tool that should not be denied our trial courts.”

Consistent with *Laffitte II*, this Court should utilize the percentage-of-recovery method in awarding fees, because: (1) “the percentage-of-the-fund method is appropriate where—as here—the amount of the settlement is fixed without any reversionary payment to the defendant,” *Burden v. SelectQuote Ins. Servs.*, No. C 10-5966 LB, 2013 WL 3988771, at \*4 (N.D. Cal. Aug. 2, 2013), and (2) the lodestar method is *not* preferred in common fund cases because it “does not achieve the stated purposes of proportionality, predictability and protection of the class. It encourages abuses such as unjustified work and protracting the litigation. It adds to the workload of already overworked district courts. In short, it does not encourage efficiency, but rather, it adds inefficiency to the process.” *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989). In contrast, with the percentage method, “[t]he integrity of the attorneys’ fee application process [is] enhanced and the class members . . . receive at least the same benefits and receive them earlier.” *Id.*, at 1379. Application of the common fund methodology is particularly appropriate where, as here, “the amount of the settlement is fixed without any reversionary payment to the defendant.” *Thieriot v. Celtic Ins. Co.*, No. C 10-04462 LB, 2011 WL 1522385, at \*5 (N.D. Cal. Apr. 21, 2011).

Under California law, the “benchmark” for attorney’s fees is one-third of the common fund. *See, e.g., Laffitte v. Robert Half Intern. Inc.*, 180 Cal. Rptr. 3d 136, 149 (2014) (“*Laffitte I*”) (“[T]he trial court’s use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits”).<sup>4</sup>

Many district courts sitting in diversity apply the California “benchmark” of one-third of the common fund. *See, e.g., Hernandez v. Burrtec Waste & Recycling Servs., LLC*, No. 5:21-CV-01490-JWH-SP, 2023 WL 5725581, at \*6 (C.D. Cal. Aug. 21, 2023) (“California courts

<sup>4</sup> Because the California Supreme Court affirmed *Laffitte I* it may be cited as precedent. *See* California Rules of Court, Rule 8.115(e)(2).



1 routinely award attorneys' fees of one-third of the common fund."); *Heid v. CyraCom Int'l,*  
 2 *Inc.*, No. 22-CV-1445-MMA (KSC), 2024 WL 4008650, at \*8 (S.D. Cal. Aug. 30, 2024)  
 3 ("Class Counsel's award of attorneys' fees, which is discussed further below, is 33% of the  
 4 Gross Settlement Amount and is in line with California courts that routinely award attorneys'  
 5 fees of one-third of the common fund"); *Smith v. CRST Van Expedited, Inc.*, No. 10-cv-1116-  
 6 IEG-WMC, 2013 WL 163293, \*5 (S.D. Cal. Jan. 14, 2013) ("These percentages compare  
 7 favorably with both California (33%) and federal (25%) benchmarks."); *Dennis v. Kellogg Co.*,  
 8 No. 09-CV-1786-L WMC, 2013 WL 6055326, at \*7 (S.D. Cal. Nov. 14, 2013) (same).<sup>5</sup>

9 Finally, under California law, while a lodestar cross-check is permitted, it is not  
 10 required. *Laffitte*, 1 Cal.5th at 504. Indeed, "the primary basis of [an attorneys] fee award  
 11 remains the percentage method." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir.  
 12 2002); *Aichele v. City of Los Angeles*, No. 2:12-cv-10863-DMG-FFM, 2015 WL 5286028, at \*5  
 13 (C.D. Cal. Sept. 9, 2015) (this Court noting that district courts have mostly shifted to the  
 14 percentage method in awarding fees in representative actions). However, a lodestar cross-  
 15 check will support Counsel's requested Fee Award.

16 Although the Ninth Circuit has established a "benchmark" fee of 25% in common fund  
 17 cases, the exact percentage varies depending on the facts of the case and, in "most common  
 18 fund cases, the award *exceeds* that benchmark." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.  
 19 482, 491 (E.D. Cal. 2010) (emphasis added); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377  
 20 ("[a] review of recent reported cases discloses that nearly all common fund awards range  
 21 around 30%"); *In re Omnivision Techs.*, 559 F.Supp.2d 1036, 1047 (N.D. Cal. 2007). This is  
 22 especially true in cases where the common fund is less than \$10 million—with fees in such  
 23 cases averaging between 30% and 50%. *See, e.g., Craft v. Cty. of San Bernardino*, 624 F. Supp.

