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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANIEL COYNE, individually and on behalf of those similarly situated; DAVID DENTON, individually and on behalf of those similarly situated; and SEAN BOLLIG, individually and on behalf of those similarly situated,

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT,

Defendant.

Case No. 2:22-cv-00475-APG-DJA

PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARDS

Plaintiffs Daniel Coyne, David Denton, and Sean Bollig ("Plaintiffs"), by and through their counsel of record (*i.e.*, Class Counsel), on behalf of themselves and the Class/Collective, hereby move this Court for an Order:

1. Awarding attorneys' fees to Class Counsel in the amount of 40% of the Gross Settlement Amount, or $7,600,000.00;[1]
2. Awarding litigation costs to Class Counsel in the amount of $60,127.73, along with reimbursement for Third-Party Administrator expenses in the projected amount of $59,500.00;
3. Awarding Incentive Awards to Plaintiffs in the following amounts: Daniel Coyne ($20,000.00), David Denton ($12,500.00) and Sean Bollig ($12,500.00); and
4. Awarding Early Opt-In Awards of $1,000.00 each for the initial group of opt-in plaintiffs, a list of whom is attached as Exhibit 13.

This Motion is made and based on the following Memorandum of Points and Authorities, the pleadings on file herein, and all exhibits and declarations attached thereto.

DATED this 22nd day of September, 2025.

BAILEY❖KENNEDY

By: /s/ Joseph A. Liebman
JOHN R. BAILEY
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN
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[1] The "Gross Settlement Amount" only takes into account compensation for past damages; it does not take into account ***the substantial future compensation*** Class/Collective Members will receive as a result of this litigation and this settlement. As addressed in more detail below, when the future value of this settlement is factored in, the percentage is substantially reduced to 11.57%.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This complicated wage and hour dispute was filed in February 2022 and has been actively litigated in two separate court systems for three-plus years. At the inception of the litigation, Class Counsel successfully opposed an extensive Motion to Dismiss filed by Defendant Las Vegas Metropolitan Police Department ("Metro"), which attempted to dismiss the entire litigation. Class Counsel was then successful—despite ardent opposition by Metro—in obtaining preliminary certification of a collective action under the Fair Labor Standards Act ("FLSA") in the United States District Court for the District of Nevada ("Federal Court"). Following preliminary certification, Class Counsel procured approximately 1,600 opt-in notices from Metro peace officers (approximately 43% of the potential plaintiffs), ensuring that a substantial percentage of Metro peace officers would be eligible to participate in any eventual Federal Court recovery.

All the while, Class Counsel was also litigating Nevada wage and hour claims in Clark County District Court ("State Court").[2] Following a lengthy discovery period in the State Court Action as well as the Federal Court Action which included the production, review, and analysis of over one hundred thousand pages of documents, multiple depositions, and written discovery, Plaintiffs—in the State Class Action—moved for class certification under NRCP 23. The class certification motion was then extensively briefed and set for hearing in State Court. Prior to the hearing, the parties chose to participate in a private mediation in an effort to globally resolve the pending actions in State Court and Federal Court. The parties and their respective counsel ultimately participated in ***three* (*3*)**, full-day, in-person mediation sessions with the Honorable Jackie Glass (Ret.) over several months, extensively negotiating directly with one another in between mediation sessions, and eventually culminating in a conditional settlement (*i.e.*, subject to Court approval) in the final session.

[2] All of Plaintiffs' claims were originally filed in State Court. Metro then removed the case to Federal Court. On October 3, 2022, the Federal Court declined to exercise supplemental jurisdiction over Plaintiffs' Nevada law claims and ordered that they be severed and remanded back to State Court. Plaintiffs' claims under the FLSA remained in Federal Court.

The terms of the settlement are extremely favorable to the class and collective action members. In particular, Metro has agreed to pay a non-reversionary Gross Settlement Amount of $19,000,000.00. In addition to this substantial recovery for past unpaid compensation, Class Counsel was able to procure considerable and substantive changes in overtime compensation policies moving forward. Specifically, as detailed below, Metro peace officers will now be appropriately compensated for their pre- and post-shift activities that were the subject of this litigation. ***The estimated value to the Class/Collective members and future Metro Peace officers of this negotiated policy change amounts to over $21.2 million dollars in additional overtime compensation over the next five years, and $46.7 million over ten years***. This outstanding settlement would not exist but for the extraordinary efforts of Class Counsel and the Class Representatives.

Class Counsel undertook this matter facing considerable risks and without any guarantee of recovery. While Class Counsel completed an extensive and detailed investigation of the potential claims and defenses to ensure their merit, there were certainly unsettled questions relating to the potential success of the case, including whether NRS Chapter 608 applies to governmental entities, whether certification could be obtained and maintained under the FLSA, and whether certification could be obtained and maintained under NRCP 23. Additionally, there were factual disputes related to the precise amounts of individualized compensability of these pre-shift and post-shift tasks that required significant, expensive, and cumbersome review and analysis by Class Counsel, and ultimately, by experts. Through considerable amounts of work and inspired legal analysis, Class Counsel was able to put its clients into the best position possible to resolve this matter in a timely and favorable manner and to ensure that the improper pay practices which spurred this lawsuit would be remedied going forward.

Based on the foregoing, an attorneys' fee award of 40% of the Gross Settlement Amount will appropriately reward Class Counsel for their successful representation of the collective and of the class. The proposed award is consistent with the amount of work required to appropriately litigate this matter, which was essentially two separate lawsuits following the remand to State Court. At the time this Motion was filed, Class Counsel has expended a combined 3,534.65 hours of work on these

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cases in State Court and Federal Court, and the proposed fee award represents a lodestar multiplier of 4.34. Class Counsel's exceptional success despite the inherent and contingent risks of this type of litigation is precisely why courts are willing to and should continue to award contingency fees and lodestar multipliers in this range.

Class Counsel also incurred out-of-pocket litigation costs in the amounts of $60,127.73.[3] These costs were reasonably incurred and benefited the collective and class members. These include, but are not limited to, costs for sending out the collective action notice and procuring opt-in consents, opt-in and putative class member depositions, expert fees, and mediation fees. Class Counsel has paid all of these costs out-of-pocket in furtherance of this litigation without any guarantee that they would be reimbursed. Accordingly, these costs should be reimbursed from the Gross Settlement Amount.

Additionally, Plaintiffs/Class Representatives deserve compensation for their important contributions to this litigation and to this settlement. Plaintiff Daniel Coyne—a member of the Executive Board for the Las Vegas Police Protective Association (PPA)—was particularly instrumental in initiating, maintaining, and resolving this dispute. For example, he initially identified many of the compensation issues that made up the gravamen of the claims; he acted as a liaison between the collective/class and the Class Counsel; and he attended several key litigation events as the client representative, including the three mediation sessions. David Denton and Sean Bollig were also extremely important in providing typicality for class representatives that had participated in the various types of overtime at issue in the litigation, as well as being significant sources of relevant information for the claims. All three class representatives took significant risk in being named Plaintiffs in this action against their employer (Metro), considering they were and still remain Metro employees to this day.

Finally, due consideration should be given to the additional opt-in plaintiffs who immediately chose to join the litigation and thereby subjected themselves to initial discovery. Metro specifically selected from amongst these individuals for depositions and served them with written discovery

[3] This amount will likely increase during the next few months due to expert involvement with the settlement award and approval process. The Motion for Final Approval will update the amount.

