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Attorneys for Plaintiff,
ELBERT MCCRAY, on behalf of himself
and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ELBERT MCCRAY, on behalf of himself and all
others similarly situated,

Plaintiffs,

v.

LOS ALAMITOS RACE COURSE, a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2020-01131139-CU-OE-CXC

[Assigned for all purposes to the Hon.
Randall J. Sherman - Dept. "CX105"]

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT;
ENHANCEMENT AWARD,
REASONABLE ATTORNEYS' FEES
AND COSTS; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JAMES A. DE
SARIO IN SUPPORT THEREOF**

DATE: February 3, 2023
TIME: 10:00 a.m.
DEPT.: CX105

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 3, 2023, at 10:00 a.m., or as soon thereafter as
the matter may be heard in Department "CX105" of the Superior Court of California, County of
Orange located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, plaintiff ELBERT
MCCRAY ("Plaintiff") on behalf of himself acting as the preliminarily approved representative of
the Settlement Class, will and hereby move this Court for entry of an Order:

1. Finally certifying the Settlement Class;
2. Finally approving the representative Plaintiff as Class Representative;
3. Finally approving Michael Nourmand, Esq. and James A. De Sario of The

1 Nourmand Law Firm, APC as Class Counsel;

2 4. Finally approving the settlement claims under the terms set forth in the
3 Stipulation of Class Action Settlement and Amendment to Stipulation of Class Action Settlement
4 (“Settlement Agreement”);

5 5. Finally approving the payment of reasonable Administration Costs of \$7,700.00 to
6 CPT Group, Inc. (“CPT”) from the Settlement Amount;

7 6. Finally approving an enhancement award of \$7,500.00 for named Plaintiff for his
8 efforts in prosecuting this class action, from the Settlement Amount;

9 7. Finally approving payment of reasonable attorneys’ fees to Class Counsel in the
10 amount of \$250,000.00, which is approximately one-third of the Settlement Amount negotiated by
11 the parties as part of the Settlement Agreement, from the Settlement Amount;

12 8. Finally approving reimbursement of Class Counsel’s costs in the amount of
13 \$9,381.07, from the Settlement Amount;

14 9. Finally approving PAGA penalties for the amount of \$20,000.00, seventy-five
15 percent (75%) or \$15,000.00 of which will be paid to the LWDA and twenty-five percent (25%) or
16 \$5,000.00 of which will be distributed to participating class members, from the Settlement
17 Amount; and

18 10. Entering a Final Judgment consistent with the terms of the Settlement Agreement.
19 Good cause exists for the granting of this Motion in that the proposed settlement is fair, reasonable
20 and adequate.

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1 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
2 Points and Authorities, the Settlement Agreement, the Declaration of James A. De Sario and all
3 exhibits attached thereto, Declaration of Veronica Olivares from and all exhibits attached thereto,
4 any other papers, files and documents filed with this Court, and upon such further oral and/or
5 documentary evidence and argument as may properly be presented to the Court at the time of the
6 hearing of this matter.

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8 DATED: January 18, 2023

THE NOURMAND LAW FIRM, APC

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10 By:


11 Michael Nourmand, Esq.
12 James A. De Sario, Esq.
13 Attorneys for Plaintiff
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff, ALBERT MCCRAY (“Plaintiff”) on behalf of himself and on behalf of the
4 preliminarily approved putative class¹, seeks final approval of a proposed settlement of this wage-
5 and-hour class action against defendant, LOS ALAMITOS RACE COURSE (“Defendant”)². As
6 this Court previously found in preliminarily approving the settlement under the terms set forth in
7 the Stipulation of Class Action Settlement and Amendment to Stipulation of Class Action
8 Settlement (“Settlement” or “Settlement Agreement”) October 24, 2022, the Settlement Agreement
9 provides a substantial benefit to the Settlement Class in the form of monetary compensation.
10 Information that has surfaced since this Court preliminarily approved the Settlement only reiterates
11 that it is fair, reasonable and adequate.

12 Having been fully apprised of the Settlement terms, it is now clear that the Settlement Class
13 overwhelmingly support the Settlement. The most important fact evidencing the Settlement Class’
14 support for the Settlement is that *one* Class Member has opted out of the Settlement and *no* Class
15 Member has objected to the Settlement, thereby 99.78% of the Class Members have agreed to
16 participate in the Settlement. Please see Declaration of Veronica Olivares from CPT.

17 The Settlement is plainly fair, reasonable and adequate in light of the probable outcome of
18 further litigation relating to liability and damages issues. As this Court knows from the Motion for
19 Preliminary Approval³, the Parties were able to reach a Settlement resolving the disputes in this
20 matter after a hotly contested but professional mediation before a well respected mediator in the
21 area of wage and hour class action, Marc J. Feder, Esq. Because the Settlement Agreement was
22 reached at arms-length before a well-respected mediator, the Court can presume, under California
23 law, that it is non-collusive, fair and reasonable. Each side vigorously advocated for its position,
24 and at the conclusion of mediation, an arms-length Settlement was reached.

25 ¹The named Plaintiff and putative class are referred to collectively herein as “Plaintiffs” or
26 the “Settlement Class.”

27 ²Defendant and Plaintiff are referred to collectively herein as the “Parties.”

28 ³Plaintiff incorporate by reference all of the pleadings and evidence filed in connection
with the Motion for Preliminary Approval as additional support for this Motion.

1 In summary, Class Counsel have achieved an excellent result in this litigation, embodied in
2 the Settlement Agreement. The proposed class settlement provides substantial monetary benefits
3 to Class Members and is a product of diligent, aggressive and expeditious efforts of Class Counsel
4 to obtain the best possible result for the Settlement Class. A significant number of Class Members
5 have shown their support of the Settlement. Lastly, *one* Class Member submitted a valid opt-out
6 and there were *no* objections filed.

7 For all of the reasons expressed herein, the Parties respectfully submit that the Settlement
8 Agreement, already approved by this Court at the preliminary approval proceedings, meets the
9 applicable criteria for this Court's final approval, and that it is fair, adequate, and reasonable and in
10 the best interest of the Settlement Class. Accordingly, final approval should be granted. California
11 Code of Civil Procedure §382; California Rules of Court Rule 3.769.

12 II. PROCEDURAL HISTORY OF THE CASE

13 On February 10, 2020, Plaintiff filed a wage and hour Class Action Complaint
14 ("Complaint") alleging cause of action for failure to pay overtime wages, failure to pay minimum
15 wage, failure to provide meal period or compensation in lieu thereof, failure to pay all earned
16 wages at termination/resignation, failure to provide accurate wage statements and violation of
17 Business and Professions Code § 17200 et seq. Thereafter, on August 4, 2020, Plaintiff filed a
18 First Amended Complaint ("FAC") to add a cause of action under the Private Attorneys General
19 Act ("PAGA"). The Complaint and FAC will be referred to as the "Litigation."

20 In the Litigation, Plaintiff alleges, *inter alia*, that Defendant failed to pay overtime wages,
21 failed to pay minimum wage, failed to provide meal periods or compensation in lieu thereof, failed
22 to pay wages upon termination/resignation, failed to provide compliant accurate itemized wage
23 statements, violated the California Business and Professions Code § 17200, et seq. and violated the
24 PAGA for the asserted Labor Code violations. Defendant denies each of the allegations asserted in
25 the Litigation, has repeatedly asserted and continues to assert defenses to Plaintiff's claims and
26 contentions, and expressly denies that it engaged in any wrongdoing or has any liability arising out
27 of any of the facts or conduct alleged in the Litigation.

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1 Class Counsel engaged in formal and informal discovery which yielded information and
2 documents concerning the claims set forth in the Litigation, such as obtaining a random sampling
3 of time and payroll records for Class Members, time and payroll records for Plaintiff, Defendant's
4 Collective Bargaining Agreement(s) ("CBA"), total number of Class Members during the relevant
5 class period, number of shifts for class members during the relevant class period, the average
6 hourly rate for Class Members, etc. Plaintiff also interviewed Class Members who worked for
7 Defendant. Furthermore, counsel for the Parties have investigated the law as applied to the facts
8 discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential
9 damages claimed by Plaintiff.

10 Counsel for the Parties engaged in extensive discussions about the strengths and
11 weaknesses of the claims and defenses. Plaintiff and Defendant undertook extensive mediation
12 efforts on June 3, 2021, with Marc J. Feder, Esq. ("Mr. Feder"), a well respected mediator of wage
13 and hour class actions. Ultimately, the mediation process with Mr. Feder resulted in the Parties
14 reaching the Settlement of the claims asserted in the Litigation. The settlement negotiations were at
15 arm's length and, although conducted in a professional manner, were adversarial.

16 The Parties concluded that there were benefits associated with settling the Litigation.
17 Specifically, the Parties concluded, after taking into account the sharply disputed factual and legal
18 issues involved in this Litigation, such as Defendant's contention that there were exemptions under
19 the CBA for overtime and meal periods, the risks associated with further prosecution, the
20 substantial benefits to be received pursuant to the compromise and settlement of the Litigation as
21 set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best
22 interest of Plaintiff, the proposed Class, and Defendant, and is fair and reasonable.

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1 **III. TERMS OF THE SETTLEMENT**

2 The key terms of the settlement are as follows:

- 3 ● Defendant will stipulate, for purposes of this settlement only, to certification of a
4 Settlement Class defined as: All non-exempt hourly employees of Defendant who
5 performed work in the State of California at any time during the Class Period, who
6 have not already released claims through a separate individual agreement or are not
7 covered by any prior court approved class action settlement during the Class Period
8 of February 10, 2016 to September 16, 2021 ("Class Period").
- 9 ● Defendant will pay a maximum of \$750,000.00, which is referred to herein as the
10 Settlement Amount or Gross Settlement Fund. The Settlement Amount is non-
11 reversionary.
- 12 ● Defendant's portion of employer taxes shall be paid Defendant separately and in
13 addition to the Settlement Amount.
- 14 ● Class Members who wish to participate in the settlement, i.e., those who do not
15 timely and validly request to be excluded from the Settlement ("Participating Class
16 Member"), will be paid their pro-rata share based on the number of Eligible
17 Workweeks they worked during the Class Period.
- 18 ● In addition, each Class Member who is a PAGA Group Member during the period
19 of February 10, 2019 to September 16, 2021 ("PAGA Period") will be paid a pro-
20 rata share of the \$5,000.00 allocated for PAGA penalties to PAGA Group Members
21 based on a proportional share of the Eligible Workweeks they worked during the
22 PAGA Period. Class Members who are PAGA Group Members will not be
23 permitted to exclude themselves from the PAGA claim portion of the Settlement.
- 24 ● The Administrative Costs for the administrative services provided by the Claims
25 Administrator, CPT Group, Inc., shall not to exceed \$7,700.00 and will be paid out
26 of the Settlement Amount.
- 27 ● Class Counsel will apply for, and Defendant will not oppose, attorney's fees not to
28 exceed \$250,000.00, which represents approximately one-third of the Gross

1 Settlement Amount and litigation Costs not to exceed \$9,381.07. Attorney's fees
2 and costs will be paid from the Settlement Amount.

- 3 • Class Counsel will apply for, and Defendant will not oppose, an enhancement
4 payment of \$7,500.00 to Plaintiff. The enhancement payment will be paid out of
5 the Settlement Amount.
- 6 • Defendant has agreed to pay \$20,000 as PAGA penalties, seventy-five percent
7 (75%) or \$15,000.00 of which will be paid to the LWDA and twenty-five percent
8 (25%) or \$5,000.00 of which will be distributed, on a pro-rata basis, to PAGA
9 Group Members. The PAGA penalties will be paid out of the Settlement Amount.