24  
 25 <sup>5</sup> Several studies have found the median common fund fee award is approximately one-third of the  
 26 total settlement fund. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (numerous  
 27 studies show "fee awards in class actions average around one-third of the recovery."); Reagan W.  
 28 Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class*  
*Counsel's Response*, 17 Rev. Litig. 525, 546 (1998); T. Willging, L. Hooper and R. Niemic, EMPIRICAL  
 STUDY OF CLASS ACTIONS IN FOUR FEDERAL DISTRICT COURTS: FINAL REPORT TO THE ADVISORY  
 COMMITTEE ON CIVIL RULES, 90 (1996) (finding attorneys' fees in class litigation "were generally in  
 the traditional range of approximately one-third of the total settlement").

1 2d 1113, 1127 (C.D. Cal. 2008) ([m]ost of the cases Class Counsel have cited in which high  
 2 percentages such as 30–50 percent of the fund were awarded involved relatively smaller funds  
 3 of less than \$10 million”) (*quoting Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 297–  
 4 98 (N.D. Cal. 1995)); *see also Alvarez v. Farmers Ins. Exch.*, No.14-cv-00574-WHO, 2017 WL  
 5 2214585, at \*3 (N.D. Cal. Jan. 18, 2017) (“Fee award percentages generally are higher in cases  
 6 where the common fund is below \$10 million.”) (citing cases); *DiMercurio v. Equilon*  
 7 *Enterprises LLC*, No. 3:19-CV-04029-JSC, 2024 WL 2113857, at \*9 (N.D. Cal. May 9, 2024)  
 8 (J. Corley) (“[C]ases with a relatively small fund of under \$10 million will “often result in fees  
 9 above 25%”); *Dixon v. Cushman & Wakefield W., Inc.*, No. 18-CV-05813-JSC, 2022 WL  
 10 1189883, at \*9 (N.D. Cal. Apr. 21, 2022) (J. Corley) (same).

#### 11 **B. The Requested Fees are Reasonable as a Percentage**

12 As California appellate courts and federal district courts sitting in diversity have made  
 13 clear, one-third of the common fund is a reasonable percentage for a trial court to award as  
 14 attorneys’ fees when a class action litigation establishes a monetary fund for the benefit of the  
 15 class members. *See, e.g., Laffitte II*, at 506 (affirming award of 33% of the common fund);  
 16 *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008) (“Empirical studies show that,  
 17 regardless whether the percentage method or the lodestar method is used, fee awards in class  
 18 actions average around one-third of the recovery.”); *Laffitte v. Robert Half Intern. Inc.*, 180  
 19 Cal.Rptr.3d 136, 149 (2014) (“*Laffitte I*”) (“[T]he trial court’s use of a percentage of 33 1/3  
 20 percent of the common fund is consistent with, and in the range of, awards in other class action  
 21 lawsuits”).<sup>6</sup>

22 Among other things, an award of one-third is appropriate because “the amount of  
 23 attorney fees typically negotiated in comparable litigation should be considered in the  
 24 assessment of a reasonable fee in representative actions. . . . Given the unique reliance of our  
 25 legal system on private litigants to enforce substantive provisions of law through class . . .  
 26 actions, attorneys providing the essential enforcement services must be provided incentives  
 27 roughly comparable to those negotiated in the private bargaining that takes place in the legal

28 <sup>6</sup> Because the California Supreme Court affirmed *Laffitte I* it may be cited as precedent. *See* California Rules of Court, Rule 8.115(e)(2).

marketplace, as it will otherwise be economic for defendants to increase injurious behavior.”<sup>7</sup> *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 47 (2000). “Regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008).

In wage and hour class action cases specifically, numerous courts have routinely approved fees of up to one-third of the common fund. *See, e.g., Martin v. FedEx Ground Package System, Inc.*, 2008 WL 5478576, at \*8 (N.D. Cal. Dec. 31, 2008) (federal district court approved attorneys’ fees of 1/3 of common fund); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of 1/3 of the total maximum settlement and noting that the fee award of 1/3 of the total settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Wilson v. Kiewit Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving fee award of 1/3 of the common fund and noting that such award is fair, reasonable and appropriate); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at \*4 (E.D. Cal. Nov. 14, 2007) (awarding 1/3 of common fund in a wage and hour class action: “[f]ee awards in class actions average around one-third of the recovery.”).

The results here are significant: a GSA of \$5,250,000 to be paid without reversion and with payroll taxes paid outside the GSA. The GSA represents a recovery in excess of 23% of Defendant’s total exposure and over 82% of Defendant’s risk-adjusted, realistic, maximum exposure, which this Court has concluded is a reasonable settlement. Dkt. No. 44.

The Settlement will result in a meaningful recovery for each Class Member with Settlement Class Members being entitled to an average individual gross recovery of \$11,904.76 per Class Member and average individual net recovery of \$6,789.12 per Class Member, which further justifies the fee request. *Id.*, ¶ 41.<sup>8</sup> *See DiMercurio v. Equilon Enterprises LLC*, No. 3:19-

<sup>7</sup> “Courts agree that, because the percentage-of-the-benefit approach is result-oriented rather than process-oriented, it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra* 82 Cal. App. 4th at 48.