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requests. Further, like the named Plaintiffs, these individuals took a substantial risk by being some of the first employees to sue their employer for these compensation deficiencies, and they should be awarded a suitable amount ($1,000.00 each) to reward their actions and to encourage future involvement of opt-in plaintiffs in FLSA matters. For all of these reasons, and as further discussed below, the Court is respectfully asked to grant this Motion for approval of Class Counsel attorneys' fees and costs, the incentive awards, and the early opt-in awards in full.

II. STATEMENT OF FACTS

A. General Background.

Plaintiffs, on behalf of themselves and all others similarly situated, initiated this litigation on February 15, 2022, alleging claims under the FLSA and Nevada law for the failure of Metro to compensate its peace officers for work performed before and after overtime shifts. This Action includes three different types of overtime assignments: (1) special event overtime assignments; (2) jail overtime assignments; and (3) medical facility overtime assignments. Plaintiffs alleged that for each type of overtime assignment, they received overtime pay for the duration of the scheduled shift time but were not paid for the entire continuous workday because they received no compensation for time spent completing pre-shift and post-shift activities that were integral and indispensable to the principal activities for which they were employed.

B. The Contingency Fee Attorney-Client Agreement.

Plaintiffs initially retained Sgro & Roger to represent them in this wage and hour litigation against Metro. On or about December 30, 2021, the Plaintiffs executed the SR Engagement Agreements with Sgro & Roger. The SR Engagement Agreements expressly provide:

> The Firm will be entitled to seek fees based on either: (a) a contingency fee of up to forty percent (40%) of the Gross Recovery (defined below), or (b) the Firm's full lodestar amount (an amount calculated by the Court based on the number of hours worked [by] the Firm's lawyers and staff multiplied by each individual's hourly rates).
>
> You agree that a contingency fee of up to 40% is reasonable given the complexity of the Matter, the anticipated attorney and staff time that the Firm will invest in pursuing the matter, the anticipated costs that the Firm will incur in pursuing the matter (and which will not be reimbursed to the firm unless the Firm obtains a Recovery for you), and the risk of non-recovery that attorneys assume when accepting a matter on a contingency basis.

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> …
>
> The Firm [Sgro & Roger] reserves the right to associate other attorneys in clients' representation, without additional expense to clients. You consent to such association and to a division of attorney fees as may be agreed upon between associated counsel and the Firm so long as the total fees do not exceed those set forth in the original Contingency Fee Agreement.[4]

Following Plaintiffs' Motion for Preliminary Certification of the Collective Action, the Federal Court granted preliminary certification and ordered the following with respect to the requisite Notice to potential collective members:

> Accordingly, the section entitled "YOUR LEGAL REPRESENTATION IF YOU JOIN" must be edited to include the following: "Plaintiffs' counsel's fee agreement is __ % of the recovery, which will be calculated by _____." Plaintiffs' counsel should insert the appropriate information based on their retainer agreement.[5]

As a result, Sgro & Roger sent out a notice to all potential plaintiffs which stated, in part, as follows:

> The attorneys for the Plaintiffs are being paid on a contingency fee basis, which means that if there is no recovery they will not receive any attorneys' fees. If Plaintiffs prevail in this litigation, their attorneys will request that the court either determine or approve the amount of attorneys' fees and costs they are entitled to receive for their services. The FLSA provides only for attorney fees for the Plaintiffs, if successful, and not for LVMPD, although a Court could award LVMPD attorneys' fees for misconduct or other reasons not covered by the FLSA.
>
> Plaintiffs' counsel's fee agreement is 40% of the gross recovery, which will be calculated by calculating 40% of the total of all amounts received prior to the payment of any taxes or reimbursement of any expenses (including any money specifically designated as attorneys' fees) whether by settlement, award, judgment, or voluntary payment by or on behalf of a defendant.[6]

In 2023, Sgro & Roger and Plaintiffs sought to retain Bailey❖Kennedy as co-counsel given Bailey❖Kennedy's substantial experience in complex civil litigation—including, but not limited to, mass tort and class action litigation. On November 21, 2023, Bailey❖Kennedy filed a Notice of Appearance in the State Court action, after agreeing with Sgro & Roger to associate as co-counsel in

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[4] SR Engagement Agreements, attached as Exhibit 1.
[5] Dkt. 107, p. 9.
[6] Dkt. 113, p. 4.

both Courts (as the SR Engagement Agreements contemplated). Ultimately, on April 8, 2024, Plaintiffs signed a revised Engagement Agreement with Bailey❖Kennedy and Sgro & Roger (the "Updated Engagement Agreement"), memorializing the updated co-counsel arrangement. Similar to the SR Engagement Agreements, the Updated Engagement Agreement included a contingency fee arrangement of 40% of the "Gross Amount Recovered," to be split equally between Bailey❖Kennedy and Sgro & Roger.[7] The "Gross Amount Recovered" was defined to include "all money or other thing[s] of value recovered by the Clients."[8]

On June 5, 2024, Plaintiffs filed a Motion in Federal Court to approve Bailey❖Kennedy as co-counsel, as well as to approve the Updated Engagement Agreement (the "Motion to Approve"). On July 29, 2024, the Federal Court granted the Motion to Approve. Specifically, the Federal Court ruled that Bailey❖Kennedy was "approved as co-counsel for the named and unnamed plaintiffs", and that the Updated Engagement Agreement "is approved and binding upon the named and unnamed plaintiffs." Consistent with the Order Granting the Motion to Approve, Class Counsel sent an updated notice to all Opt-In Plaintiffs to advise them of the Updated Engagement Agreement. Similar to the prior notice, the Opt-In Plaintiffs were advised as follows:

> The retention of Bailey Kennedy, LLP **does not** result in the Plaintiffs incurring or being charged any additional attorney's fees via this lawsuit. Rather, Sgro & Roger and Bailey Kennedy, LLP have agreed to split the attorney's fees (if any) that are earned from their representation of the Plaintiffs in this action 50/50. The fee that counsel will earn from their representation of Plaintiffs in this action has always been, and will continue to be, a contingency fee as follows:
>
> A) Counsel is entitled to recover attorney's fees in the amount of forty percent (40%) of the gross amount recovered by the Plaintiffs, whether by compromise, settlement, or otherwise before a trial in the matter.[9]

C. Motion to Dismiss.

Following Metro's removal of this action to Federal Court, Metro filed a Motion to Dismiss, seeking to dismiss the action in its entirety. Metro argued in pertinent part that: (1) Plaintiffs lacked standing to pursue relief under NRS Chapter 608; (2) Plaintiffs failed to adequately plead willfulness

[7] Decl. of Joseph A. Liebman, attached as Exhibit 2; Updated Engagement Agreement, attached as Exhibit 3.

[8] The Updated Engagement Agreement goes on to clarify that "if the matter is settled or resolved in whole or in part with the clients receiving something of value other than cash, counsel shall be entitled to a fee based upon the value of the property or thing received, and counsels' fee shall be paid in cash by the clients."

[9] Sample Notice, attached as Exhibit 4.

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under the FLSA; (3) Plaintiffs failed to plead an entitlement to overtime under the FLSA; and (4) NRS 608 does not provide a private right of action against government employers such as Metro.