10 As set forth below, the Settlement meets all the criteria for final approval because it is fair,
11 adequate and reasonable.

12 **IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS**
13 **ACTION SETTLEMENT BECAUSE IT IS FAIR AND REASONABLE**

14 "In approving the settlement of a class action, a court exercises its discretion in determining
15 whether the settlement is fair and reasonable." *Oldham v. California Capital Fund, Inc.* (2003)
16 109 Cal.App.4th 421, 431; see also *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224,
17 244-245. A presumption of fairness exists where: (1) the settlement is reached through arms'-
18 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
19 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
20 is small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (citing *Newberg on Class Actions*
21 §11.41 (3rd ed. 1992)); see also *Wershba* 91 Cal.App.4th at 245; *Chavez v. Netflix, Inc.* (2008) 162
22 Cal.App.4th 43, 52. Where there is no extrinsic evidence of fraud or collusion, the Court should
23 assume that settlement negotiations were conducted in good faith. *Newberg on Class Actions* (3rd
24 ed.), section 11.51, p. 11-126).

25 **A. The Settlement Is The Product of Arm's-Length And Informed Negotiations**

26 This Settlement was reached following extensive, arms-length negotiations before mediator
27 Marc J. Feder, Esq. Although conducted in a professional manner, the Settlement negotiations
28 were adversarial and contentious. The lengthy and substantial negotiations between the Parties

1 took into account the strengths and weaknesses of the claims of the Settlement Class, and potential
2 defenses to the wage and hour claims.

3 Class Counsel and Defendant's counsel aggressively advanced the Parties' respective
4 positions throughout the Litigation and settlement negotiations. The negotiations were conducted,
5 as discussed herein, after considerable investigation and analysis by capable and experienced Class
6 Counsel. Class Counsel and Plaintiff have concluded that it is in the best interest of the Class
7 Members to settle this class action for the substantial benefits obtained for the Class Members
8 under the Settlement Agreement, in light of the risks associated with obtaining class certification
9 and the costs inherent in extensive additional discovery. As such, the Parties ultimately recognized
10 that the inherent expense, delay and uncertainty of trial and the numerous potential appellate issues
11 raised in this case present the real danger that an ultimate victory by either side may be of
12 substantially less value than the Settlement.

13 **B. The Settlement Was Reached After Extensive Investigation, Discovery, And**
14 **Analysis of Class Claims**

15 Prior to mediation, the Parties diligently engaged in formal and informal discovery which
16 yielded information and documentation concerning the claims set forth in the Litigation, such as
17 obtaining sampling of time and payroll records for the class, Defendant's CBA's, policies and
18 procedures, total number of class members during the relevant class period, the average hourly
19 rate, etc. Plaintiff also interviewed Class Members who worked for Defendant. Furthermore,
20 counsel for the Parties have investigated the law as applied to the facts discovered regarding the
21 alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by
22 Plaintiff. While counsel may disagree on the facts and legal implications thereof, counsel on both
23 sides have completed sufficient work to ensure that the presentation made to the Court in the
24 course of proposing the Settlement at issue is complete, thorough, and accurate.

25 Based on this thorough investigation of the facts, Class Counsel believes that the
26 Settlement Amount of \$750,000.00 is not only within the reasonable standard, but constitutes an
27 excellent result as it has been shown by the number of class members that have participated in the
28 Settlement. Furthermore, in light of the inherent difficulty and risks of litigation, the proposed
settlement terms herein are eminently reasonable. It is equally well settled that a proposed

1 settlement is not to be measured against a hypothetical ideal result that might have been achieved.
2 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150
3 (quoting *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, with
4 approval: "This court has aptly held that it is the very uncertainty of outcome in litigation and
5 avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed
6 settlement is not to be judged against a hypothetical or speculative measure of what might have
7 been achieved by the negotiators."); *Cotton v. Hinton* (5th Cir. 1977) 559 F.2d 1326, 1330 ("The
8 trial court should not make a proponent of a proposed settlement 'justify each term of settlement
9 against a hypothetical or speculative measure of what concessions might have been gained;
10 inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.'") (quoting
11 *Milstein v. Werner* (S.D.N.Y. 1972) 57 F.R.D. 515, 524-525).

12 Given the nature of any litigation, especially class action litigation, subsequent litigation
13 would involve extensive further written discovery, numerous depositions, expert discovery, motion
14 practice related to class certification, discovery disputes, and summary judgment and/or summary
15 adjudication motions. Moreover, proving any individual damages would be a lengthy and
16 burdensome process. Thus, after carefully analyzing Plaintiff's claims, Class Counsel and named
17 Plaintiff concluded that this Settlement is in the best interest of the Class Members.

18 **C. Plaintiff's Case Contains Risks**

19 In contrast to the certain financial benefits that the proposed Settlement provides to the
20 Settlement Class, continued litigation of this action would involve substantial risks for the
21 Settlement Class. Defendant has asserted a number of potentially dispositive defenses and could
22 potentially pursue summary judgment with regard to one or more of these defenses should the
23 litigation continue.

24 While Class Counsel and Plaintiff believe that it is possible that they would ultimately have
25 prevailed at class certification and trial in this case, the result is highly uncertain. Plaintiff must
26 therefore recognize that the issue of liability is problematic and the risks of litigation are
27 substantial. If Plaintiff was unable to prevail on his theories, a judgment would be entered for
28 Defendant, and the Settlement Class would receive nothing. The proposed Settlement, in contrast,

1 offers significant value to the Settlement Class that fairly and reasonably accounts for the very real
2 risks of continued litigation.

3 **D. The Settlement Provides Substantial Benefits To The Settlement Class**

4 The relief provided to the Settlement Class by this Settlement is significant and substantial.
5 As noted above, 99.78% of the Class Members have agreed to participate in the settlement.
6 Accordingly, the Settlement Agreement provides a significant benefit to the Settlement Class.

7 **E. Class Counsel Are Experienced Class Action Litigators**

8 Class Counsel are respected members of the California Bar with strong records of vigorous
9 and effective advocacy of their clients, and they are experienced in handling complex class action
10 litigation. Both Class Counsel and Plaintiff were prepared to litigate the claims in this action, but
11 they strongly and unequivocally support the proposed Settlement as being in the best interest of the
12 Settlement Class based on the circumstances referenced herein.

13 Class Counsel are experienced in wage and hour class action litigation. The Nourmand
14 Law Firm, APC is currently acting as lead counsel in at least fifteen other wage and hour class
15 actions. Class Counsel have been appointed class counsel on several wage and hour class actions
16 and one FACTA class action. Thus, Class Counsel is sufficiently experienced and qualified to
17 evaluate the Class Members' claims and viability of Defendant's defenses.

18 In the opinion of Class Counsel, the recovery for each class member is well within the
19 acceptable range for this type of action. This Settlement is also favorable given that the Settlement
20 Class will promptly receive compensation rather than facing uncertainties inherent in further
21 litigation and waiting for years for this action to be tried. It is also telling that the Settlement Class
22 have overwhelmingly supported the settlement on the terms set forth in the Settlement Agreement.
23 Based on all considerations, this Settlement is highly favorable and is in the best interests of the
24 Settlement Class.

25 **F. There Was One Valid Opt-Out and No Objections**

26 A lack of or small number of objections and opt-outs likewise indicates that the Settlement
27 is fair, reasonable, and adequate. *Laskey v. Int'l Union* (6th Cir. 1981) 638 F.2d 954, 957
28 ("Significantly, only seven out of 109 made any kind of objection and the objections made

1 indicated these employees did not want to compromise at all but wanted full benefits, rather than
2 making any complaint directed to the adequacy of their legal representation”); *Shlensky v. Dorsey*
3 (3rd Cir. 1979) 574 F.2d 131, 148 (concluding that settlement was fair where, among other things,
4 “very few” class members objected); *In re SmithKline Beckman Corp. Sec. Litig.* (E.D. Pa. 1990)
5 751 F. Supp. 525, 530 (“The Court ordered that class members be notified by mail and publication,
6 and not one has lodged an objection to the settlement’s terms. Both the utter absence of objections
7 and the nominal number of shareholders who have exercised their right to opt out of this litigation
8 militate strongly in favor of approval of the settlement”). In the instant matter, there was *one* opt-
9 out and *no* objections filed out of 453 Class Members which weigh strongly in favor of final
10 approval.

11 In sum, all relevant factors support final approval of the settlement. The Parties negotiated
12 at arm’s-length and in good faith under the supervision of an experienced and well-respected
13 mediator. Class Counsel also engaged in extensive investigation, discovery, and analysis of class
14 claims. Moreover, Class Counsel, who are experienced class action litigators, strongly believe that
15 this Settlement provides an excellent result to the Settlement Class. Lastly, there were no
16 objections filed and one valid opt-out militate strongly in favor of approval of the Settlement. For
17 the foregoing reasons, this Court should conclude that under the circumstances of this case, the
18 proposed settlement is fair, adequate, and well within the range of reasonableness.

19 **V. THE PAYMENT TO THE CLAIMS ADMINISTRATOR IS REASONABLE**

20 The Claims Administrator has fulfilled its duty to prepare and send the Notice to all
21 Settlement Class members, in English and Spanish. Moreover, the Claims Administrator has also
22 fulfilled its duty to provide a report detailing the following: (1) total number of members of the
23 Settlement Class who were sent the notice; (2) total number of members of the Settlement Class
24 who timely requested to opt-out from the Settlement; and (3) total number of members of the
25 Settlement Class who submitted timely objections to the Settlement. The Claims Administrator
26 has stated that a fee of \$7,700.00 is the total cost of administration of the Settlement, which is fair
27 and reasonable. Plaintiff and Class Counsel request that the Court approve payment of the final
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1 total cost of administration to CPT in the amount of \$7,700.00, to be deducted from the Settlement
2 Amount.

3 **VI. THE NAMED PLAINTIFF SHOULD BE AWARDED THE REQUESTED**
4 **ENHANCEMENT AWARD**

5 Plaintiff and Class Counsel request that the Court finally approve an enhancement award of
6 \$7,500.00 for the time, effort, and the risk he undertook in participating in this Litigation. Because
7 a named plaintiff is an essential ingredient of any class action, an enhancement award is
8 appropriate to induce individuals to step forward and assume the burdens and obligations of
9 representing the class. In deciding the amount of an enhancement award for a class representative,
10 relevant factors include the actions the plaintiff has taken to protect the interests of the class, the
11 degree to which the class has benefitted from those actions, and the amount of time and effort the
12 plaintiff expended in pursuing the litigation. *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1015.