<sup>8</sup> When broken down by Class, Exempt Class Members will receive an average individual gross recovery of \$13,803.68, equating to an average gross per workweek recovery of \$261.52, and Non-Exempt Class Members will receive an average individual gross recovery of \$6,521.74, equating to an average gross per workweek recovery of \$183.69. *Id.*, ¶ 41.

CV-04029-JSC, 2024 WL 2113857, at \*9 (N.D. Cal. May 9, 2024) (“This not a claims-made settlement and 100% of Class Members will receive a payment with an average individual settlement payment of \$6,661.86, and 75 of the 341 Class Members will receive a settlement payment in excess of \$10,000.00.”).

**C. A Lodestar Cross Check Also Supports the Requested Fee Award**

The California Supreme Court has further held that, while a trial court may adjust the percentage based on a lodestar cross check, it is not required to do so. *Laffitte II*, 1 Cal.5th at 505-506. (“We hold further that the trial courts have discretion to do a lodestar cross-check on a percentage fee . . . they also retain the discretion to forego the lodestar cross-check and use other means to evaluate the reasonableness of a requested fee percentage.”). The California Supreme Court has explained that “the lodestar calculation, when used in this manner, does not override the trial court’s primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award.” *Id.*, at 505.

Nonetheless, a cross-check will confirm the reasonableness of Plaintiff’s fee request.

In determining the lodestar multiplier, counsel should not be penalized with a lower award for settling the case early in litigation because the percentage of the fund method is designed to “encourage[] early settlement, which avoids protracted litigation” and delivers quicker, *more certain benefits* to putative Class Members. *Id.*, at 490. “[T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar methodology.” *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th at 52 (“Considering that our Supreme Court has placed an extraordinarily high value on settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that goal.”).

Under California law, which this Court applies in diversity matters, when reviewing the lodestar, the Court should “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.

1 App. 4th 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the  
 2 litigation involved a contingent risk or required extraordinary legal skill justifying  
 3 augmentation of the unadorned lodestar in order to approximate the fair market rate for such  
 4 services.” *Id.* at 556; *see also Laffitte II, supra*, 1 Cal. 5th at 503-05.

5 The Court then enhances the lodestar figure by a “multiplier” to account for a range  
 6 of factors, such as the novelty and difficulty of the questions involved, the extent to which the  
 7 nature of the litigation precluded other employment by the attorneys, the contingent nature  
 8 of the fee award, and the results obtained. *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-33 (2001)  
 9 (citing *Serrano v. Priest*, 20 Cal.3d 25, 49 (1977); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th  
 10 819, 834 (2001); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002)  
 11 (factors in evaluating a fee award include: (1) the results achieved; (2) the risk of litigation; (3)  
 12 the skill required and the quality of the work; (4) the contingent nature of the fee and the  
 13 financial burden carried by the Plaintiff; and (5) awards made in similar cases).

14 One of the most common enhancements is the one made to account for contingency  
 15 risk. Courts “routinely enhanced the lodestar to reflect the risk of non-payment in common  
 16 fund cases” to account for the risk in contingent representation. *Vizcaino v. Microsoft Corp.*,  
 17 290 F.3d 1043, 1051 (9th Cir. 2002) (approving multiplier of 3.65 and observing that  
 18 “attorneys whose compensation depends on their winning the case[ ] must make up in  
 19 compensation in the cases they win for the lack of compensation in the cases they lose.”).

20 In reviewing a fee request, “the amount of attorney fees typically negotiated in  
 21 comparable litigation should be considered in the assessment of a reasonable fee in  
 22 representative actions . . . Given the unique reliance of our legal system on private litigants to  
 23 enforce substantive provisions of law through class . . . actions, attorneys providing the  
 24 essential enforcement services must be provided incentives roughly comparable to those  
 25 negotiated in the private bargaining that takes place in the legal marketplace, as it will  
 26 otherwise be economic for defendants to increase injurious behavior.”<sup>9</sup> *Lealao v. Beneficial*

27  
 28 <sup>9</sup> “Courts agree that, because the percentage-of-the-benefit approach is result-oriented rather than  
 process-oriented, it better approximates the workings of the marketplace than the lodestar  
 approach.” *Lealao, supra* 82 Cal. App. 4th at 48.



1 *California, Inc.*, 82 Cal. App. 4th 19, 47 (2000).