Plaintiffs filed an extensive, 25-page Opposition to Metro's Motion to Dismiss, thoroughly rebutting the various arguments set forth above. Metro filed a Reply in Support of its Motion to Dismiss. On September 21, 2022, the Federal Court largely agreed with Plaintiffs' arguments, ruling that the majority of Plaintiffs' claims were plausible and adequately pled. With respect to the Nevada law claims, the Federal Court (following additional briefing) again agreed with Plaintiffs' position and declined supplemental jurisdiction, and those claims were therefore remanded back to the State Court.

D. Extensive Discovery.

Due to the severance of the Nevada law claims and the FLSA claims, Class Counsel conducted discovery in two separate actions. With respect to the FLSA action, Class Counsel—on behalf of Plaintiffs—responded to six sets for requests for admission, six sets of requests for production, and six sets of interrogatories. Class Counsel—on behalf of Plaintiffs—defended five separate depositions of their clients. Class Counsel—on behalf of Plaintiffs—reviewed and produced approximately 1,700 pages of documents.

In the State Court as well as the Federal Court, Class Counsel served extensive written discovery requests on Metro in order to fulfill their class certification burden under NRCP 23, and to further support the merits of Plaintiffs' claims under the FLSA. Metro's initial production in response to the Requests for Production consisted of a total of ***129,735 pages*** of responsive documents. Class Counsel was required to spend substantial hours (81.5 hours in total) digesting, reviewing, analyzing, and summarizing these documents.[10] Because Metro did not maintain electronic records of their special event overtime assignments, a large portion of the documents were PDFs specific to and describing each and every special event. Review and analysis of these highly relevant, yet individualized, documents thus turned into a much more cumbersome process than originally contemplated.

[10] Ex. 2, ¶ 36.

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Despite the large volume of documents produced, Class Counsel—on behalf of Plaintiffs—took the position that the production was deficient and served an extensive meet and confer letter on Metro's counsel. After a significant amount of follow-up with respect to Metro's responses, it finally provided supplemental documents/data on December 17, 2024. Specifically, Metro provided a sampling of fifteen proxy access reports, which provided data showing when these 15 particular Plaintiffs would arrive at a Metro area command center. Due to Metro's lack of records pertaining to pre- and post-shift activities for scheduled overtime shifts, the proxy access reports were probative of exactly how early officers were checking into the area command prior to overtime shifts to retrieve equipment and how long after the overtime shift they were returning to the area command to return equipment. Similar to the PDFs described above, Class Counsel was required to spend a significant amount of time (51 hours in total) analyzing, deciphering, and summarizing these reports in order to help prove the amounts of overtime compensation underpayment.[11] On January 5, 2025, Metro provided another supplemental production, producing all of the special event PDFs up to the end of 2024. The supplemental production amounted to another large production of ***103,122 pages*** of documents.

Although the parties reached settlement prior to formal expert disclosures, Plaintiffs had already retained a damages/statistical expert. In preparation for the mediation sessions, Plaintiffs' expert—Dr. Carrie Amidon-Johansson with Berkeley Research Group—conducted and prepared a preliminary damages analysis in order to provide Class Counsel and the Class Representatives with the necessary information to evaluate and resolve the dispute.[12]

E. Preliminary Certification in Federal Court.

On November 14, 2022, Plaintiffs filed an 18-page Motion for Preliminary Certification of a Collective Action and Authorization to Circulate Notice Pursuant to 29 U.S.C. § 216(b) ("Motion for Preliminary Certification"). The Motion for Preliminary Certification was supported by many different exhibits, including, but not limited to, declarations from the three named Plaintiffs. The purpose of the Motion for Preliminary Certification was to establish a collective under the FLSA and

[11] Ex. 2, ¶ 37.
[12] Memoranda of Costs, attached as Exhibits 5 and 6.

to give Metro officers who had worked scheduled overtime shifts within the applicable statute of limitations (up to 3 years) the opportunity to opt-in to the Federal Collective Action. As this Court is aware, in order to obtain preliminary certification, Plaintiffs must show that all potential members of the collective are similarly situated to the named Plaintiffs.

On May 1, 2023, Metro filed a 21-page Opposition to the Motion for Preliminary Certification. Metro presented many different arguments in an effort to avoid preliminary certification, including the supposed lack of a Metro policy regarding overtime compensation for pre- and post-shift tasks, as well as the alleged individualized nature of the various overtime shifts at issue.

On May 22, 2023, Plaintiffs filed an 11-page Reply in Support of the Motion for Preliminary Certification, rebutting Metro's various arguments one-by-one. On August 15, 2023, the Federal Court, despite Metro's ardent opposition, agreed with Plaintiffs and granted the Motion for Preliminary Certification. The Federal Collective Action was preliminarily certified pursuant to the FLSA on behalf of the following collective group:

> Las Vegas Police Protective Association (PPA) members who have worked one or more Scheduled Overtime Shifts since February 1, 2019, that required the officer to perform uncompensated pre-shift and/or post-shift work consisting of transporting equipment between the shift site and another designated location.

The Federal Court ordered a 90-day opt-in notice period and some revisions to the proposed notice. Following those revisions, Class Counsel undertook the necessary, yet cumbersome process of serving notice on all potential collective members. For the next 90 days, Class Counsel obtained hundreds of opt-in notices from collective members and filed with the Federal Court numerous notices identifying those collective members. In all, at the end of the 90-day opt-in period, Class Counsel had identified 1,595 members of the collective, which, along with the three named Plaintiffs, totaled 1,598 members.[13]

Class Counsel expended significant time and resources to ensure that any potential plaintiff who wanted to opt-in would be able to do so. Generally, the average opt-in rate under the FLSA is

[13] Dkt. 121. On June 2, 2025, the Federal Court entered a Stipulation adding 18 additional opt-in plaintiffs and withdrawing 1 in the Federal Collective Action. Dkt. 132.

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approximately 15-20%. *Collinge v. IntelliQuick Delivery, Inc.*, No. 2:12-CV-00824 JWS, 2015 WL 13764353, at *11 n. 113 (D. Ariz. Feb. 24, 2015); *Brewer v. BP P.L.C.*, No. CV 11-401, 2012 WL 13042626, at *10 (E.D. La. May 11, 2012). From March of 2022 through the present, Class Counsel was able to procure opt-in consents from 1,612 current and former Metro peace officers. Considering there were 3,811 Metro peace officers who worked a scheduled overtime shift during the Class Period who were members of the PPA, this amounts to an extraordinary opt-in percentage of approximately 42.2%, significantly higher than the average rate.

F. Class Certification in State Court.

On January 22, 2024, Plaintiffs filed their 22-page Motion for Class Certification in State Court. In support of the Motion for Class Certification, Plaintiffs included and compiled numerous exhibits in a separate appendix. Pursuant to the State Court's Scheduling Order, the filing of the Motion for Class Certification triggered a discovery period limited to NRCP 23 certification issues. As discussed above, extensive discovery was conducted in conjunction with the Federal Court action during this time period.

Similar to their Opposition to the Motion for Preliminary Certification, Metro once again ardently opposed Class Certification under NRCP 23, filing a 30-page Opposition and a lengthy appendix of exhibits. Metro did not concede any of the NRCP 23 factors, and also asserted various other arguments based on standing and due process in an effort to defeat certification.