13 Particularly in employment class actions, such as discrimination or wage claims, named
14 plaintiff should be entitled to an enhancement award as an incentive to take the risks associated
15 with pursuing employment claims on behalf of other employees. "We also think there is
16 something to be said for rewarding those drivers who protect and help to bring rights to a group of
17 employees who have been the victims of discrimination." *Thornton v. East Texas Motor Freight*
18 (6th Cir. 1974) 497 F.2d 416, 420. The guiding standard in determining the amount of an incentive
19 award is to evaluate the special circumstances, the personal risk attached to being a named
20 plaintiff, the time spent assisting in the litigation, the factual expertise provided, other burdens
21 suffered by the plaintiffs and the recovery. *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F.Supp. 185,
22 201. Where the plaintiff is a "present or past employee whose present position or employment
23 credentials or recommendation may be at risk by reason of having prosecuted the suit, who
24 therefore lends his or her name and efforts to the prosecution of litigation at some personal peril, a
25 substantial enhancement award is justified." *Id.*

26 In the instant case, the named Plaintiff assisted Class Counsel on many occasions with the
27 investigation and prosecution of this action. Plaintiff contributed documents to Class Counsel,
28 spent numerous hours educating Class Counsel on the inner workings of Defendant's organization,

1 time keeping and meal period practices, and Plaintiff participated in a full day mediation. The
2 amount sought for the class representative is in line with the enhancement awards in similar wage
3 and hour class actions. Further, Defendant supports the requested award of \$7,500.00 for Plaintiff.
4 As such, the enhancement award requested is intended to compensate Plaintiff for the critical role
5 he played in this case and the substantial time, effort, and risk he undertook to help secure the
6 result obtained on behalf of the Settlement Class is well deserved and warranted. Furthermore,
7 Plaintiff has provided Defendant a general release of his claims in exchange for the enhancement
8 fee requested. Please see declaration from Plaintiff in support final approval of the Settlement.

9 **VII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE FAIR,**
10 **REASONABLE, AND APPROPRIATE**

11 Class Counsel's application for an award of attorneys' fees in an amount of approximately
12 33.33% of the settlement value created on behalf of the Settlement Class is reasonable and fair.
13 The requested fee falls on the lower end of the Ninth Circuit's historical benchmark for attorneys'
14 fees of 20% to 50% of a common fund and is fair compensation for undertaking complex, risky,
15 expensive, and time-consuming litigation on a contingent basis.

16 Further, through the notice sent to the Settlement Class, all members of the Settlement
17 Class were advised of the amount of attorneys' fees requested and no member of the Settlement
18 Class objected to the Settlement and request for attorneys' fees. This is evidence of the Settlement
19 Class' belief that the requested attorney fee percentage is reasonable.

20 The requested fees are extremely reasonable and the results achieved for the Settlement
21 Class are excellent. Class Counsel respectfully requests that this Court enter an Order to that
22 effect. Class Counsel seek a fee award calculated as a percentage of the total value of the
23 Settlement Amount, for the successful prosecution and resolution of this action. California state
24 and federal courts have recognized that an appropriate method for determining an award of
25 attorneys' fees is based on a percentage of the total value of benefits to the Settlement Class by the
26 settlement. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480; *Serrano v. Priest* (1977) 20
27 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West,*
28 *Inc.* (9th Cir. 1977) 577 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust

1 enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries so
2 that the active beneficiary does not bear the entire burden alone.” *Id* at 769.

3 The California Supreme Court in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, a
4 wage and hour class action wherein class counsel obtained a \$19 million non-reversionary
5 settlement on behalf of the class, approved the use of the percentage of fund or common fund
6 method to award 33.33% of the settlement amount or \$6,333,333.33 to class counsel for attorneys’
7 fees. The Court stated: “[w]hatever doubts may have been created by *Serrano III*, supra, 20 Cal.3d
8 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage
9 method to calculate a fee in a common fund case, where the award serves to spread the attorney fee
10 among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join
11 the overwhelming majority of federal and state courts in holding that when class action litigation
12 established a monetary fund for the benefit of the class members, and the trial court in its equitable
13 powers awards class counsel a fee out of that fund, the court may determine the amount of a
14 reasonable fee by choosing an appropriate percentage of the fund created. The recognized
15 advantages of the percentage method - including relative ease of calculation, alignment of
16 incentives between counsel and the class, a better approximation of market conditions in a
17 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
18 unnecessarily prolonging the litigation [] convince us the percentage method is a valuable tool that
19 should not be denied our trial courts.” 1 Cal.5th 480, 503, emphasis added.

20 Under the “common fund” doctrine, “a litigant or a lawyer who recovers a common fund
21 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
22 from the fund as a whole.” *Boeing*, supra, 444 U.S. at 478. The Supreme Court explained: “The
23 doctrine rests on the perception that persons who obtain the benefit of a lawsuit without
24 contributing to its costs are unjustly enriched at the successful litigants expense. Jurisdiction over
25 the fund involved in the litigation allows a court to prevent this inequity by assessing attorney’s
26 fees against the entire fund, thus spreading fees proportionately among those benefitted by the
27 suit.” *Id.*

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1 Thus, the common fund doctrine ensures that each member of the Settlement Class
2 contributes proportionately to the payment of the attorneys' fees recovered from monetary
3 payments that the prevailing party recovered in the lawsuit. "Put another way, in common fund
4 cases, a variant of the usual rule applies and the winning party pays his or her own attorneys' fees;
5 in fee-shifting cases, the usual rule is rejected and the losing party covers the bill." *Stanton v.*
6 *Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt. L.P.* (9th Cir. 2002) 301 F.3d
7 1115.

8 The common fund doctrine is predicated on the principle of preventing unjust enrichment.
9 When a litigant's efforts create or preserve a fund from which others derive benefits, the court may
10 spread litigation costs proportionately among all the beneficiaries to compensate those who created
11 the fund. Further, the *Rutter Group California Practice Guide: Civil Trials and Evidence*
12 acknowledges the applicability of the common fund doctrine and describes it as follows: "When
13 the lawsuit results in the recovery of a fund or property benefitting others as well as the plaintiff
14 (e.g., a class action), the court has inherent equitable power to order Plaintiff's attorney's fees paid
15 out of the common fund or property." See *Serrano*, supra, 20 Cal.3d at 35 and *Laffitte*, supra, 1
16 Cal.5th at 503.

17 Such "fee spreading" assures that all those benefitted by the litigation pay their fair share of
18 obtaining the recovery. *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26 ("Percentage
19 fees have traditionally been allowed in such common fund cases.") The California Supreme Court
20 has approved of awarding fees as a percentage of the settlement. *Laffitte*, supra, 1 Cal.5th at 503;
21 *Serrano*, supra, 20 Cal.3d at 35.

22 Since *Serrano*, there has been a "groundswell of support for mandating the percentage-of-
23 the-fund approach in common fund cases." *Id.* *Bell v. Farmers Ins. Exchange* (2004) 115
24 Cal.App.4th 715, 726, 765 approved a 25% fee award in a wage and hour class case. *Consumer*
25 *Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387 discussed the
26 common fund doctrine developed by the Supreme Court: "The common fund doctrine, frequently
27 applied in class actions when the efforts of the attorney for the named class representatives produce
28 monetary benefits for the entire class, to allow a party preserving or recovering a fund for the

1 benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the
2 fund or the property itself or directly from other parties enjoying the benefit." *Id* at 397. Under
3 these principles, a percentage of the common fund fee award is proper based on the Settlement
4 Amount of \$750,000.00.

5 For Class Counsel, the fees here were wholly contingent in nature and the case presented
6 far more risk than the usual contingent fee case. There was the prospect of the enormous cost
7 inherent in class action litigation, as well as a long battle with Defendant. That prospect has
8 previously become reality, in both trial courts and the Court of Appeal in other wage and hour class
9 litigation. Class Counsel risked not only a great deal of time, but also a great deal of expense to
10 ensure the successful litigation of this action on behalf of all Class Members. Based upon the
11 foregoing, Class Counsel respectfully requests that the Court award attorneys' fees in the amount
12 of \$250,000.00 and litigations costs in the amount of \$9,381.07.

13 **A. An Award of Attorneys' Fees as Requested is Appropriate Under The**
14 **Lodestar Method.**

15 Under either theory of awarding fees, the case that should govern the court's decision is
16 *Lealao*, supra, 82 Cal.App.4th 19. *Lealao* stands for the proposition that the court-awarded
17 attorneys' fees should approximate what counsel could get on the free market for the same
18 services. *Id.* at 50. Specifically, *Lealao* holds that if the Court sets fees under a lodestar, the
19 multiplier should consider what counsel would have earned on the free market. The free market is
20 determined by the percentage of the common fund, not the lodestar amount. *Id.* Accordingly,
21 whatever method this Court uses to set fees, the Court should look to what the free market would
22 bear under the circumstances. Even if the Court awards fees under the lodestar method, under
23 *Lealao*, the lodestar fees should be adjusted by a multiplier to reflect the percentage of the fund. *Id.*
24 at 19 and 50.

25 Here, Class Counsel earned the requested fee. At least 318.5 hours will have been
26 expended by The Nourmand Law Firm, APC. The issue in this motion is not why the Court should
27 award a fee commensurate with 33.33% of the fund, but why the Court should not award such a
28 fee. The Settlement comes after productive litigation, all the while when the viability of wage and

1 hour class actions continue to be questioned. These facts, as well as others discussed below,
2 warrant approval of the requested fee.

3 Under the lodestar method, a base fee amount is calculated from a compilation of time
4 reasonably spent on the case and the reasonable hourly compensation of the attorney. The base
5 amount is then adjusted in light of various factors. *Serrano*, supra, 20 Cal 3d at 48.

6 To summarize Class Counsel's lodestar request, The Nourmand Law Firm, APC will have
7 worked approximately 318.5 hours litigating this case and brining it to fruition. (please see infra
8 for breakdown of hours). Class Counsel's hourly rate in this case for Michael Nourmand is
9 \$750.00 per hour; and James A. De Sario is \$500.00 per hour. At Class Counsel's hourly rate, this
10 results in a total lodestar amount of \$191,375.00 (128.5 hours x \$750/hr. = \$96,375.00; 190 hours
11 x \$500/hr. = \$95,000.00).

12 **B. Class Counsel's Hourly Rate**

13 At the requested rates for Class Counsel, this results in a total lodestar amount of
14 \$191,375.00. A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill
15 and experience in the relevant community. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084,
16 1095. The Court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
17 attorney's skill and experience, the nature of the work performed, the relevant area of expertise and
18 the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App.
19 4th 629, 632.

20 One difficulty in determining the hourly rate of attorneys of similar skill and experience in
21 the relevant community is the scarcity of hourly fee paying clients in class action litigation. As a
22 practical matter, few if any consumers pay attorneys' fees on an hourly basis for such extensive
23 litigation, and thus retainer agreements in such cases are based on a contingency fee relationship.
24 Although there is no customary billing rate, the nature of class action work should be strongly
25 considered by the court. Courts have upheld rates as high as \$450⁴ per hour (in 1993) in
26 employment matters. *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal. App. 4th 976,
27 *overruled on other grounds*.

28 _____
⁴ Adjusted for inflation, \$450 in 1993 equals over \$700 in 2019.

1 A survey conducted by the National Law Journal for the year 2002 provides a sample of a
2 billing rate for California Lawyers. In that survey, six California firms provided their hourly
3 billing rates. Of those six firms, five regularly charge in excess of \$500.00 per hour for their
4 partners. In fact, four of the firms charge as high as \$600.00, \$620.00, \$650.00, and up to \$850.00
5 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County
6 and San Diego County and are the types of firms that Plaintiff's counsel regularly opposes in these
7 class action cases. (See the National Law Journal Survey attached as Exhibit "10" to Declaration
8 of James A. De Sario in Support of Final Approval). The only difference is that these defense
9 attorneys are paid on a monthly basis and do not have to advance any costs on a case.