2 **1. Class Counsel's Hourly Rates Are Reasonable**

3 “The reasonable hourly rate is that prevailing in the community for similar work.”  
 4 *PLCM Grp. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000), *as modified* (June 2, 2000). “[I]n  
 5 assessing a reasonable hourly rate, the trial court is allowed to consider the attorney’s skill as  
 6 reflected in the quality of the work, as well as the attorney’s reputation and status.” *MBNA*  
 7 *Am. Bank, N.A. v. Gorman*, 147 Cal. App. 4th Supp. 1, 13 (2006), *as modified* on denial of reh’g  
 8 (Jan. 2, 2007).

9 “Courts may find hourly rates reasonable based on evidence of other courts approving  
 10 similar rates or other attorneys engaged in similar litigation charging similar rates.” *Parkinson*  
 11 *v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010). Attorney declarations are  
 12 satisfactory evidence of prevailing market rates. *Raining Data Corp. v. Barrenechea*, 175 Cal.App.4th  
 13 1363, 1375 (2009); *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007).

14 Current billing rates in the Northern California area range from \$250 per hour to over  
 15 \$1,000 per hour. Siegel Decl., ¶ 59; **Exhibit 3A** (Laffey Matrix); **Exhibit 3B** (2024 Real  
 16 Report, Wolters Kluwer) (2024 rates for partners in employment litigation is \$912 in San Jose  
 17 and \$764 in San Francisco); **Exhibit 3C** (2015 National Law Journal Survey of Billing Rates  
 18 in California); *see also Joh v. Am. Income Life Ins. Co.*, No. 18-CV-06364-TSH, 2021 WL 66305,  
 19 at \*8 (N.D. Cal. Jan. 7, 2021) (approving partner rates of \$750-\$800 an hour and associates at  
 20 \$415-\$465 an hour in 2021); *In re High-Tech Employee Antitrust Litig.*, 2015 WL 5158730, at \*9  
 21 (N.D. Cal. Sept. 2, 2015) (reasonable “billing rates for partners [that] range from about \$490  
 22 to \$975 ... billing rates for non-partner attorneys, including senior counsel, counsel, senior  
 23 associates, associates, and staff attorneys, [that] range from about \$310 to \$800, with most  
 24 under \$500 ... [and] billing rates for paralegals, law clerks, and litigation support staff [that]  
 25 range from about \$190 to \$430, with most in the \$300 range.”); *Syers Properties III, Inc. v.*  
 26 *Rankin*, 226 Cal.App.4th 691, 702 (Cal. Ct. App. 2014) (relying on Laffey matrix for reasonable  
 27 market rates).

28 Given their expertise and skill, as well as the strong result achieved for the Settlement



1 Class by Class Counsel, the requested rates for Class Counsel are reasonable.<sup>10</sup> Siegel Decl., ¶  
2 60.

3 Additionally, Class Counsel's prior billing rates have been accepted as part of lodestar  
4 cross-checks in numerous other class actions where King & Siegel LLP served as Class  
5 Counsel, including in two prior class actions in the Central District. Siegel Decl., ¶ 60.

## 6 **2. Class Counsel's Time Spent Was Reasonably**

7 "Trial courts conducting lodestar cross-checks have generally not been required to  
8 closely scrutinize each claimed attorney-hour, but have instead used information on attorney  
9 time spent to focus on the general question of whether the fee award appropriately reflects the  
10 degree of time and effort expended by the attorneys." *Laffitte II*, 1 Cal. 5th at 505. The Court  
11 may rely on a declaration "summarizing overall time spent, rather than demanding and  
12 scrutinizing daily time sheets in which the work performed was broken down by individual  
13 task." *Laffitte II*, 1 Cal.5th at 505; *see also Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D.  
14 431, 451 ("Where the lodestar method is used as a cross-check to the percentage method, it  
15 can be performed with a less exhaustive cataloguing and review of counsel's hours.") (E.D.  
16 Cal. 2013); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d at 43, 50 (2nd Cir. 2000) ("Of  
17 course, where used as a mere cross-check, the hours documented by counsel need not be  
18 exhaustively scrutinized by the district court."); *Moreno v. City of Sacramento*, 534 F.3d 1106,  
19 1112 (2008) ("It must also be kept in mind that lawyers are not likely to spend unnecessary  
20 time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain,  
21 as to both the result and the amount of the fee.").

22 Class Counsel spent 469.9 hours on this matter, which included: conducting pre-filing  
23 investigation; interviewing Plaintiff; reviewing Plaintiff's personnel files; analyzing Plaintiff's  
24 claims and Defendants' potential defenses to the same, conducting legal research; preparing  
25 and filing the Class Action Complaint and PAGA letter, and the Amended Class Action

26 \_\_\_\_\_  
27 <sup>10</sup> Under longstanding law, Class Counsel are entitled to use their current billing rate across the length  
28 of the litigation. *See, e.g., Gates v. Deukmejian*, 987 F.2d 1392, 1406 (9th Cir. 1992) ("We long have  
recognized that district courts have the discretion to compensate prevailing parties for any delay in  
the receipt of fees by awarding fees at current rather than historic rates in order to adjust for inflation  
and loss of the use funds.").