On September 27, 2024, Plaintiffs filed their 30-page Reply in Support of Class Certification. Plaintiffs also supplemented the record—following the discovery period—with another lengthy appendix. Pursuant to a Stipulation between the Parties, the State Court did not set the Motion for Class Certification for hearing, as the Parties had agreed to schedule a private mediation to try to reach a global resolution of both cases before argument on the Motion.

G. The Mediation Sessions.

1. *The First Session*

On December 12, 2024, the parties appeared before the Hon. Jackie Glass (Ret.) at Advanced Resolution Management for a private mediation session. In preparation for the mediation, Plaintiffs' expert—Dr. Amidon-Johansson—prepared a preliminary estimate of special event overtime

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damages with the data/documents that had been produced by Metro at that point. Due to a lack of some of the necessary data, Dr. Amidon-Johansson's preliminary estimate was based on different assumptions regarding the number of special events per year as well as the average amount of time spent on pre- and post-shift tasks that would warrant compensation.

Class Counsel also prepared and submitted a comprehensive 20-page Mediation Brief accompanied by numerous exhibits. The Brief set forth Plaintiffs' claims, outlined the status of both the State and Federal Actions, analyzed the relevant law applicable to each claim, and presented an estimated calculation of damages. This damages calculation drew on data obtained during discovery, combined with research into publicly available information on special events worked by Metro peace officers each year to address gaps in information, and extensive consultation with Plaintiffs' retained expert.

Plaintiff Daniel Coyne attended the day-long mediation session along with Class Counsel. Numerous attorneys and representatives from Metro also attended the mediation session. One of the primary disputes during the initial mediation session related to how long officers had spent on pre- and post-shift activities for special events. Dr. Amidon-Johansson's assumptions were based on either 90 minutes or 120 minutes of additional (combined) pre- and post-shift compensation per officer and per shift, while Metro disagreed with those assumptions. Ultimately, while the parties were unable to resolve the matter, they did agree to continue working toward resolution and to schedule another mediation session in January 2025. The parties also agreed that Metro would produce additional documents/data prior to the next mediation session in order to better inform the parties of the potential damages at issue.

2. *The Second Session*

As discussed above, over the next couple of weeks, Metro produced additional data/documentation. Specifically, Metro provided a sampling of 15 different officers and their proxy data showing every time s/he checked into an area command center. Metro also produced additional documents relating to special event shifts through the end of 2024, which assisted the parties in

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estimating the amount of special event shifts worked during the Class Period.[14] Class Counsel had to spend a significant amount of time analyzing and summarizing this data in order to prepare for the second mediation session.

During the second mediation session, the parties made significant progress in negotiating a potential resolution. Unfortunately, as the day came to a close, the parties were still several million dollars apart in terms of a settlement amount. During this mediation session, however, Metro did advise that it would begin paying all officers who are required to obtain a vehicle for a special event shift one additional hour (at a minimum) of additional overtime compensation.

Plaintiffs agreed to leave their settlement offer open for several weeks following the second session, while the parties prepared to go forward with the Motion for Class Certification in State Court. However, approximately one week before the hearing date, and following multiple discussions and communications between counsel, the parties ultimately agreed, in principle, to a global settlement amount of $19,000,000.00.

3. *The Third Session*

Although the parties had agreed on a settlement amount, there were many other aspects of the settlement they needed to negotiate and resolve, including the extent of the policy changes going forward. As discussed above, as a result of the lawsuit being filed, and in an effort to limit future damages, Metro finally changed its policy pertaining to compensation for obtaining a department vehicle for a special event overtime shifts. Yet there were many other instances in which officers were required to obtain and/or return other types of necessary equipment for all of the overtime shifts at issue.

Thus, the parties scheduled a third mediation session with Judge Glass to work through these various issues. Class Counsel was able to significantly expand the policy change to encompass other types of equipment and other types of shifts. Additionally, various other terms of the settlement were discussed and ultimately resolved. In order to memorialize the settlement, the parties drafted, finalized, and executed (through counsel) a Mediator's Resolution Memorandum. Based on Judge

[14] Ultimately, the parties tentatively agreed there were approximately 200,000 special event shifts during the Class Period.

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Glass' experience with this dispute over three separate mediation sessions, she included the following in the Mediator's Resolution Memorandum.

> Pursuant to the standards set forth in *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530 (Nev. 2005) and *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (Nev. 1969), the Mediator has determined that a 40% contingency fee is fair and reasonable. The Mediator also has determined, based on her experience with this matter and involvement as a neutral mediator throughout the settlement process, that the terms of the settlement are fair, just, adequate, and reasonable for all parties.[15]

H. Finalizing the Settlement Documentation.

Over the next several months, the parties drafted, negotiated, finalized, and executed the formal Settlement Agreement setting forth in detail all of the relevant and material terms of the settlement.[16] The parties then presented the Settlement Agreement to the State Court and Federal Court via a joint hearing on August 15, 2025, and it was preliminarily approved by formal Order by both Courts on August 25, 2025. The Order specified that the present Motion was to be filed by September 22, 2025.

III. ARGUMENT

As described above, this is a hybrid action brought under the FLSA and comparable Nevada wage and hour statutes. Unlike many wage and hour hybrid actions, this action was severed into two separate matters—the Nevada law claims were litigated in State Court and the FLSA claims were litigated in Federal Court. The Federal Court preliminarily certified a collective action of Metro peace officers on August 15, 2023. The Federal Court reaffirmed its certification in conjunction with preliminary approval of the settlement. Similarly, the State Court certified a class under NRCP 23 in conjunction with its preliminary approval of the settlement.

The FLSA provides that plaintiffs shall recover reasonable attorneys' fees and costs from the defendant-employer. 19 U.S.C. § 216(b). Similarly, NRS 608.140 provides for an award of attorney's fees in Nevada wage and hour disputes. Regardless, in a common fund settlement such as this, the Court is tasked with determining the reasonableness of an attorneys' fees award pursuant to

[15] Mediator's Resolution Memorandum, attached as Exhibit 7.
[16] Settlement Agreement, attached as Exhibit 8.

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the engagement agreement between the Plaintiffs and Class Counsel, which in this particular case, calls for a 40% contingency fee award.

A. Class Counsels' Fee Award is Properly and Commonly Calculated as a Percentage of the Gross Settlement Amount, as Contemplated by the Updated Engagement Agreement.

The United States Supreme Court has recognized that "a litigant or lawyer who recovers a fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Company v. Van Gemert*, 444 U.S. 472, 478 (1980). The rationale behind the common fund doctrine is to ensure that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) ("the percentage of the fund method more accurately reflects the results achieved."). "[I]t is well settled that the lawyer who creates a common fund is allowed an *extra* reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit." *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989) (emphasis in original).

The percentage method has long been the "dominant" method of determining fees in similar cases. *In re Omnivision Techs.*, 559 F.Supp.2d 1036, 1046 (N.D. Cal. 2007). The percentage fee approach inherently confers many benefits to all parties, "including removing the inducement to unnecessarily increase hours, prompting early settlement, reducing burdensome paperwork for counsel and the court and providing a degree of predictability to fee awards." *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1376 (N.D. Cal. 1989).