10 Finally, Class Counsel attach the Declaration of Richard Pearl in support of the Motion for
11 Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*, Case No.
12 BC441237, dated January 4, 2011. (See Declaration Richard Pearl attached as Exhibit "11" to
13 Declaration of James A. De Sario in Support of Final Approval). Mr. Pearl specializes in issues
14 related to cost-award attorney's fees, including the representation of parties in fee litigation and
15 appeals, serving as an expert witness, mediator and arbitrator in disputes concerning attorney's fees
16 and related issues. Mr. Pearl is also the author of California Attorney's Fee Awards (3d ed Cal.
17 CEB 2010), as well as the author of the Second Edition, years 1994 through 2008. He has also
18 authored numerous other publications on attorney's fees, as set forth in his Declaration. (*Id.* at
19 ¶¶4-5).

20 Mr. Pearl has reviewed the comparable hourly rates of attorney fees in California. He
21 confirms that courts have approved hourly rates of attorneys as follows.

- 22 • Rates of up to \$875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior
23 Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- 24 • Rates of up to \$750.00 in *Kashmiri et al. v. Regents of UC*, San Francisco County
25 Superior Court (before applying a 3.7 multiplier); and
- 26 • Rates of up to \$750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*,
27 San Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25
28 multiplier). *Id.* at Pages 4 and 5.

1 Additionally, Mr. Pearl has reviewed numerous declarations, depositions and surveys of
2 legal rates on a non-contingent basis for the year 2009 and found hourly rates of up to \$775.00,
3 \$795.00, \$800.00, \$855.00, \$950.00, etc. (*Id.* at pages 6-12). These are non-contingent rates where
4 payment in full is expected promptly upon billing. (*Id.* at page 13). These rates indicate that the
5 requested hourly rate, as well as a multiplier, is reasonable in the case-at-hand in view of Class
6 Counsel's experience, the result achieved in this case and the contingent nature of the fees in class
7 action cases.

8 In sum, the requested attorneys' fees are reasonable. It required an attorney with great
9 skills and financial backing as it involved a highly specialized area of employment law that
10 requires skilled and experienced attorneys. To obtain such an attorney on the free market, a client
11 must pay appropriate compensation. Therefore, Class Counsel's requested rate is fair and
12 reasonable.

13 **C. Class Counsel's Hours Spent on the Case**

14 The Nourmand Law Firm, APC will have spent approximately 318.5 hours litigating this
15 case and bringing it to fruition. This includes what Class Counsel collectively expects to expend in
16 administering the Settlement including preparation for and attending the final approval hearing.
17 Specifically, the following increments of time were spent by The Nourmand Law Firm, APC from
18 the time meeting Plaintiff through the present:

19 (1) Approximately 31.5 hours were spent on this case pre-litigation, which
20 involved the investigation of the matter, including meeting with Plaintiff,
21 reviewing Defendant's policies, and requesting and reviewing Plaintiff's
22 time and pay records, personnel files, in addition to trying to locate other
23 witnesses to obtain their narrative accounts of Defendant's practices for the
24 purpose of determining commonality of practices, typicality of claims, and
25 other elements to gauge the certifiability and manageability of the potential
26 action.

27 (2) Approximately 24.4 hours were spent complying with the prerequisites in
28 connection with Plaintiff's cause of action under the Labor Code Private

1 Attorneys' General Act of 2004 ("PAGA"), including the preparation and
2 submission of Plaintiff's letter to the Labor and Workforce Development
3 Agency ("LWDA") and providing a copy of the same to Defendant by
4 certified mail, filing the initial Complaint against Defendant, and after it was
5 determined that the LWDA would not investigate, filing the FAC to include
6 a cause of action under PAGA against Defendant through a stipulation and
7 order.

8 (3) Approximately 10.5 hours were spent after filing the Complaint to better
9 understand Defendant's corporate structure, investigating corporate
10 affiliates, and determine which individuals, if any, could be individually
11 liable and may be added as additional defendants.

12 (4) Approximately 19.3 hours were spent negotiating the parameters and scope
13 of an early mediation, agreeing to a qualified mediator, and determining the
14 necessary informal discovery that would be required from Defendant
15 beforehand.

16 (5) Approximately 72.2 hours were spent performing informal discovery,
17 including obtaining and reviewing a representative sampling of time and
18 payroll records; obtaining data as to workweeks, pay periods and average
19 hourly rate for the putative class; Defendant's CBA's and relevant policies;
20 obtaining and reviewing expert consultant reports and analysis of the
21 records, which included exposure models and violation rates for the asserted
22 claims.

23 (6) Approximately 42.1 hours were spent working with Plaintiff to identify
24 additional Class Members as well as trying to obtain information regarding
25 their work experiences with Defendant, which included creating a
26 questionnaire with which to interview Class Members and utilizing this
27 information at mediation.
28

- 1 (7) Approximately 28.5 hours were spent preparing for and attending a full day
2 of mediation, including preparation of a mediation brief and damages model
3 with the consultation of expert consultants.
- 4 (8) Approximately 29.4 hours were spent drafting, negotiating and finalizing the
5 Memorandum of Understanding, as well as a long form Settlement
6 Agreement, Class Notice, workweek dispute form; obtaining bids from
7 claims administrators and selecting the most reasonable bid.
- 8 (9) Approximately 33.2 hours were spent preparing the Motion for Preliminary
9 Approval and supporting declaration; reviewing and analyzing the Court's
10 initial tentative and meeting and conferring with opposing counsel regarding
11 addressing the Court's concerns in light of the Court's initial tentative
12 ruling; drafting an Amendment to the Stipulation of Class Action Settlement
13 ("Amendment") Settlement Agreement, revisions to the Class Notice,
14 workweek dispute form, drafting an opt-out form; negotiating and finalizing
15 the Amendment to the Settlement Agreement and accompanying documents
16 with Defendant's Counsel; fully executing the Amendment to the Settlement
17 Agreement; and providing supplemental briefing and declaration to the
18 Court in support of the Motion for Preliminary Approval.
- 19 (10) Approximately 27.4 hours working with the Claims Administrator on
20 formatting and finalizing the Class Notice, including reviewing, analyzing,
21 and making changes to the translation of the Class Notice into Spanish;
22 reviewing updates on administration as to weekly reports; working with the
23 Claims Administrator and Plaintiff for declarations in support of final
24 approval; drafting the Motion for Final Approval and proposed Order
25 Granting Final Approval.

26 The aforementioned increments of time amount to 318.5 hours spent by Class Counsel in
27 furtherance of the Litigation. Additionally, the over three hundred (300) hours expended by the
28 lawyers and staff members of The Nourmand Law Firm, APC in connection with this Litigation is

1 only a calculation of efforts made thus far and does not include the time that will be spent
2 preparing for and attending the final approval hearing, and updating this Court regarding the
3 disposition of uncashed checks. Thus, Class Counsel requests that the Court find that these hours
4 are reasonable in this litigation.

5 The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed
6 time records are not required. An attorney's testimony alone may suffice. "Testimony of an
7 attorney as to the number of hours worked on a particular case is sufficient evidence to support an
8 award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi* (1986)
9 182 Cal.App.3d 553, 559. Reasonable hours include, in addition to time spent during litigation,
10 the time spent before the action is filed, including time spent interviewing the clients, investigation
11 of the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*
12 (1980) 447 U.S. 54, 62. Further, the fee award should include fees incurred to establish and defend
13 the attorney's fee claim. *Serrano v. Priest* (1982) 32 Cal. 3d 621, 639.

14 **D. A Multiplier of The Lodestar Should Be Awarded To Account For The**
15 **Successful Result, The Contingency Risk of Litigation And The Percentage of**
Fees Class Counsel Would Have Received On The Free Market

16 Once the Court establishes the lodestar amount, it may enhance the fee award by a
17 multiplier in order to make an appropriate fee award. *Serrano*, 20 Cal.3d at 48. The pertinent
18 factors include the difficulty of the questions involved and the skill in presenting them, the
19 contingent nature of the fee award, the extent to which the litigation precluded other employment,
20 and the percentage-of-the-fund the attorney would have received on the fair market. *Id.* However,
21 this list is not exhaustive and the Court can consider other factors it deems important in setting the
22 multiplier. *Id.* at 40. A limitation in setting the multiplier is that the Court cannot duplicate factors
23 already included in the lodestar. *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1139.

24 In applying the multiplier, *Newberg on Class Actions* states that "[m]ultipliers ranging from
25 one to four frequently are awarded in common fund cases when the lodestar method is applied. A
26 large common fund award may warrant an even larger multiplier." *Newberg on Class Actions* Vol.
27 3, §14.03, p. 14-5, Dec. 1992. Applying these factors to the instant action demonstrates that Class
28 Counsel should be awarded fees based upon a multiplier of approximately 1.31.

1 1. **The Court Should Increase The Multiplier Based On A Percentage-Of-**
2 **The-Fund To Ensure That The Fee Awarded Is Within The Range of**
3 **Fees Freely Negotiated In The Legal Marketplace In Comparable**
4 **Litigation**

5 If the members of the Settlement Class paid the fees that the market would bear, they would
6 pay a fee of 33.33% - 50% of any recovery. Since this is the market rate, *Lealao* indicates that the
7 fee should be enhanced to reflect what the members of the Settlement Class would pay on the open
8 market. *Lealao* held a trial court should award lodestar fees by examining the percentage-of-the-
9 benefit and adjusting the lodestar calculation accordingly. *Id* at 49, 53. *Lealao* indicated that this
10 is an upward adjustment and should be akin to a contingency fee recovery; the court stated, “an
11 adjustment reflecting the amount of the Class recovery is not significantly different from an
12 adjustment reflecting a percentage of that amount, and California courts have evaluated a lodestar
13 as a percentage of the benefit.” *Id* at 46. The *Lealao* method appears particularly appropriate
14 because class actions generally are contingency fee cases for plaintiffs and the class action clients
15 do not expect to pay an hourly fee.

16 The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is
17 “primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of
18 nonpayment in contingency cases[.]” *Ketchum v. Moses*, supra, 24 Cal. 4th 1122, 1138. *Lealao*
19 reasons likewise that “the law should mimic the market”:

20 Given the unique reliance of our legal system on private litigants to enforce substantive
21 provisions of law through class and derivative actions, attorneys providing the essential
22 enforcement services must be provided incentives roughly comparable to those negotiated
23 in the private bargaining that takes place in the legal marketplace, as it will otherwise be
24 economic for Defendants to increase injurious behavior. [Citations]. It has therefore been
25 urged (most persistently by Judge Richard Posner) that in defining a “reasonable fee” in
26 such representative actions the law should ‘mimic the market.’ [Citations].
27 ‘In the class action context, that would mean attempting to award the fee that informed
28 private bargaining, if it were truly possible, might have reached. The simplest way for the
29 law to duplicate the bargain that informed parties would reach if urgency costs were low is
30 to look to fee award levels in actions brought by sophisticated private parties under the
31 same or comparable statutes.’ *Lealao*, supra, 82 Cal.App. 4th at 47-48.

32 2. **An Enhancement Based On A Percentage of The Fund Is Justified**
33 **Based On Factors Stated in *Lealao*.**

34 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-
35 benefit, and lack of objections by Class Members and commendable conduct by counsel. *Id* at 51.
36 These factors are present in this case. As in *Lealao*, members of the Settlement Class were notified

1 of the settlement and attorneys' fees and no members of the Settlement Class objected to the
2 settlement and request for attorneys' fees.

3 Prompt settlement cannot be used to diminish the fee or the enhancement based on a
4 percentage-of-the-fund. *Lealao* 82 Cal.App.4th at 52 [the promptness of settlement "cannot be used
5 to justify the refusal to apply a multiplier[.]"] According to *Lealao*, the Supreme Court has placed
6 "an extraordinarily high value" on settlement, and counsel should be rewarded, not punished, for
7 achieving this goal. *Id.*

8 3. The Difficulty of The Questions Involved And The Skill in Presenting 9 Them.