1 Complaint; meeting and conferring with Defendants' counsel regarding the Amended Class  
 2 Action Complaint and proper scope of the Classes and mediation; propounding formal and  
 3 informal discovery requests to Defendants; inspection and analysis of thousands of pages of  
 4 documents produced by Defendants in response to formal and informal discovery requests;  
 5 meeting and conferring with Defendants regarding formal and informal discovery and as part  
 6 of potential motion practice; attending various Court conferences and preparing status  
 7 reports regarding the same; interviewing witnesses/Class Members identified through the  
 8 *Belaire* process regarding the claims at issue and to obtain putative Class Member declarations  
 9 for use at mediation (and class certification if mediation was unsuccessful); inspecting and  
 10 reviewing aggregate and individual Class Member data, and wage-related and policy  
 11 documents produced via discovery, including per-shift time punch and rounded time data,  
 12 plus itemized wage statements for the entirety of the Class, and all compensation, security,  
 13 payroll, time-keeping, time tracking, and meal/rest period policy-related documents;  
 14 telephone conferences and email exchanges with Class Counsel's expert regarding damages;  
 15 preparing the mediation brief; attending an all-day mediation; drafting, negotiating, and  
 16 revising the Settlement Agreement and notice packet; reviewing Defendant's confirmatory  
 17 discovery; preparing for and appearing at motion and status conference hearings; preparing  
 18 and filing the Motion for Preliminary and Final Approval (to be filed); communicating with  
 19 the Class Administrator and Defense Counsel regarding the Class Member data,  
 20 administration, reviewing calculations regarding Class settlement distribution; monitoring  
 21 the notice and settlement administration process; and otherwise litigating the case. *See* Siegel  
 22 Decl., ¶¶ 52-56, **Exhibit 2** (contemporaneous records of hours worked).

23 Class Counsel will also spend additional time preparing and filing the Motion for Final  
 24 Approval, attending the final approval hearing, monitoring the final settlement  
 25 administration, attending the final compliance hearing, as well prosecuting an enforcement  
 26 action if Defendants breaches the Settlement. *Id.*, ¶ 57.

27 Class Counsel's hours were reasonable and necessary to achieve the very substantial  
 28 value delivered to the Class by the Settlement.

### 3. A “Lodestar Multiplier” in This Action

Once the unadjusted lodestar is determined, the Court applies a lodestar multiplier. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (“Indeed, courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases.”).

As discussed above, the factors justifying a multiplier include “the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941–42 (9th Cir. 2011); *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132–33 (2001) (factors include: (1) the novelty and difficulty of the questions involved; (2) the results obtained; (3) the contingent nature of the fee award; (4) the extent to which the nature of the litigation precluded other employment by the attorneys; and (5) the reaction of the Class).

These factors weigh in favor of a multiplier and Class Counsel’s fee request.

(1) Substantial Results Obtained. The results here are significant: a GSA of \$5,250,000 to be paid without reversion and with payroll taxes paid outside the GSA. The GSA represents a recovery in excess of 23% of Defendant’s total exposure and 85% of the Defendant’s risk-adjusted, realistic, maximum exposure, which this Court has concluded is a “reasonable” settlement. Dkt. No. 44. Indeed, the Settlement will result in a meaningful recovery for each Class Member with Settlement Class Members being entitled to an average individual gross recovery of \$11,904.76 per Class Member and average individual net recovery of \$6,789.12 per Class Member, which further justifies the fee request. *Id.*, ¶ 41.<sup>11</sup> *See DiMercurio v. Equilon Enterprises LLC*, No. 3:19-CV-04029-JSC, 2024 WL 2113857, at \*9 (N.D. Cal. May 9, 2024) (“This not a claims-made settlement and 100% of Class Members will receive a payment with an average individual settlement payment of \$6,661.86, and 75 of the 341 Class Members will receive a settlement payment in excess of \$10,000.00.”); *see also Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and

<sup>11</sup> When broken down by Class, Exempt Class Members will receive an average individual gross recovery of \$13,803.68, equating to an average gross per workweek recovery of \$261.52, and Non-Exempt Class Members will receive an average individual gross recovery of \$6,521.74, equating to an average gross per workweek recovery of \$183.69. *Id.*, ¶ 41.