Nevada law is in accord. *See State Dept. of Human Resources, Welfare Div. v. Elcano*, 794 P.2d 725, 726, 106 Nev. 449, 452 (1990) (recognizing the recovery of attorneys' fees under the common fund doctrine under Nevada law); *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864–65, 124 P.3d 530, 549 (2005) (same). In Nevada, the contingency fee does not vest until the client prevails, and thus, the court has discretion to award the entirety of the contingency fee as long as it is deemed to be a reasonable fee. *Capriati Constr. Corp., Inc. v. Yahyavi*, 137 Nev. 675, 680-81, 498 P.3d 226, 231-32 (2021). In fact, the Nevada Court of Appeals recently ruled that "a trial

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court can award attorney fees to the prevailing party who was represented under a contingency fee agreement, even if there are no hourly billing records to support the request." *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 558, 429 P.3d 664, 671 (Nev. Ct. App. 2018); *see also Shuette*, 121 Nev. at 864, 124 P.3d 530 ("[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis must begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee."); *Nevins v. Martyn*, 140 Nev. Adv. Op. 66, 557 P.3d 965, 975 (2024); *Fox v. Vice*, 131 S.Ct. 2205, 2216 (2011) ("The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection.").

The rationale behind this approach is relatively simple. Attorneys take on substantial risk "by offering or accepting contingency fee agreements." *O'Connell*, 134 Nev. at 559, 429 P.3d at 671. Thus, "[c]ourts should also account for the greater risk of nonpayment for attorneys who take contingency fee cases, in comparison to attorneys who bill and are paid on an hourly basis, as they normally obtain assurances they will receive payment." *Id.* This risk is even more substantial in class action litigation, which requires significantly more time and resources than a typical contingency matter. Further, "contingency fees allow those who cannot afford an attorney who bills at an hourly rate to secure legal representation." *Id.* And again, in the instance of a class action, it allows hundreds—if not thousands—of plaintiffs to benefit from legal representation with the possibility of receiving a monetary recovery that would likely never have been possible or financially worthwhile in an individual lawsuit. *Shuette*, 121 Nev. at 851–52, 124 P.3d at 540–41 ("It also helps class members obtain relief when they might be unable or unwilling to individually litigate an action for financial reasons….").

B. Class Counsels' Request of 40% of the Gross Settlement Fund is Fair and Reasonable, Especially Considering the Substantial Benefit Derived from the Policy Change.

Fee awards in common fund cases typically range "from 20 to 50 percent of the common fund created." *See* Newberg § 14:6 (4th ed. 2008). "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a

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disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." Newberg § 14:6 (4th ed. 2008).

Federal courts applying the percentage-of-recovery method frequently award 1/3 of the common fund. *See, e.g., In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995); *Jane Roe, et al. v. SFBSC Management, LLC, et al.*, 2022 WL 17330847, at *19 (N.D. Cal., 2022). Nevada courts have routinely issued fee awards representing 40% of the gross recovery in typical contingency fee matters. *See Capriati Constr.*, 137 Nev. at 681, 498 P.3d at 232 (finding that a $2.3 million award is reasonable for a $5.9 million verdict); *Elazar v. Berry*, 2013 WL 7156047 (Nev. Dec. 18, 2013); *McElfresh v. Steimer*, 2009 WL 6356574 (Nev. Dist. Ct., Nov. 30, 2009).

The Ninth Circuit has identified five factors to determine whether a particular percentage fee is reasonable; namely: (1) the results achieved; (2) the risks of litigation; (3) the complexity of the case, the skill required and the quality of work performed by plaintiffs' counsel; (4) the contingent nature of the fee and the financial burden carried by plaintiffs' counsel; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). For the reasons set forth below, a 40% attorney's fee payment for these two pending actions—consistent with the Updated Engagement Agreement—is an imminently reasonable fee and should be approved by the State Court and the Federal Court, especially considering the substantial benefit to be derived from Metro's overtime compensation policy amendment going forward. ***In fact, when the estimated ten-year value of the policy change is factored into the settlement value (as contemplated under the Updated Engagement Agreement), Class Counsels' requested attorneys' fees actually amounts to an 11.57% recovery—not a 40% recovery***.[17]

1. *The Settlement Obtained by Class Counsel Provides Substantial Benefits to the Class/Collective, Including Not Just the Non-Reversionary $19,000,000.00 Payment, But Also Substantial Value of the Policy Change Going Forward.*

A "crucial factor" in determining appropriate attorneys' fees is "the extent of a plaintiff's success." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Torres v. Gristede's Operating Corp.*, 519 Fed.Appx 1, 5 (2d Cir. 2013) ("'[T]he most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'"); *Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985, 988

[17] Ex. 9. The percentage recovery is 18.9% when based on an estimated five-year value of the policy change.

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(9th Cir. 2023) ("The touchstone for determining the reasonableness of attorneys' fees in a class action is the benefit to the class.").

Class Counsel obtained an extremely successful settlement on the Class/Collective's behalf. With respect to the monetary consideration for the settlement, after three-lengthy and contested mediation sessions, Class Counsel was able to obtain a $19,000,000.00 non-reversionary settlement payment. Based on the payroll data supplied by Metro and the estimated time periods of underpayment (*i.e.*, 1 hour for special event overtime shifts, 40 minutes for medical facility overtime shifts, and 5 minutes for jail overtime shifts), the projected Net Settlement Amount (*i.e.*, the amount earmarked for settlement awards) reflects approximately 64% of the alleged damages sought for the Class Period.[18]

Another extremely valuable aspect of the settlement is the substantial overtime compensation policy change that would not have come to fruition without this lawsuit, bifurcated in two jurisdictions. As set forth in detail above, and as detailed in the Settlement Agreement, Metro has agreed to remedy the compensation issues that was the basis for this lawsuit going forward. Specifically, it has agreed to pay—at a minimum—one hour in additional overtime compensation for any officer that is required to obtain a vehicle for a special event overtime shift. Similarly, it will pay actual time for any officer that is required to retrieve and/or return equipment at an area command center prior to and/or subsequent to a scheduled overtime shift (*e.g.*, special event, jail, and medical facility). Thus, in addition to the $19,000,000.00 cash settlement that is intended to redress prior compensation issues from 2018 through 2025, the Class and the Collective is receiving an additional substantial monetary benefit going forward. Based on the payroll data that was provided in conjunction with this settlement to calculate Settlement Awards, Plaintiffs' expert has calculated the monetary benefit of the policy change to be $21.2 million for the next five years, and $46.7 million for the next ten years.[19]

Nevada precedent imposes no bar on considering the value of a policy change as part of the common fund when calculating reasonable attorney's fees. The Ninth Circuit likewise recognizes

[18] Ex. 2, ¶ 40.

[19] Expert Valuation, attached as Exhibit 9.

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that where the value of nonmonetary or injunctive relief—such as a policy change or revised business practices—can be reasonably ascertained, that value may be included in the common fund for purposes of applying the percentage method. *See, e.g., Roes, 1–2 v. SFBSC Management, LLC*, 944 F.3d 1035, 1055-56 (9th Cir. 2019) ("'[W]here the value to individual class members of benefits deriving from injunctive relief can be accurately ascertained [courts may] include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees.'") (citation omitted). And even where the precise value cannot be quantified, courts treat such relief as "'a relevant circumstance to consider in determining what percentage of the fund is reasonable as fees.'" *Id.* (citation omitted).