10 Class Counsel used a high level of skill in addressing the difficult questions presented in
11 this case, which involved the hotly debated issues of meal periods, meal premiums serving as basis
12 for wage statement and waiting time penalties, neutrality of rounding practice, etc. The proof of
13 Class Counsel's skill in this area of the law lies in the size of the settlement and the recoveries of
14 individual members of the Settlement Class. "The recovery in this case is thus a more authentic
15 indication of the value of counsel's contribution than might otherwise be true." *Id.* at 53. Thus,
16 the multiplier should be enhanced by the difficulty of the questions involved and the skill in
17 presenting them.

18 4. Contingent Risk of Litigation

19 The multiplier should be enhanced by the contingent nature of counsel's fee recovery. The
20 risks of class action cases are enormous. Litigating a wage and hour class action through trial takes
21 years and requires the investment of thousands of dollars. Litigation costs in the present case for
22 The Nourmand Law Firm, APC are \$9,381.07. Attorneys willing to undertake this risk deserve a
23 high rate.

24 Second, wage and hour laws are still developing, and change in the law always threaten to
25 wipe out the plaintiff's attorney. In fact, during the pendency of this case, numerous appellate
26 decisions have attacked the validity of class action wage and hour cases directly relevant to this
27 case, which could have significantly affected its value. It is this contingent nature of these cases
28 that justify an award when and if plaintiff's counsel is able to obtain a settlement or verdict,

1 because oftentimes no money is recovered in a case, including plaintiff's counsel's costs, let alone
2 their time.

3 **5. This Litigation Precluded Other Employment**

4 A practice can only properly litigate so many cases at one time. The requirements of this
5 were significant, requiring at least 318.5 hours by The Nourmand Law Firm, APC of attorney time.
6 Class Counsel was most definitely precluded from other employment. This factor should be
7 considered in enhancing the multiplier.

8 **VIII. CONCLUSION**

9 The Settlement is fair, adequate and reasonable. It will result in substantial payments to
10 members of the Settlement Class and was achieved through extensive, arms-length negotiations by
11 Class Counsel who are experienced in wage and hour class action litigation. For the foregoing
12 reasons, Class Counsel and Plaintiff request that the Court grant final approval of the Settlement
13 and sign the proposed Order filed concurrently herewith.

14 *Respectfully Submitted,*

15 DATED: January 18, 2023

THE NOURMAND LAW FIRM, APC

16
17 By:



Michael Nourmand, Esq.
James A. De Sario, Esq.
Attorneys for Plaintiffs

DECLARATION OF JAMES A. DE SARIO

I, James A. De Sario, say and declare, as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am associate of The Nourmand Law Firm, APC and counsel for ELBERT MCCRAY ("Plaintiff") and Plaintiff Class. As such, I am familiar with the file in this matter and if called as a witness I could and would competently testify to the following facts of my own personal knowledge.

2. Plaintiff on behalf of himself and on behalf of the preliminarily approved putative class, seeks final approval of a proposed settlement of this wage-and-hour class action against defendant, LOS ALAMITOS RACE COURSE ("Defendant"). As this Court previously found in preliminarily approving the settlement under the terms set forth in the Stipulation of Class Action Settlement and Amendment to Stipulation of Class Action Settlement ("Settlement" or "Settlement Agreement") October 24, 2022, the Settlement Agreement provides a substantial benefit to the Settlement Class in the form of monetary compensation. Information that has surfaced since this Court preliminarily approved the Settlement only reiterates that it is fair, reasonable and adequate.

3. Having been fully apprised of the Settlement terms, it is now clear that the Settlement Class overwhelmingly support the Settlement. The most important fact evidencing the Settlement Class' support for the Settlement is that *one* Class Member has opted out of the Settlement and *no* Class Member has objected to the Settlement, thereby 99.78% of the Class Members have agreed to participate in the Settlement. Please see Declaration of Veronica Olivares from CPT.

4. The Settlement is plainly fair, reasonable and adequate in light of the probable outcome of further litigation relating to liability and damages issues. As this Court knows from the Motion for Preliminary Approval, the Parties were able to reach a Settlement resolving the disputes in this matter after a hotly contested but professional mediation before a well respected mediator in the area of wage and hour class action, Marc J. Feder, Esq. Because the Settlement Agreement was reached at arms-length before a well-respected mediator, the Court can presume,

1 under California law, that it is non-collusive, fair and reasonable. Each side vigorously advocated
2 for its position, and at the conclusion of mediation, an arms-length Settlement was reached.

3 5. In summary, Class Counsel have achieved an excellent result in this litigation,
4 embodied in the Settlement Agreement. The proposed class settlement provides substantial
5 monetary benefits to Class Members and is a product of diligent, aggressive and expeditious
6 efforts of Class Counsel to obtain the best possible result for the Settlement Class. A significant
7 number of Class Members have shown their support of the Settlement. Lastly, *one* Class Member
8 submitted a valid opt-out and there were *no* objections filed.

9 **Procedural History of the Case**

10 6. On February 10, 2020, Plaintiff filed a wage and hour Class Action Complaint
11 (“Complaint”) alleging cause of action for failure to pay overtime wages, failure to pay minimum
12 wage, failure to provide meal period or compensation in lieu thereof, failure to pay all earned
13 wages at termination/resignation, failure to provide accurate wage statements and violation of
14 Business and Professions Code § 17200 et seq. Thereafter, on August 4, 2020, Plaintiff filed a
15 First Amended Complaint (“FAC”) to add a cause of action under the Private Attorneys General
16 Act (“PAGA”). The Complaint and FAC will be referred to as the “Litigation.”

17 7. In the Litigation, Plaintiff alleges, *inter alia*, that Defendant failed to pay overtime
18 wages, failed to pay minimum wage, failed to provide meal periods or compensation in lieu
19 thereof, failed to pay wages upon termination/resignation, failed to provide compliant accurate
20 itemized wage statements, violated the California Business and Professions Code § 17200, et seq.
21 and violated the PAGA for the asserted Labor Code violations. Defendant denies each of the
22 allegations asserted in the Litigation, has repeatedly asserted and continues to assert defenses to
23 Plaintiff’s claims and contentions, and expressly denies that it engaged in any wrongdoing or has
24 any liability arising out of any of the facts or conduct alleged in the Litigation.

25 8. Class Counsel engaged in formal and informal discovery which yielded information
26 and documents concerning the claims set forth in the Litigation, such as obtaining a random
27 sampling of time and payroll records for Class Members, time and payroll records for Plaintiff,
28 Defendant’s Collective Bargaining Agreement(s) (“CBA”), total number of Class Members during

1 the relevant class period, number of shifts for class members during the relevant class period, the
2 average hourly rate for Class Members, etc. Plaintiff also interviewed Class Members who
3 worked for Defendant. Furthermore, counsel for the Parties have investigated the law as applied to
4 the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the
5 potential damages claimed by Plaintiff.

6 9. Counsel for the Parties engaged in extensive discussions about the strengths and
7 weaknesses of the claims and defenses. Plaintiff and Defendant undertook extensive mediation
8 efforts on June 3, 2021, with Marc J. Feder, Esq. ("Mr. Feder"), a well respected mediator of wage
9 and hour class actions. Ultimately, the mediation process with Mr. Feder resulted in the Parties
10 reaching the Settlement of the claims asserted in the Litigation. The settlement negotiations were
11 at arm's length and, although conducted in a professional manner, were adversarial.

12 10. The Parties concluded that there were benefits associated with settling the
13 Litigation. Specifically, the Parties concluded, after taking into account the sharply disputed
14 factual and legal issues involved in this Litigation, such as Defendant's contention that there were
15 exemptions under the CBA for overtime and meal periods, the risks associated with further
16 prosecution, the substantial benefits to be received pursuant to the compromise and settlement of
17 the Litigation as set forth in the Settlement Agreement, that settlement on the terms set forth herein
18 is in the best interest of Plaintiff, the proposed Class, and Defendant, and is fair and reasonable.

19 **Class Counsel Are Experienced Class Litigators**

20 11. I graduated from UCI with a B.A. in Political Science in 1998. Thereafter I
21 attended University of West Los Angeles School of Law and graduated in 2006. I became a
22 member of the California State Bar in March 2009. In February 2009 I became an associate at
23 Kokozyan & Nourmand LLP and thereafter in June 2010, I became a senior associate at The
24 Nourmand Law Firm, APC. I exclusively represent employees in the area of employment law,
25 wage and hour litigation on an individual and class wide basis. I am admitted to practice in all
26 state courts in California, the United States District Courts of California - Central District, and
27 Ninth Circuit Court of Appeal. I am also an active member of the California Employment
28 Lawyer's Association ("CELA"). I was named as a Rising Star by Super Lawyers and recently

1 selected as a Super Lawyer by Super Lawyers.

2 12. Michael Nourmand, is the principal of The Nourmand Law Firm, APC, and
3 graduated from UCLA with a B.A. in Political Science (Cum Laude) in 1994. Thereafter Mr.
4 Nourmand attended Loyola Law school and graduated in May of 1998. Mr. Nourmand became a
5 member of the California State Bar in December 1998. In September 1999, Mr. Nourmand along
6 with his former business partner Bruce Kokozyan, started the law firm of Kokozyan & Nourmand
7 LLP and began to represent plaintiffs in the area of personal injury, insurance bad-faith,
8 employment law, wage and hour, and class actions. In June 2010, Mr. Nourmand dissolved his
9 partnership at Kokozyan & Nourmand LLP and started The Nourmand Law Firm, APC exclusively
10 representing plaintiffs in the areas of employment law, wage and hour, and class actions. Prior to
11 starting his law firm, Mr. Nourmand worked for a plaintiff's law firm, Rose, Klein & Marias, Law
12 Offices of Gary Bostwick and externed at the U.S. Attorney's Office, Civil Fraud Division and
13 U.S. Bankruptcy Court, Honorable Judge Barry Russell. Mr. Nourmand is admitted to practice in
14 all state courts in California, the United States District Courts of California - Central District,
15 Southern District, Ninth Circuit Court of Appeal, and the United States Supreme Court. In July
16 2011 Mr. Nourmand was selected as one of 75 Top Labor & Employment Lawyers in California
17 by the Daily Journal; in 2011 and 2012 Mr. Nourmand was selected as a Rising Star by Super
18 Lawyers and in 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and in 2022 he was
19 selected as a Super Lawyer by Super Lawyers. Mr. Nourmand was selected for inclusion in The
20 Best Lawyers in America for 2016, 2017, 2018, 2019, 2020, 2021, and 2022. Mr. Nourmand is
21 also an active member of the California Employment Lawyer's Association ("CELA"), National
22 Employment Lawyer's Association ("NELA"), Consumer Attorneys Association of Los Angeles
23 ("CAALA"), Consumer Attorneys of California ("CAOC"), California State Bar, Labor and
24 Employment Section, and the Los Angeles County Bar.

25 13. Class Counsel are respected members of the California Bar with strong records of
26 vigorous and effective advocacy of their clients, and they are experienced in handling complex
27 class action litigation. Both Class Counsel and Plaintiff were prepared to litigate the claims in this
28 action, but they strongly and unequivocally support the proposed Settlement as being in the best

1 interest of the Settlement Class based on the circumstances referenced herein.