1 hour class action settlement approved where average class member recovery was  
 2 approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012  
 3 WL 2117001 (E.D. Cal. June 11, 2012) (finding that average payment to class members of less  
 4 than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159 HKSC,  
 5 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (granting final approval of  
 6 class action settlement where average recovery was approximately \$108 and describing result  
 7 as "very favorable").

8 (2) Class Counsel's Skill and Experience. Plaintiff's Counsel are experienced  
 9 representative and class action litigators, and have previously secured numerous significant  
 10 PAGA and class action settlements on behalf of thousands of California employees. *Id.*, at ¶¶  
 11 3-8. King & Siegel LLP is exclusively dedicated to representing employees in individual and  
 12 class action litigation in California State and federal courts, as well as in arbitration hearings.  
 13 Since the founding of our firm, King & Siegel LLP has successfully represented tens of  
 14 thousands of employees in numerous wage and hour and other employment-related class  
 15 actions. This experience and expertise, combined with the high-quality of work performed in  
 16 this case by Plaintiff's Counsel, resulted in the very favorable settlement achieved.

17 (3) Complexity and Risk. This case faced risk. First, Defendants argued that  
 18 Plaintiff lacked standing to litigate claims on behalf of non-exempt employees and employees  
 19 who were not in her position or similarly situated. While an issue for certification, it is correct  
 20 that Plaintiff needed show that she was adequate class plaintiff with typical claims shared by  
 21 the Classes: "a class representative must be part of the class and possess the same interest  
 22 and suffer the same injury as the class members." *East Tex. Motor Freight Sys. Inc. v. Rodriguez*,  
 23 431 U.S. 395, 403 (1977). Given the disparity in the factual and legal bases for the claims across  
 24 the two classes there was a risk that the Court might find that Plaintiff was not able to  
 25 prosecute claims on behalf of all Class Members, although as discussed in the motion for  
 26 preliminary approval, Class Counsel did somewhat discount this defense. MPA Siegel Decl.,  
 27 ¶¶ 54-56. Second, there was significant risk on prevailing as to the Exempt Classes claims for  
 28 misclassification, which, for the majority of Class Members, was predicated on their failure to

perform exempt tasks at least 50.1% of the time. Given the potential for fact-specific, and individualized, questions to determine that answer as to each Class Member, there was a real risk that the Court would find that certification was not appropriate for these Class Members, wiping out the value of their claims in this suit. MPA Siegel Decl., ¶¶ 62-64. Defendant interposed a plethora of other defenses to certification and, ultimately, trial—some of which were more persuasive than others—contributing to the overall risk of the litigation, a risk mainly borne by Class Counsel. *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (no abuse of discretion where the “\$4 million award (thirty-three percent [of the class’s recovery]) for attorneys’ fees is justified because of the complexity of the issues and the risks”); *Weeks v. Kellogg Co.*, No. 09-cv-8102, 2013 WL 6531177, at \*15 (C.D. Cal. Nov. 23, 2013) (“Estimates of what constitutes a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).”).

(4) Counsel Was On Contingency. “One of the most common fee enhancers . . . is for contingency risk.” *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 579 (2004).

“[T]he lodestar enhancement [for contingent cases] is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees.” *Bernardi v. County of Monterey*, 167 Cal.App.4th 1379, 1399 (Cal. Ct. App. 2008). “This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases. In common fund cases, attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose.” *Vizcaino v. Microsoft Corp.*, 290 F.3d at 1051; see also *Ketchum v. Moses*, 24 Cal. 4th 1122, 1123, 17 P.3d 735 (2001) (“A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his or her work if the lawyer is paid *only* for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.”); see also *Crommie v. State of Cal., Pub. Utilities Comm’n*, 840 F. Supp.

719, 725 (N.D. Cal. 1994), *aff'd in part sub nom. Mangold v. California Pub. Utilities Comm'n*, 67 F.3d 1470 (9th Cir. 1995), and judgment corrected *sub nom. Crommie v. State of California Pub. Utilities Comm'n*, No. C-89-4433 MHP, 1996 WL 440548 (N.D. Cal. July 26, 1996) (“The purpose of contingent risk inquiry is to determine a fee that is likely to entice competent counsel to undertake difficult public interest cases.”).