Here, the policy change is certainly quantifiable. Similar to the $19,000.000.00 non-reversionary settlement payment, Metro's policy change going forward is quantifiable because it is based on reliable payroll data showing exactly how much Class/Collective Members are expected to earn going forward as a result of this policy change. In fact, it is estimated to be worth $46.7 million in future compensation for the next ten years—compensation these Class/Collective Members (and future Metro officers) would not have received but for the efforts of Class Counsel in this litigation. In similar situations where valuation is feasible and reliable, many courts—including the Ninth Circuit—have included nonmonetary value into the common fund for the purpose of calculating reasonable attorney's fees. *See, e.g., Farrell v. Bank of America Corporation, N.A.*, 827 Fed.Appx. 628, 631 (9th Cir. 2020); *Bedolla v. Allen*, 736 Fed.Appx. 614, 616 (9th Cir. 2018); *Martin v. Toyota Motor Credit Corp.*, No. 220CV10518JVSMRW, 2022 WL 17038908, at *11 (C.D. Cal. Nov. 15, 2022); *Herrera v. Wells Fargo Bank, N.A.*, No. 818CV00332JVSMRW, 2021 WL 9374975, at *12 (C.D. Cal. Nov. 16, 2021); *George v. Academy Mortgage Corporation (UT)*, 369 F.Supp.3d 1356, 1379-80 (N.D Ga. 2019); *Kifafi v. Hilton Hotels Retirement Plan*, 999 F.Supp.2d 88, 98 (D.D.C. 2013).

Finally, there are other aspects of the settlement that were procured by Class Counsel that are very beneficial to the Class and/or Collective. Specifically, Class Counsel ensured that the scope of the release was limited to the specific claims at issue in this case, so as not to jeopardize other claims that members of the Class and/or Collective may have under the FLSA and Nevada wage and hour

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statutes. As seen by the release language, there is a carve-out for pending allegations regarding the effect of Metro's employee PERS contributions on the overtime rate of pay and whether it resulted in underpayments for overtime shifts.

In all, the Class/Collective stands to receive substantial benefits for past compensation underpayments in the way of a significant settlement payment, as well as the benefit of having these compensation issues remedied going forward via policy changes. Class Counsel was instrumental in bringing this settlement to fruition and should be compensated accordingly.

2. *The Various Risks of Continued Litigation Were Significant.*

In light of the various hurdles Plaintiffs would have faced if it continued to litigate this matter through trial, $19,000,000.00 is a tremendous outcome for the Class/Collective. As discussed above, there were individualized proof issues pertaining to damages, which could have affected not just the merits of the claims, but also class certification as well as maintaining collective certification. Here are a few examples:

- Not all Plaintiffs had to obtain and/or return a vehicle or other equipment from an area command center for each special event overtime shift. As discovery progressed, it became clear that there were instances where Plaintiffs were able to drive directly to the special event from their homes, and return home directly from the special event, and thus, for those specific shifts, Plaintiffs would not be entitled to pre- and/or post-shift compensation.
- When officers did need to conduct pre- and/or post-shift tasks thereby requiring compensation, there were individualized compensation variations from officer to officer. Depending on the location of his/her area command, one officer may be entitled to 30 minutes of pre- and post-shift compensation, while another officer may be entitled to 1 hour and 30 minutes of pre- and post-shift compensation. Considering that officers had not clocked in for their pre- and/or post-shift tasks, it would be difficult and arduous to attempt to measure the specific amounts of compensation for each and every officer and each and every shift.
- Metro asserted that it had overpaid officers in certain pay periods under the FLSA (and corresponding Nevada statutes) because Metro had permitted its officers to use PTO (paid-

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time off) to fulfill the 80-hour requirement for overtime eligibility. Under Metro's theory, this would also create individualized proof issues relating to overtime eligibility and/or potential offsets to damages.

Despite all of these proof and certification hurdles, Class Counsel—on behalf of the Class and the Collective—was able to creatively advance persuasive arguments to address them. As a result, Class Counsel was able to procure a significant monetary settlement that will result in substantial back wages being paid to all members of the Class and the Collective. Again, considering that this anticipated recovery amounts to 64% of the estimated damages sought by Plaintiffs, Class Counsel's proposed fee is more than reasonable. *See, e.g., In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, *19 (recovery of 36% of estimated gross damages, or 23% of estimated net damages, was an "exceptional result" and justified one-third fee award).

Further, Metro retained outstanding, experienced attorneys to defend this matter, and therefore, continued litigation and discovery would have undoubtedly raised other hurdles and defenses with respect these claims. Litigating against competent, experienced counsel further justifies the requested fee amount. *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *3 (N.D. Cal. Dec. 6, 2017) ("Plaintiffs' counsel achieved these exceptional raw-dollar, percentage, and per capita results despite facing off against some of the best, and most well-resourced, defense lawyers in the country."); *de Mira v. Heartland Emp. Serv., LLC,* No. 12-CV-04092 LHK, 2014 WL 1026282, at *2 (N.D. Cal. Mar. 13, 2014) ("Defendant was represented by an experienced and well-resourced defense firm. Had Class Counsel failed to vigorously prosecute this case, it is unlikely that this settlement could have been achieved.").

3. *The Case was Particularly Complex Due to Severance of the Nevada Law Claims and the FLSA Claim and Various Other Issues, Yet Litigated Effectively Due to the Skill and Experience of Class Counsel.*

As discussed above, although the entirety of the case was originally filed in State Court, following Metro's removal and the Federal Court's remand of the Nevada Claims back to State Court, the case ultimately had to be litigated in two separate forums. Although there was some overlap with respect to discovery, the severance of Plaintiffs' claims required separate motions for

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class and collective action certification, and required Class Counsel to navigate the unique procedural posture of litigating similar, overlapping claims in separate court systems subject to disparate precedent. This particular Motion is just one example. It requires Class Counsel to seek attorney's fees under the standard set by the Nevada Supreme Court as well as the standard set by the Ninth Circuit.

Not to mention the inherently complex nature of class actions altogether, as the successful pursuit of a complex class action requires unique skills and abilities. *Carlin*, 380 F. Supp. 3d at 1021; *Joh v. Am. Income Life Ins. Co.*, No. 18-CV-06364-TSH, 2021 WL 66305, at *7 (N.D. Cal. Jan. 7, 2021). As set forth in the attached declarations[20], Class Counsel are experienced in complex litigation and class actions. Bailey❖Kennedy, in particular, has litigated numerous class actions, both as plaintiff counsel and as defense counsel, which was one of the primary reasons it was retained by Plaintiffs and Sgro & Roger as co-counsel. Sgro & Roger, likewise, brought to this case its deep and longstanding experience representing members of the Las Vegas Police Protective Association in labor and employment disputes against Metro. Because of Sgro & Roger's established credibility with union members, its trusted relationships within the law enforcement community, and its proven track record of skillfully litigating high-stakes disputes against Metro, Class Counsel were uniquely positioned to navigate this litigation effectively, secure the trust and participation of an extraordinary number of opt-in plaintiffs, and ultimately achieve an exceptionally favorable settlement. *In re Heritage Bond Litig.*, 2005 WL 1594403 at *19 (""[T]he quality of Class Counsel's effort, experience and skill is demonstrated in the exceptional result achieved.").