2 14. Class Counsel are experienced in wage and hour class action litigation. The
3 Nourmand Law Firm, APC is currently acting as lead counsel in at least fifteen other wage and
4 hour class actions. Class Counsel have been appointed class counsel on several wage and hour
5 class actions and one FACTA class action. Thus, Class Counsel is sufficiently experienced and
6 qualified to evaluate the Class Members' claims and viability of Defendant's defenses.

7 15. In the opinion of Class Counsel, the recovery for each class member is well within
8 the acceptable range for this type of action. This Settlement is also favorable given that the
9 Settlement Class will promptly receive compensation rather than facing uncertainties inherent in
10 further litigation and waiting for years for this action to be tried. It is also telling that the
11 Settlement Class have overwhelmingly supported the settlement on the terms set forth in the
12 Settlement Agreement. Based on all considerations, this Settlement is highly favorable and is in
13 the best interests of the Settlement Class.

14 **There Was One Valid Opt-Out and No Objections**

15 16. In sum, all relevant factors support final approval of the settlement. The Parties
16 negotiated at arm's-length and in good faith under the supervision of an experienced and well-
17 respected mediator. Class Counsel also engaged in extensive investigation, discovery, and
18 analysis of class claims. Moreover, Class Counsel, who are experienced class action litigators,
19 strongly believe that this Settlement provides an excellent result to the Settlement Class. Lastly,
20 there were no objections filed and one valid opt-out militate strongly in favor of approval of the
21 Settlement. For the foregoing reasons, this Court should conclude that under the circumstances of
22 this case, the proposed settlement is fair, adequate, and well within the range of reasonableness.

23 **The Payment To The Claims Administrator Is Reasonable**

24 17. The Claims Administrator has fulfilled its duty to prepare and send the Notice to all
25 Settlement Class members, in English and Spanish. Moreover, the Claims Administrator has also
26 fulfilled its duty to provide a report detailing the following: (1) total number of members of the
27 Settlement Class who were sent the notice; (2) total number of members of the Settlement Class
28 who timely requested to opt-out from the Settlement; and (3) total number of members of the

1 Settlement Class who submitted timely objections to the Settlement. The Claims Administrator
2 has stated that a fee of \$7,700.00 is the total cost of administration of the Settlement, which is fair
3 and reasonable. Plaintiff and Class Counsel request that the Court approve payment of the final
4 total cost of administration to CPT in the amount of \$7,700.00, to be deducted from the Settlement
5 Amount.

6 **The Named Plaintiff Should Be Awarded The Requested Enhancement Award**

7 18. Plaintiff and Class Counsel request that the Court finally approve an enhancement
8 award of \$7,500.00 for the time, effort, and the risk he undertook in participating in this Litigation.
9 Because a named plaintiff is an essential ingredient of any class action, an enhancement award is
10 appropriate to induce individuals to step forward and assume the burdens and obligations of
11 representing the class. In deciding the amount of an enhancement award for a class representative,
12 relevant factors include the actions the plaintiff has taken to protect the interests of the class, the
13 degree to which the class has benefitted from those actions, and the amount of time and effort the
14 plaintiff expended in pursuing the litigation.

15 19. In the instant case, the named Plaintiff assisted Class Counsel on many occasions
16 with the investigation and prosecution of this action. Plaintiff contributed documents to Class
17 Counsel, spent numerous hours educating Class Counsel on the inner workings of Defendant's
18 organization, time keeping and meal period practices, and Plaintiff participated in a full day
19 mediation. The amount sought for the class representative is in line with the enhancement awards
20 in similar wage and hour class actions. Further, Defendant supports the requested award of
21 \$7,500.00 for Plaintiff. As such, the enhancement award requested is intended to compensate
22 Plaintiff for the critical role he played in this case and the substantial time, effort, and risk he
23 undertook to help secure the result obtained on behalf of the Settlement Class is well deserved and
24 warranted. Furthermore, Plaintiff has provided Defendant a general release of his claims in
25 exchange for the enhancement fee requested. Please see declaration from Plaintiff in support final
26 approval of the Settlement.

The Requested Attorneys' Fees and Costs are Fair, Reasonable, and Appropriate

20. Class Counsel's application for an award of attorneys' fees in an amount of approximately 33.33% of the settlement value created on behalf of the Settlement Class is reasonable and fair. The requested fee falls on the lower end of the Ninth Circuit's historical benchmark for attorneys' fees of 20% to 50% of a common fund and is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis.

21. For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. There was the prospect of the enormous cost inherent in class action litigation, as well as a long battle with Defendant. That prospect has previously become reality, in both trial courts and the Court of Appeal in other wage and hour class litigation. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. Based upon the foregoing, Class Counsel respectfully requests that the Court award attorneys' fees in the amount of \$250,000.00 and litigation costs in the amount of \$9,381.07.

22. The Nourmand Law Firm, APC will have worked approximately 318.5 hours litigating this case and bringing it to fruition. This includes what Class Counsel collectively expects to expend in administering the Settlement including preparation for and attending the final approval hearing. Specifically, the following increments of time were spent by The Nourmand Law Firm, APC from the time meeting Plaintiff through the present:

(1) Approximately 31.5 hours were spent on this case pre-litigation, which involved the investigation of the matter, including meeting with Plaintiff, reviewing Defendant's policies, and requesting and reviewing Plaintiff's time and pay records, personnel files, in addition to trying to locate other witnesses to obtain their narrative accounts of Defendant's practices for the purpose of determining commonality of practices, typicality of claims, and other elements to gauge the certifiability and manageability of the potential action.

(2) Approximately 24.4 hours were spent complying with the prerequisites in

1 connection with Plaintiff's cause of action under the Labor Code Private
2 Attorneys' General Act of 2004 ("PAGA"), including the preparation and
3 submission of Plaintiff's letter to the Labor and Workforce Development
4 Agency ("LWDA") and providing a copy of the same to Defendant by
5 certified mail, filing the initial Complaint against Defendant, and after it
6 was determined that the LWDA would not investigate, filing the FAC to
7 include a cause of action under PAGA against Defendant through a
8 stipulation and order.

9 (3) Approximately 10.5 hours were spent after filing the Complaint to better
10 understand Defendant's corporate structure, investigating corporate
11 affiliates, and determine which individuals, if any, could be individually
12 liable and may be added as additional defendants.

13 (4) Approximately 19.3 hours were spent negotiating the parameters and scope
14 of an early mediation, agreeing to a qualified mediator, and determining the
15 necessary informal discovery that would be required from Defendant
16 beforehand.

17 (5) Approximately 72.2 hours were spent performing informal discovery,
18 including obtaining and reviewing a representative sampling of time and
19 payroll records; obtaining data as to workweeks, pay periods and average
20 hourly rate for the putative class; Defendant's CBA's and relevant policies;
21 obtaining and reviewing expert consultant reports and analysis of the
22 records, which included exposure models and violation rates for the asserted
23 claims.

24 (6) Approximately 42.1 hours were spent working with Plaintiff to identify
25 additional Class Members as well as trying to obtain information regarding
26 their work experiences with Defendant, which included creating a
27 questionnaire with which to interview Class Members and utilizing this
28 information at mediation.

- 1 (7) Approximately 28.5 hours were spent preparing for and attending a full day
2 of mediation, including preparation of a mediation brief and damages model
3 with the consultation of expert consultants.
- 4 (8) Approximately 29.4 hours were spent drafting, negotiating and finalizing
5 the Memorandum of Understanding, as well as a long form Settlement
6 Agreement, Class Notice, workweek dispute form; obtaining bids from
7 claims administrators and selecting the most reasonable bid.
- 8 (9) Approximately 33.2 hours were spent preparing the Motion for Preliminary
9 Approval and supporting declaration; reviewing and analyzing the Court's
10 initial tentative and meeting and conferring with opposing counsel regarding
11 addressing the Court's concerns in light of the Court's initial tentative
12 ruling; drafting an Amendment to the Stipulation of Class Action Settlement
13 ("Amendment") Settlement Agreement, revisions to the Class Notice,
14 workweek dispute form, drafting an opt-out form; negotiating and finalizing
15 the Amendment to the Settlement Agreement and accompanying documents
16 with Defendant's Counsel; fully executing the Amendment to the
17 Settlement Agreement; and providing supplemental briefing and declaration
18 to the Court in support of the Motion for Preliminary Approval.
- 19 (10) Approximately 27.4 hours working with the Claims Administrator on
20 formatting and finalizing the Class Notice, including reviewing, analyzing,
21 and making changes to the translation of the Class Notice into Spanish;
22 reviewing updates on administration as to weekly reports; working with the
23 Claims Administrator and Plaintiff for declarations in support of final
24 approval; drafting the Motion for Final Approval and proposed Order
25 Granting Final Approval.

26 The aforementioned increments of time amount to 318.5 hours spent by Class Counsel in
27 furtherance of the Litigation. Class Counsel's hourly rate in this case for Michael Nourmand is
28 \$750.00 per hour; and James A. De Sario is \$500.00 per hour. At Class Counsel's hourly rate, this

1 results in a total lodestar amount of \$191,375.00 (128.5 hours x \$750/hr. = \$96,375.00; 190 hours
2 x \$500/hr. = \$95,000.00).

3 23. A survey conducted by the National Law Journal for the year 2002 provides a
4 sample of a billing rate for California Lawyers. In that survey, six California firms provided their
5 hourly billing rates. Of those six firms, five regularly charge in excess of \$500.00 per hour for
6 their partners. In fact, four of the firms charge as high as \$600.00, \$620.00, \$650.00, and up to
7 \$850.00 per hour. These firms are located in Orange County, Los Angeles County, San Francisco
8 County and San Diego County and are the types of firms that Plaintiff's counsel regularly opposes
9 in these class action cases. Please see the National Law Journal Survey attached as Exhibit "10."
10 The only difference is that these defense attorneys are paid on a monthly basis and do not have to
11 advance any costs on a case.

12 24. Finally, Class Counsel attach the Declaration of Richard Pearl in support of the
13 Motion for Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*,
14 Case No. BC441237, dated January 4, 2011. Please see Declaration of Richard Pearl attached as
15 Exhibit "11." Mr. Pearl specializes in issues related to cost-award attorney's fees, including the
16 representation of parties in fee litigation and appeals, serving as an expert witness, mediator and
17 arbitrator in disputes concerning attorney's fees and related issues. Mr. Pearl is also the author of
18 California Attorney's Fee Awards (3d ed Cal. CEB 2010), as well as the author of the Second
19 Edition, years 1994 through 2008. He has also authored numerous other publications on
20 attorney's fees, as set forth in his Declaration. (*Id.* at ¶¶4-5).

21 25. Mr. Pearl has reviewed the comparable hourly rates of attorney fees in California.
22 He confirms that courts have approved hourly rates of attorneys as follows.

- 23 • Rates of up to \$875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior
24 Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- 25 • Rates of up to \$750.00 in *Kashmiri et al. v. Regents of UC*, San Francisco County
26 Superior Court (before applying a 3.7 multiplier); and
- 27 • Rates of up to \$750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*,
28 San Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25

multiplier). *Id* at Pages 4 and 5.

26. Additionally, Mr. Pearl has reviewed numerous declarations, depositions and surveys of legal rates on a non-contingent basis for the year 2009 and found hourly rates of up to \$775.00, \$795.00, \$800.00, \$855.00, \$950.00, etc. (*Id.* at pages 6-12). These are non-contingent rates where payment in full is expected promptly upon billing. (*Id.* at page 13). These rates indicate that the requested hourly rate, as well as a multiplier, is reasonable in the case-at-hand in view of Class Counsel's experience, the result achieved in this case and the contingent nature of the fees in class action cases.