Class Counsel took this case on contingency and has worked for more than fifteen months without compensation on this matter. Siegel Decl., ¶ 50. Given the potential for adverse outcomes in this Action, including, but not limited to losing on class certification or on the merits, the contingent risk taken on by Class Counsel was substantial. *Id.* There was a real risk that Class Counsel would not be compensated for their work *at all* because they handled this matter on a purely contingent basis. *Id.* Plaintiffs were not responsible for paying attorneys’ fees; thus Class Counsel could *only* recover attorneys’ fees if the litigation was successful—if they failed, they would recoup nothing. *Id.*

Further, Class Counsel have advanced \$27,870.34 in costs on behalf of the Class, which it has carried throughout the pendency of this litigation, and devoted substantial time to this litigation. *Id.* Class Counsel ran the risk of recovering nothing in fees, and being out of pocket for these and tens of thousands of dollars in attorney time. *Id.*

(5) Preclusion of Other Employment. Class Counsel’s respective firms have only a finite amount of time to work up and litigate their cases. By taking on this matter, Class Counsel necessarily passed on other engagements, both contingent and hourly. As of the date of the hearing on final approval, Class Counsel will have worked on and litigated this case for more than fifteen months, devoting hundreds of hours to the matter. Class Counsel should not be penalized for giving up other valuable work opportunities while they efficiently and effectively litigated this matter to a successful resolution for the Class.

(6) Awards in Similar Cases. California District Courts in the last several years have regularly departed upwards from the Ninth Circuit benchmark in considering attorneys’ fee requests in similar wage and hour class actions to granted one-third of the common fund for such case. *See Taylor v. Populus Grp., LLC*, No. 20-CV-0473- BAS-DEB, 2023 WL 139898, at



\*3 (S.D. Cal. Jan. 9, 2023) (approving fee award request of 33.33%); *Contreras v. Worldwide Freight Services, Inc.*, 2020 WL 2083017 (E.D. Cal. 2020) (approving fee award request of 33.33% of total settlement amount, noting that the average per class member recovery of \$221.01 weighed in favor of an increase over the Ninth Circuit benchmark and that awards made in similar cases supported the requested award); *Howell v. Advantage RN, LLC*, 2020 WL 5847565 (S.D. Cal. 2020) (approving fee award of 33.33% and lodestar multiplier of 1.0904); *Greer v. Dick's Sporting Goods, Inc.*, 2020 WL 5535399 (E.D. Cal. 2020) (approving fee award of 33% and lodestar multiplier of 1.24). These recent examples continue the history in this Circuit of routinely awarding attorneys' fees in the 30–35% range in wage and hour class actions. *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM SHX, 2008 WL 8150856 (C.D. Cal. July 21, 2008) (34% award); *Hightower v. JPMorgan Chase Bank, N.A.*, No. CV111802PSGPLAX, 2015 WL 9664959, at \*11 (C.D. Cal. Aug. 4, 2015) (30% award); *Elliott v. Rolling Frito-Lay Sales, LP*, No. SACV 11-01730 DOC, 2014 WL 2761316, at \*10 (C.D. Cal. June 12, 2014) (30% award).

(7) The Positive Reaction of the LWDA. The LWDA has not objected to Class Counsel's request for fees in the amount of \$1,750,000.00 after receiving notice of the request—further supporting the appropriateness of the requested fee award.

#### 4. Class Counsel's Lodestar to Date

Class Counsel's unenhanced lodestar to date is approximately \$324,430.00 after spending a reasonable and necessary 469.9 hours on this matter.<sup>12</sup> Siegel Decl., ¶¶ 52-56; Villegas Decl., ¶¶ 13-16. The fees sought reflect a lodestar multiplier of 5.4. *Id.*

However, as stated in the Siegel and Villegas Declarations, Class Counsel expects to bill another 50-60 hours on the Motion for Final Approval, attending the hearing on the Motion for Final Approval, and overseeing the Notice and Settlement Administration process, which would result in an estimated lodestar multiplier of 4.7 by the time the time of

<sup>12</sup> Many of these hours of were spent in motion practice to force Defendants to provide data and documents that Class Counsel was entitled to as a matter of law and/or to which Defendants had agreed to produce but later reneged on that agreement. MFA Siegel Decl., ¶ 66.

the Final Approval Hearing.<sup>13</sup>

Class Counsel's fee award is justified under a lodestar cross-check as Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky lawsuit while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (positive results, risk, contingency, and duration are proper considerations in awarding attorney's fees).

Class Counsel's fee award is fair, reasonable, and adequate, and should be approved.

**D. Plaintiff's Counsel's Request for Payment of Actual Litigation Costs is Fair, Adequate, and Reasonable**

The Settlement Agreement provides for reimbursement of Class Counsel's costs not to exceed \$50,000.00. Settlement Agmt., ¶¶ 3, 39. However, Class Counsel is seeking only \$27,870.34 in actual litigation costs that have been reasonably incurred or will be incurred in prosecuting this case, including, without limitation court filing fees, mediation fees, expert fees, and hearing attendance costs. Siegel Decl., ¶ 62 and **Appx. 1, Exhibit 4**.