4. *The Contingent Nature of the Fee and the Financial Burden Carried by Class Counsel.*

As discussed by the Nevada Court of Appeals, attorneys take on substantial risk "by offering or accepting contingency fee agreements." *O'Connell*, 134 Nev. at 559, 429 P.3d at 671. Thus, "[c]ourts should also account for the greater risk of nonpayment for attorneys who take contingency fee cases, in comparison to attorneys who bill and are paid on an hourly basis, as they normally obtain assurances they will receive payment." *Id.*; *see also In re Washington Pub. Power Supply*

[20] Ex. 2; *see also* Decl. of Tony Sgro, attached as Exhibit 10.

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Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994) ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases"). "A higher-than-benchmark award exists to reward counsel for investing 'substantial time, effort, and money, especially in light of the risks of recovering nothing.'" *Carlin*, 380 F.Supp.3d at 1021; *see also Vizcaino*, 290 F.3d at 1051 ("[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases.").

Class Counsel has litigated this case since February 2022 without receiving any remuneration for their legal services. By the time they receive any payment toward attorneys' fees and costs, Class Counsel will have been litigating this case for over three and a half years. As set forth in more detail below, Class Counsel (assuming it was billing at an hourly rate) has invested $1,753,076.75 of their own labor and $60,127.73 in litigation costs without any assurances of recovery. While Class Counsel undertook an extensive and detailed investigation of the potential claims and defenses to ensure their merit, there were certainly unsettled questions relating to the potential success of the case, including whether (1) NRS Chapter 608 applies to governmental entities, (2) certification could be obtained and maintained under the FLSA, and (3) certification could be obtained and maintained under NRCP 23. Additionally, there were factual disputes related to measuring the compensability of each of the pre-shift and post-shift tasks that required significant, expensive, and cumbersome review and analysis by Class Counsel, and ultimately, by experts.

Class Counsels' exceptional success despite the inherent and contingent risks of this type of litigation is precisely why courts are willing to and should continue to award contingency fees and lodestar multipliers in range sought by Class Counsel.

5. *Awards in Similar Cases.*

As set forth above, Nevada courts have routinely issued 40% fee awards in typical contingency fee matters. *See Capriati Constr.*, 137 Nev. at 681, 498 P.3d at 232 (finding that a $2.3 million award is reasonable for a $5.9 million verdict); *Elazar v. Berry*, 2013 WL 7156047 (Nev. Dec. 18, 2013); *McElfresh v. Steimer,* 2009 WL 6356574 (Nev. Dist. Ct., Nov. 30, 2009). Similarly, 40% of the common fund for attorneys' fees is within the range of a typical wage-and-hour case in the Ninth Circuit. *See, e.g., Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010

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WL 2196104, at *8 (S.D. Cal. June 1, 2010) (noting the "typical range of 20% to 50%" attorneys' fees in wage-and-hour cases); *Birch v. Off. Depot, Inc.*, No. 06 CV 1690 DMS (WMC), 2007 WL 9776717, at *2 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a $16 million wage and hour class action); *Rippee v. Bos. Mkt. Corp.*, No. 05CV1359 BTM(JMA), 2006 WL 8455400, at *4 (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a $3.75 million wage and hour class action).

Class Counsel does recognize that there are many wage and hour disputes in which the fee award is lower than 40% (typically 33%). *See, e.g., Roe v. SFBSC Mgmt., LLC*, No. 14-CV-03616-LB, 2022 WL 17330847, at *20 (N.D. Cal. Nov. 29, 2022); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *18, n. 12 (C.D. Cal. June 10, 2005). However, as discussed above, the 40% figure is only inclusive of the $19,000,000.00 monetary settlement payment. Once the value of policy change is included, Class Counsels' fee request amounts to only an 11.57% award, much lower than the typical awards in wage and hour disputes. *See, e.g., Roe*, 2022 WL 17330847, at *19 (including a value of $2,000,000 for changed business practices in order to calculate the reasonable attorney's fee).

6. *The Brunzell Factors Likewise Support the 40% Award.*

In Nevada, the trial courts must also consider the following four factors when determining the reasonableness of requested attorneys' fees:

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Although there is significant overlap between the factors discussed above and the *Brunzell* factors, Class Counsel has included them here to ensure compliance with both Nevada and Ninth Circuit precedent.

With respect to the ***first factor***, the qualities of Class Counsel are thoroughly discussed above as well as in the attached declarations. To be sure, Bailey❖Kennedy and Sgro & Roger are

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well-respected, experienced counsel in Southern Nevada, and well equipped to successfully litigate a case such as this (which they have done).

The ***second and third factors***—character of the work and the work actually done—are also addressed in significant detail above as well as in the attached declarations. Class Counsel were engaged in a complicated wage and hour dispute governed by Nevada and federal precedent, which was ultimately postured in two different court systems. The Collective under the FLSA includes approximately 1,600 members and the Class (which now includes those in the Collective) is more than double that size. There were numerous legal and factual issues which had to be addressed, which Class Counsel was able to do through skillful work and inspired legal analysis. And, as addressed above, the result—the ***fourth factor***—was a timely, substantial settlement covering not just past damages but future potential damages as well.

C. If Necessary, the Requested Fee Is Reasonable Under a Lodestar Cross-Check.

Nevada law does not require a lodestar cross-check when conducting a contingency fee reasonableness analysis. *See Shuette*, 121 Nev. at 864, 124 P.3d 530 ("[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis must begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount ***or a*** contingency fee.") (emphasis added). Similarly, in the Ninth Circuit, "'a lodestar cross-check is not required so long as the court achieves a reasonable result using the method it selects.'" *Katz-Lacabe v. Oracle Am., Inc.*, No. 3:22-CV-04792-RS, 2024 WL 4804974, at *5 (N.D. Cal. Nov. 15, 2024). In fact, some courts in the Ninth Circuit have determined that a lodestar cross-check analysis should not be undertaken in certain instances. *Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628, 631 (9th Cir. 2020) (holding it was not reasonable to perform a lodestar cross-check due to the inclusion of injunctive relief); *Benson v. DoubleDown Interactive, LLC*, No. 18-CV-0525-RSL, 2023 WL 3761929, at *3 (W.D. Wash. June 1, 2023); *Andrews v. Plains All Am. Pipeline L.P.*, No. CV154113PSGJEMX, 2022 WL 4453864, at *2 (C.D. Cal. Sept. 20, 2022); *Lopez v. First Student, Inc.*, No. EDCV191669JGBSHKX, 2022 WL 618973, at *6 (C.D. Cal. Feb. 8, 2022).

However, in certain instances, a lodestar cross-check will be used—even if not required—to further substantiate the reasonableness of fees. *Vizcaino*, 290 F.3d at 1050. "[T]he lodestar can be

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approximate and still serve its purpose." *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *14 (C.D. Cal. July 21, 2008). "[I]t is well established that '[t]he lodestar cross-check calculation need entail neither mathematical precision nor bean counting ... [courts] may rely on summaries submitted by the attorneys and need not review actual billing records.'" *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015). "[T]he common fund fee award, as a contingent fee award, should often (if not always) be higher than counsel's lodestar itself." 5 Newberg and Rubenstein on Class Actions §15:73 (6th ed.).