27. Once the Court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. For the reasons set forth herein, the instant action demonstrates that Class Counsel should be awarded fees based upon a multiplier of approximately 1.31.

28. The following are the itemized litigation costs for the above-referenced matter:

(1)	Filing Fees	\$ 1,650.00
(2)	E-Filing Fees	\$ 270.80
(3)	Process Service	\$ 65.34
(4)	Mediation	\$ 5,000.00
(5)	Professional Services	\$ 2,175.00
(6)	Messenger	\$ 43.05
(7)	Court Call	\$ 94.00
(8)	Postage	\$ 26.48
(9)	Photocopies (282 x .20)	<u>\$ 56.40</u>
	Total	\$ 9,381.07

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct this 18th day of January 2023, at Beverly Hills, California.


James A. De Sario

EXHIBIT 10



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A Firm-by-Firm Sampling of Billing Rates Nationwide

The *National Law Journal* asked the respondents to its 2002 survey of the nation's 250 largest law firms to provide hourly billing rate information for partners and associates firmwide. The firms that supplied information -- including some firms that are not in the NLJ 250 -- are listed below in alphabetical order. The number after a firm's name indicates the total number of attorneys at that firm. The city listed below the name of a firm is the location of the firm's principal office or largest office.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

A B C D

Akin, Gump, Strauss, Hauer & Feld (1,017)
(Washington, D.C.)
Partners \$350-\$600
Associates \$170-\$330

Alston & Bird (674)
(Atlanta)
Partners \$330-\$575
Associates \$170-\$500

Altheimer & Gray (361)
(Chicago)
Partners \$220-\$525
Associates \$115-\$360

Andrews & Kurth (375)
(Houston)
Partners \$310-\$595
Associates \$170-\$400

Arent Fox Kintner Plotkin & Kahn (249)
(Washington, D.C.)
Partners \$315-\$560
Associates \$185-\$360

Armstrong Teasdale (230)
(St. Louis)
Partners \$210-\$310
Associates \$105-\$240

Arter & Hadden (273)
(Cleveland)
Partners \$215-\$450
Associates \$150-\$285

Baker, Donelson, Bearman & Caldwell (240)
(Memphis, Tenn.)
Partners \$175-\$480
Associates \$110-\$275

Ballard Spahr Andrews & Ingersoll (441)
(Philadelphia)

Kelley Drye & Warren (358)
(New York)
Partners \$300-\$590
Associates \$180-\$375

Kramer Levin Naftalis & Frankel (295)
(New York)
Partners \$440-\$625
Associates \$210-\$440

L M N

Lane Powell Spears Lubersky (175)
(Seattle)
Partners \$225-\$380
Associates \$175-\$260

Lewis, Rice & Fingersh (170)
(St. Louis)
Partners \$160-\$355
Associates \$110-\$270

Little Mendelson (395)
(San Francisco)
Partners \$220-\$440
Associates \$135-\$350

Locke Liddell & Sapp (408)
(Houston)
Partners \$300-\$595
Associates \$150-\$340

Loeb & Loeb (175)
(Los Angeles)
Partners \$350-\$650
Associates \$185-\$325

Lord, Bissell & Brook (325)
(Chicago)
Partners \$165-\$510
Associates \$140-\$285

Lowenstein Sandler (193)
(Roseland, N.J.)

04/15/03

Partners \$240-\$525
Associates \$145-\$300

Bell, Boyd & Lloyd (226)
(Chicago)
Partners \$250-\$550
Associates \$200-\$275

Blackwell Sanders Peper Martin (301)
(Kansas City, Mo.)
Partners \$165-\$410
Associates \$110-\$210

Blank Rome Comisky & McCauley (398)
(Philadelphia)
Partners \$285-\$565
Associates \$175-\$360

Boult, Cummings, Conners & Berry (89)
(Nashville, Tenn.)
Partners \$185-\$375
Associates \$138-\$235

Bracewell & Patterson (362)
(Houston)
Partners \$210-\$600
Associates \$125-\$325

Bradley, Arant, Rote & White (181)
(Birmingham, Ala.)
Partners \$205-\$365
Associates \$150-\$275

Brinks Hofer Gilson & Liene (138)
(Chicago)
Partners \$295-\$500
Associates \$165-\$290

Bryan Cave (841)
(St. Louis)
Partners \$225-\$720
Associates \$135-\$410

Buchalter, Nemer, Fields & Younger (137)
(Los Angeles)
Partners \$310-\$450
Associates \$160-\$350

Buchanan Ingersoll (362)
(Pittsburgh)
Partners \$225-\$720
Associates \$135-\$360

Buckingham, Doolittle & Burroughs (135)
(Akron, Ohio)
Partners \$205-\$360
Associates \$135-\$260

Burns, Doane, Swicker & Mathis (97)
(Alexandria, Va.)
Partners \$300-\$550
Associates \$175-\$300

Burr & Forman (169)
(Birmingham, Ala.)
Partners \$205-\$365
Associates \$140-\$225

Butzel Long (204)
(Detroit)
Partners \$205-\$380
Associates \$135-\$215

Partners \$285-\$525
Associates \$140-\$295

Lugo, Forward, Hamilton & Scripps (202)
(San Diego)
Partners \$310-\$500
Associates \$150-\$300

Manatt, Phelps & Phillips (244)
(Los Angeles)
Partners \$375-\$600
Associates \$200-\$355

Marshall, Donnelly, Warner, Coleman & Goggin
(288)
(Philadelphia)
Partners \$130-\$255
Associates \$115-\$180

Mathews and Branscomb (51)
(San Antonio)
Partners \$175-\$325
Associates \$125-\$195

McCarter & English (270)
(Newark, N.J.)
Partners \$250-\$495
Associates \$140-\$285

McGuire Woods (558)
(Richmond, Va.)
Partners \$210-\$575
Associates \$85-\$325

Michael Best & Friedrich (349)
(Milwaukee)
Partners \$180-\$425
Associates \$180-\$240

Miller, Canfield, Paddock and Stone (301)
(Detroit)
Partners \$220-\$475
Associates \$125-\$230

Miller & Chevalier (123)
(Washington, D.C.)
Partners \$320-\$650
Associates \$175-\$340

Miller Nash (140)
(Portland, Ore.)
Partners \$210-\$350
Associates \$125-\$225

Milson Mullins Rife & Scarborough (282)
(Columbia, S.C.)
Partners \$200-\$390
Associates \$145-\$270

Nutter, McClennen & Fish (170)
(Boston)
Partners \$330-\$480
Associates \$175-\$300

O - R

Obermayer Rebmann Maxwell & Hippel (110)
(Philadelphia)
Partners \$300-\$475
Associates \$145-\$325

Ogletree, Deakins, Nash, Smoak & Stewart
(162)

Cades Schutte Fleming & Wright (59)
(Honolulu)
Partners \$185-\$325
Associates \$135-\$205

Carlton Fields (211)
(Tampa, Fla.)
Partners \$230-\$400
Associates \$130-\$270

Caso Bigelow & Lombardi (20)
(Honolulu)
Partners \$210-\$340
Associates \$125-\$210

Chouin, Hall & Stewart (159)
(Boston)
Partners \$375-\$575
Associates \$195-\$345

Cooley Godward (560)
(Palo Alto, Calif.)
Partners \$330-\$600
Associates \$190-\$425

Covington & Hurting (522)
(Washington, D.C.)
Partners \$325-\$600
Associates \$160-\$390

Cuizen O'Connor (440)
(Philadelphia)
Partners \$185-\$450
Associates \$120-\$325

Crosby, Healey, Roach & May (237)
(Oakland, Calif.)
Partners \$234-\$454
Associates \$170-\$320

Cummings & Lockwood (171)
(Stamford, Conn.)
Partners \$250-\$450
Associates \$155-\$290

Curtis, Mallet-Prevost, Colt & Mosle (168)
(New York)
Partners \$420-\$625
Associates \$180-\$435

Davis Graham & Stapp (97)
(Denver)
Partners \$200-\$425
Associates \$125-\$210

Davis Wright Tremaine (389)
(Seattle)
Partners \$225-\$325
Associates \$130-\$270

Day, Berry & Howard (291)
(Hartford, Conn.)
Partners \$275-\$450
Associates \$160-\$330

Dickinson Wright (200)
(Detroit)
Partners \$215-\$410
Associates \$130-\$210

Dickstein Shapiro Morin & Oshinsky (311)
(Washington, D.C.)
Partners \$360-\$550

(Atlanta)
Partners \$200-\$460
Associates \$170-\$265

Oppenheimer Wolff & Donnelly (246)
(Minneapolis)
Partners \$225-\$500
Associates \$125-\$375

Patton Boggs (366)
(Washington, D.C.)
Partners \$235-\$700
Associates \$180-\$315

Pennie & Edmonds (233)
(New York)
Partners \$365-\$500
Associates \$190-\$360

Pepper Hamilton (389)
(Philadelphia)
Partners \$245-\$525
Associates \$150-\$295

Perkins Cole (565)
(Seattle)
Partners \$160-\$650
Associates \$135-\$415

Phelps Dunbar (293)
(New Orleans)
Partners \$145-\$300
Associates \$110-\$175

Phillips, Lytle, Hitchcock, Blaine & Huber (171)
(Buffalo, N.Y.)
Partners \$185-\$350
Associates \$105-\$265

Piper Rudnick (794)
(Chicago)
Partners \$295-\$615
Associates \$140-\$405

Pitney, Hardin, Kipp & Szuch (195)
(Morristown, N.J.)
Partners \$280-\$450
Associates \$155-\$290

Powell, Goldstein, Frazer & Murphy (290)
(Atlanta)
Partners \$265-\$515
Associates \$160-\$300

Proston Gates & Ellis (386)
(Seattle)
Partners \$180-\$500
Associates \$120-\$410

Reed Smith (739)
(Pittsburgh)
Partners \$240-\$620
Associates \$100-\$435

Robinson & Cole (202)
(Hartford, Conn.)
Partners \$260-\$500
Associates \$150-\$300

Ross & Hardies (181)
(Chicago)
Partners \$260-\$465
Associates \$160-\$290

Associates \$180-\$340

Dinsmore & Shohl (254)
(Cincinnati)
Partners \$190-\$345
Associates \$125-\$235

Dow, Lohnes & Albertson (147)
(Washington, D.C.)
Partners \$310-\$600
Associates \$160-\$335

Drinker Biddle & Reath (433)
(Philadelphia)
Partners \$280-\$450
Associates \$145-\$275

Duane Morris (482)
(Philadelphia)
Partners \$174.86-\$523.47
Associates \$146.97-\$394.36

Dykema Gossett (252)
(Detroit)
Partners \$210-\$380
Associates \$140-\$240

E F G

Eckert Seamans Cherin & Mellon (193)
(Pittsburgh)
Partners \$220-\$425
Associates \$135-\$240

Edwards & Angell (290)
(Boston)
Partners \$300-\$550
Associates \$140-\$300

Epstein Becker & Green (333)
(New York)
Partners \$220-\$540
Associates \$150-\$350

Fish & Richardson (279)
(Boston)
Partners \$350-\$500
Associates \$185-\$360

Foster Pepper & Shofelman (106)
(Seattle)
Partners \$225-\$400
Associates \$190-\$250

Fowlston Starkin (73)
(Wichita, Kan.)
Partners \$145-\$300
Associates \$100-\$155

Fowler White Boggess Banker (180)
(Tampa, Fla.)
Partners \$175-\$350
Associates \$125-\$225