Class Counsel's request for reimbursement of this amount is fair, adequate, and reasonable, as these costs were reasonably incurred. Moreover, the costs that Plaintiff seeks reimbursement for are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (Class counsel entitled to "those out-of-pocket expenses that would normally be charged to a fee paying client.") (9th Cir. 1994); *Trustees of Const. Industry and Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities* Litigation, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable); *Ashker v. Sayre*, 2011 WL 825713, at \* 3 (N.D. Cal. 2011).

Because the expenses for which reimbursements is requested by Class Counsel were reasonably incurred, significantly *less* than the preliminarily approved costs of \$50,000, the

<sup>13</sup> Class Counsel will submit updated billing records with the Motion for Final Approval supporting the additional hours spent on this matter post-Motion for Fees.

1 Court should grant Class Counsel's request for costs.

2 **E. The Class Representative Enhancement Award is Fair and Reasonable**

3 Named Plaintiffs in class action lawsuits are eligible for reasonable incentive awards to  
 4 compensate them "for the expense or risk they have incurred in conferring a benefit on other  
 5 members of the class." *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*, 186 Cal. App.  
 6 4<sup>th</sup> 399, 412 (2010); *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4<sup>th</sup> 715, 726 (2004) (upholding  
 7 "service payments" to named plaintiffs for their efforts in bringing the case). "Incentive  
 8 awards are fairly typical in class action cases" and the Court should award incentive payments  
 9 "to compensate [plaintiffs] for work done on behalf of the class, to make up for financial or  
 10 reputational risk undertaken in bringing the action, and...to recognize [their] willingness to  
 11 act as a private attorney general." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir.  
 12 2009).

13 Plaintiff requests receipt of payment of an enhancement award from the non-  
 14 reversionary GSA in the amount of \$35,000, in addition to the share of the Net Settlement  
 15 Amount she is otherwise entitled to receive as a Participating Class Member.

16 The proposed enhancement award is reasonable compensation given the significant  
 17 time and effort that Plaintiff devoted to this case; the valuable assistance she provided to Class  
 18 Counsel; and the fact that she came forward to bring this case on behalf of 441 other employees  
 19 despite the potential public or employer disapproval she risked. Siegel Decl., ¶ 64; *see generally*  
 20 Declaration of Paula Norton in Support of Motion for Attorneys' Fees and Costs ("Norton  
 21 Decl."). Ms. Norton contributions demonstrate a strong commitment to the Class and to  
 22 advocating on their behalf, justifying payment of the award. *Garner v. State Farm Mut. Auto.*  
 23 *Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at \*17 n.8 (N.D. Cal. Apr. 22, 2010)  
 24 ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of  
 25 \$20,000 or more where, as here, the class representative has demonstrated a strong  
 26 commitment to the class.").

27 The requested \$35,000 enhancement award for Named Plaintiff falls within the range  
 28 of incentive awards typically awarded to Class Representatives in other wage-and-hour class

actions, particularly given the risks that Plaintiff undertook.<sup>14</sup>

#### **F. The Payment of Settlement Administration Costs Should Be Approved**

Plaintiff also requests that the Court approve payment of \$8,500 in settlement administration costs to Apex Class Action LLC (“Apex”). Apex performed duties in connection with administration of this Settlement that were integral in effectuating the Notice and Settlement administration process.

Among other things, Apex calculated each Settlement Class Member’s estimated share of the Net Settlement Amount, formatted and printed Notices for mailing, mailed Notice Packets to all 441 identifiable Settlement Class Members, kept the Parties informed of the status of the Notice process, and otherwise administered the Settlement.

Apex’s requested settlement administration costs reimbursement of \$8,500 is fair, reasonable, and adequate, and should be finally approved.

#### **IV. CONCLUSION**

For the foregoing reasons, Class Counsel respectfully requests the Court award attorneys’ fees in the amount of one-third of the common fund, or \$1,750,000; reimbursement of litigation expenses of \$27,870.34; and a class representative incentive payment of \$35,000.

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<sup>14</sup> See, e.g., *Bond v. Ferguson Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving \$11,250 service award to each of the two class representatives in a trucker meal break class action); *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at \*2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of \$10,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at \*28 (E.D. Cal. Oct. 19, 2006) (approving enhancement awards of \$15,000 as “reasonable”); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at \*52 (N.D. Cal. Jan. 26, 2007) (finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at \*18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000 incentive award for each Class Representative” in wage-and-hour settlement).

1 Dated: February 14, 2025

Respectfully Submitted,  
**KING & SIEGEL LLP**

2  
3 By: Elliot J. Siegel  
4 Elliot J. Siegel  
5 Attorneys for Plaintiff and the Settlement Class

6 Dated: February 14, 2025

7 Respectfully Submitted,  
**LAW OFFICE OF XAVIER VILLEGAS, APC**

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King & Siegel ||| LLP