Class Counsels' lodestar to date is $1,753,076.75, which is based on 3,534.65 hours of attorney/paralegal time. It is based on hourly rates ranging from $100-$250/hour for paralegals, $300-$450/hour for associates, $450-$550/hour for junior partners, and $825-$1,000/hour for senior partners, which is well within the reasonable range for this community. *See Carroll v. Kijakazi*, No. 2:20-CV-01953-DJA, 2023 WL 11911797, at *2 (D. Nev. Sept. 21, 2023) (approving an effective hourly rate of almost $1,200/hour); *Mayorga v. Ronaldo*, 656 F. Supp. 3d 1218, 1232 (D. Nev. 2023) (approving rates ranging from $850/hour to $300/hour).[21]

Based on this lodestar cross-check, the proposed multiplier is 4.34. This is reasonable and within the range accepted in the Ninth Circuit. *Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1124-25 (C.D. Cal. 2008) (multiplier of 5.2); *Steiner v. America Broadcasting Co. Inc.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (multiplier of 6.85); *Uschold v. NSMG Shared Servs., LLC*, No. 18-CV-01039-JSC, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (multiplier of 4); *Martin*, No. 220CV10518JVSMRW, 2022 WL 17038908, at *11 (multiplier of 6.33). To be sure, "[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 298 (N.D. Cal. 1995); *Carlin*, 380 F. Supp. 3d at 1022.

[21] Similarly, in State Court, "$350-$775 per hour is consistently found 'reasonable' by courts in the Eighth Judicial District for similarly situated commercial litigation cases…." *Medicine Man Technologies, Inc. v. Vegas Valley Growers LLC*, No. A-18-777319-C, 2020 WL 11192796, at *4 (Nev.Dist.Ct. Mar. 23, 2020). In fact, Bailey Kennedy and its attorneys have consistently had their rates approved as reasonable in Clark County District Court. *See, e.g., Dimopoulous v. Harris Law Firm*, Case No A-21-828630-C, Order p. 14, filed April 13, 2023 (approving $1,000/hour for Mr. Kennedy); *Huerta v. Rogich, et al.*, Case No. A-13-686303-C, Order Granting Defs. Peter Eliades and Teld, LLC's Mot. for Attorney's Fees and Setting Supp. Briefing on Apportionment, filed March 16, 2020 (approving $800/hour for Mr. Kennedy and $385/hour for Mr. Liebman); *Richman v. Haines & Krieger, LLC*, No. 11A643004, 2015 WL 10382283, at *3 (Nev.Dist.Ct. May 27, 2015).

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Between now and the close of this matter, Class Counsel will need to spend significant additional hours for such tasks as communicating with class members, coordinating with the Settlement Administrator and defense counsel, drafting the final approval motion, presenting argument at the final approval hearing, and overseeing post-approval distribution. Thus, the multiplier will become less and less by the end of this action. In sum, a lodestar cross-check confirms that a fee award of 40% of the monetary amount of the common fund and 11.57% of the entire value of the settlement is reasonable and appropriate in this case.

D. Class Counsel's Reasonable Costs and Expenses Should be Approved.

Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008); *see also* NRS 18.020. Thus, Class Counsel seeks reimbursement from the common fund in the amount of $60,127.73 for litigation costs and expenses advanced by Class Counsel during the action. *See Oliveira v. Language Line Servs., Inc.*, 767 F. Supp. 3d 984, 1002 (N.D. Cal. 2025). The amount is less than the amount contemplated by the settlement and that was contained in the Notice to the Class, which provided for reimbursement of up to $100,000 in costs/expenses. The delta will increase the size of the Net Settlement Amount for the Class/Collective.[22]

The relevant detail and support for these costs and expenses is attached hereto in the Memorandum of Costs. *Oliveira*, 767 F. Supp. 3d at 1002 ("To recover such expenses, the attorneys should provide an itemized list of their expenses by category with the total amount advanced for each category so that the Court can assess whether the expenses were reasonable."). All of the costs sought were necessary in connection with the prosecution of this litigation and were made for the benefit of the Class/Collective and should therefore be approved in full.

E. The Court Should Approve Incentive Awards for the Named Plaintiffs.

"Incentive awards are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). They "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the

[22] As discussed above, this amount will be updated via the Motion for Final Approval.

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action, and, sometimes, to recognize their willingness to act as a private attorney general. Awards are generally sought after a settlement or verdict has been achieved." *Id.* at 958-59.

The Settlement Agreement here provides for a $20,000 incentive award (subject to Court approval) for Daniel Coyne, and $12,500 incentive awards, respectively, for David Denton and Sean Bollig. These levels of incentive awards are also quite typical. *See, e.g., Glass v. UBS Financial Services, Inc.*, 2007 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007) (approving $25,000 enhancement to each of four named plaintiffs for seven months of litigation); *Low v. Trump Univ., LLC*, 2017 WL 1275191, at *16 (S.D. Cal. Mar. 31, 2017) (approving $15,000 incentive award to each of five plaintiffs).

While all three named Plaintiffs were instrumental to this action, Daniel Coyne took the lead and devoted substantial time and effort to this matter, and that is why his proposed incentive award is larger. As just one example, Mr. Coyne attended all three, full-day mediation sessions on behalf of the Class/Collective. *Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *7 (S.D. Cal. June 1, 2010) (approving $25,000 incentive award where the representative "engag[ed] in day-long settlement negotiations with a respected mediator"). While the Named Plaintiffs' various declarations provide more information regarding the work and value they provided toward this matter[23], it should be noted that they took on significant risk by being the first officers to initiate litigation against their employer in order to remedy this long-standing overtime compensation issue. *See Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG WMC, 2013 WL 163293, at *6 (S.D. Cal. Jan. 14, 2013) (noting risk to class representatives' reputations and future employability).

F. The Court Should Approve $1,000 Awards for the Early Opt-in Plaintiffs.

Class Counsel and Plaintiffs are also requesting approval of $1,000 early opt-in awards for each of the opt-in Plaintiffs who bravely chose to join this litigation in its infancy and prior to preliminary certification. As set forth in the Settlement Agreement, "the Early Opt-In Award recognizes these individuals' early and public support of the Action, including their willingness to be named in a publicly filed complaint…. [T]heir early participation helped establish the case's

[23] Decls. of Named Plaintiffs, attached as Exhibit 11.

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credibility and advanced the litigation, while also exposing them to heightened professional and reputational risk." Courts have approved these types of awards for these very reasons. *See, e.g.*, *Oliveira*, 767 F. Supp. 3d at 1008.

IV. CONCLUSION

For all the reasons set forth above, Class Counsel and Class Representatives respectfully request that the Courts:

- Award attorneys' fees to Class Counsel in the amount of 40% of the Gross Settlement Amount, which is 11.57% of the total value of the settlement, or $7,600,000.00;
- Award actual litigation costs to Class Counsel in the amount of $60,127.73, including reimbursement for Third-Party Administrator expenses;[24]
- Award Incentive Awards to Plaintiffs in the following amounts: Daniel Coyne ($20,000.00), David Denton ($12,500.00) and Sean Bollig ($12,500.00); and
- Award Early Opt-In Awards of $1,000.00 each for the initial group of opt-in plaintiffs, a list of whom is attached as Exhibit 13.

DATED this 22nd day of September, 2025.

BAILEY❖KENNEDY

By: /s/ Joseph A. Liebman
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[24] APEX Bid, attached as Exhibit 12.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 22nd day of September, 2025, service of the foregoing was made by mandatory electronic service through the United States District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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