Gardner Wynne Sewell (288)
(Dallas)
Partners \$250-\$550
Associates \$130-\$320

Gibbons, Del Duco, Dolan, Griffinger & Vecchione (160)
(Newark, N.J.)
Partners \$235-\$600
Associates \$145-\$265

Rutan & Tucker (123)
(Costa Mesa, Calif.)
Partners \$250-\$425
Associates \$165-\$275

S - W

Saul Ewing (228)
(Philadelphia)
Partners \$250-\$475
Associates \$145-\$265

Schnader Harrison Segal & Lewis (301)
(Philadelphia)
Partners \$220-\$465
Associates \$135-\$285
Soyfarth Shaw (505)
(Chicago)
Partners \$260-\$600
Associates \$160-\$265

Shaw Pittman (407)
(Washington, D.C.)
Partners \$315-\$576
Associates \$170-\$325

Sheppard, Mullin, Richter & Hampton (336)
(Los Angeles)
Partners \$305-\$525
Associates \$170-\$295

Shipman & Goodwin (137)
(Hartford, Conn.)
Partners \$235-\$360
Associates \$140-\$230

Sills Cummie Radin Tischman Epstein & Gross
(155)
(Newark, N.J.)
Partners \$290-\$500
Associates \$125-\$290

Smith, Gambrell & Russell (177)
(Atlanta)
Partners \$185-\$465
Associates \$130-\$350

Steel Hector & Davis (195)
(Miami)
Partners \$240-\$600
Associates \$175-\$280

Stites & Harrison (213)
(Louisville, Ky.)
Partners \$175-\$325
Associates \$105-\$190

Stoel Rives (364)
(Portland, Ore.)
Partners \$210-\$400
Associates \$140-\$340

Strahley Ronen Stevens & Young (145)
(Philadelphia)
Partners \$200-\$465
Associates \$140-\$250

Strasburger & Price (224)
(Dallas)
Partners \$190-\$450
Associates \$155-\$250

Sughrue Mion (94)

11/19/03

Gray Cary Ware & Freidenrich (402)
(Palo Alto, Calif.)
Partners \$310-\$620
Associates \$195-\$345

Greenbaum Doll & McDonald (172)
(Louisville, Ky.)
Partners \$190-\$365
Associates \$130-\$205

Greenberg Glusker (104)
(Los Angeles)
Partners \$325-\$850
Associates \$210-\$325

Greenberg Traurig (878)
(Miami)
Partners \$250-\$800
Associates \$150-\$375

H - K

Haight, Brown & Bonesteel (91)
(Los Angeles)
Partners \$200-\$300
Associates \$115-\$175

Hale and Dorr (480)
(Boston)
Partners \$350-\$675
Associates \$230-\$395

Haynes and Boone (468)
(Dallas)
Partners \$265-\$500
Associates \$125-\$330

Hodgson Russ (189)
(Buffalo, N.Y.)
Partners \$200-\$475
Associates \$110-\$320

Hogan & Hartson (937)
(Washington, D.C.)
Partners \$230-\$750
Associates \$90-\$405

Holland & Knight (1,273)
(Washington, D.C.)
Partners \$200-\$375
Associates \$145-\$365

Holme Roberts & Owen (188)
(Denver)
Partners \$215-\$525
Associates \$145-\$275

Hughes Hubbard & Reed (282)
(New York)
Partners \$375-\$625
Associates \$175-\$415

Husch & Eppenhorn (278)
(St. Louis)
Partners \$160-\$340
Associates \$115-\$186

Jackson Lewis (351)
(White Plains, N.Y.)
Partners \$245-\$450
Associates \$150-\$350

(Washington, D.C.)
Partners \$300-\$450
Associates \$200-\$350

Sutherland Asbill & Brennan (356)
(Atlanta)
Partners \$275-\$545
Associates \$160-\$280

Swidler Berlin Sheroff Friedman (298)
(Washington, D.C.)
Partners \$310-\$590
Associates \$170-\$380

Thelen Reid & Priest (440)
(New York)
Partners \$315-\$575
Associates \$165-\$390

Thompson Coburn (280)
(St. Louis)
Partners \$190-\$400
Associates \$105-\$220

Thompson & Knight (333)
(Dallas)
Partners \$260-\$475
Associates \$135-\$250

Thorp Reed & Armstrong (103)
(Pittsburgh)
Partners \$210-\$390
Associates \$175-\$230

Townsend and Townsend and Crew (151)
(San Francisco)
Partners \$415-\$525
Associates \$265-\$355

Vedder, Price, Kaufman & Kammholz (213)
(Chicago)
Partners \$270-\$495
Associates \$165-\$290

Venable (448)
(Baltimore)
Partners \$250-\$670
Associates \$165-\$310

Vorys, Sater, Seymour and Pease (353)
(Columbus, Ohio)
Partners \$235-\$400
Associates \$125-\$250

Wiley, Rein & Fielding (221)
(Washington, D.C.)
Partners \$300-\$525
Associates \$160-\$290

Williams & Connolly (211)
(Washington, D.C.)
Partners \$350-\$600
Associates \$185-\$330

Williams Hullen (237)
(Richmond, Va.)
Partners \$185-\$370
Associates \$125-\$225

Winstead Sachrest & Minick (233)
(Dallas)
Partners \$250-\$540
Associates \$145-\$300

Jenkins & Gilchrist (573)
(Dallas)
Partners \$275-\$525
Associates \$165-\$380

Jenner & Block (390)
(Chicago)
Partners \$350-\$625
Associates \$185-\$350

Jones, Walker, Waechter, Poitavant, Carrère &
Denègre (217)
(New Orleans)
Partners \$170-\$335
Associates \$110-\$185

Womble Carlyle Sandridge & Rice (437)
(Winston-Salem, N.C.)
Partners \$190-\$500
Associates \$125-\$265

Wyatt, Tarrant & Combs (201)
(Louisville, Ky.)
Partners \$150-\$310
Associates \$100-\$190

(The National Law Journal, December 2002)

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11/19/03

EXHIBIT 11

1 I, Richard M. Pearl, declare:

2 1. I make this Declaration of my own personal knowledge, and if called to testify, I could
3 and would testify competently to the matters stated herein.

4 A. Background

5 2. I am a member in good standing of the California State Bar. I am in private practice as
6 the principal of my own law firm, the Law Offices of Richard M. Pearl. I specialize in issues related to
7 court-awarded attorneys' fees, including the representation of parties in fee litigation and appeals,
8 serving as an expert witness, and serving as a mediator and arbitrator in disputes concerning attorneys'
9 fees and related issues. In this case, I have been asked by Plaintiffs' counsel to express my expert
10 opinion regarding their claim for reasonable attorneys' fees.

11 3. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt Hall
12 School of Law, University of California, Berkeley, California. After graduation, I spent fourteen years
13 in federally-funded legal services programs before going into private practice in 1982. From 1977 to
14 1982, I was Director of Litigation for California Rural Legal Assistance, Inc., a statewide legal services
15 program with more than fifty attorneys. Since April 1987, I have been a sole practitioner in the San
16 Francisco Bay Area. Martindale Hubbell rates my law firm "AV." I also have been selected as a
17 Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, and 2010. A copy
18 of my Resume is attached hereto as Exhibit A.

19 4. Since 1982, my practice has been a general civil litigation and appellate practice, with an
20 emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and written
21 extensively on court-awarded attorneys' fees. I have been a member of the California State Bar's
22 Attorneys Fees Task Force and have testified before the State Bar Board of Governors and the
23 California Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards, (3d
24 ed Cal. CEB 2010). I also was the author of California Attorney Fee Awards, 2d Ed. (Calif. Cont. Ed.
25 of Bar 1994), and its 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,
26 and 2008 Supplements. This treatise has been cited by the California appellate courts on more than 35
27 occasions. I also authored the 1984, 1985, 1987, 1988, 1990, 1991, 1992, and 1993 Supplements to its
28 predecessor, CEB's California Attorney's Fees Award Practice. In addition, I authored a federal

1 manual on attorneys' fees entitled Attorneys' Fees: A Legal Services Practice Manual, published by the
2 Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's
3 Wrongful Employment Termination Practice, 2d Ed. (1997).

4 5. More than 90% of my practice is devoted to issues involving court-awarded attorney's
5 fees. I have been counsel in over 140 attorneys' fee applications in state and federal courts, primarily
6 representing other attorneys. I also have briefed and argued more than 40 appeals, at least 25 of which
7 have involved attorneys' fees issues. In the past ten or so years, I have successfully handled four cases
8 in the California Supreme Court involving court-awarded attorneys' fees: (1) *Delaney v. Baker* (1999)
9 20 Cal. 4th 23, which held that heightened remedies, including attorneys' fees, are available in suits
10 against nursing homes under California's Elder Abuse Act; (2) *Ketchum v. Moses* (2001) 24 Cal. 4th
11 1122, which held, inter alia, that contingent risk multipliers remain available under California attorney
12 fee law, despite the United States Supreme Court's contrary ruling on federal law (note that in
13 *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme
14 Court); (3) *Flannery v. Prentice* (2001) 26 Cal. 4th 572, which held that in the absence of an agreement
15 to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and
16 (4) *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, which I handled, along with trial counsel,
17 in both the Court of Appeal and Supreme Court. I also successfully represented the plaintiffs in a
18 previous attorneys' fee decision in the Supreme Court, *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, and
19 represented amicus curiae, along with Richard Rothschild, in the Supreme Court's most recent fee
20 decision, *Yasquez v. State of California* (2009) 45 Cal. 4th 243. I also have handled several Ninth
21 Circuit attorneys' fees matters, including *Davis v. City & County of San Francisco* (9th Cir. 1992) 976
22 F.2d 1536, *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470, *Velez v. Wynne* (9th Cir. 2007) 2007 U.S.
23 App. LEXIS 2194, and *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 P.3d 973. See
24 Exhibit A.

25 B. Plaintiffs' Counsel's Rates

26 6. I have been asked by Plaintiffs' counsel to submit this declaration in support of
27 Plaintiffs' Motion for Final Approval of Class Action Settlement and an Award of Reasonable
28 Attorneys' Fees and Costs. I submit this declaration to provide the Court information concerning

1 hourly rates for attorneys in the San Francisco Bay Area, and in particular to provide information
2 demonstrating that the hourly rates requested by Plaintiffs' counsel in this matter are within the range of
3 market rates being charged in the San Francisco Bay Area and the San Diego market for similar
4 services, i.e. handling and trying complex class actions on behalf of employees against large employers
5 like Pacific Bell Telephone Company in this case.

6 7. I understand that Plaintiffs' counsel are requesting an award of attorneys' fees at the
7 following rates:

8 a. Goldstein Demchak Baller Borgen & Dardarian, Oakland, CA

9

Name	Grad Year	Billing Rate
Roberta L. Steele	1993	\$600
Laura L. Ho	1994	\$600
Joseph E. Jaramillo	1995	\$550
Senior Paralegal		\$195
Paralegal		\$150

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11
12

13 b. GraceHollis LLP, San Diego, CA

14

Name	Grad Year	Billing Rate
Graham S.P. Hollis	1985	\$600
Marta Manus	2008	\$375
Senior Paralegal		\$170

15
16

17 8. Through my writing and practice, I have become familiar with the non-contingent
18 market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in
19 several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys;
20 (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys
21 seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as
22 surveys and articles on attorney's fees in the legal newspapers and treatises.

23 9. The information I have gathered, some of which is summarized below, shows that the
24 rates requested by Plaintiffs' counsel in this case are well in line with the non-contingent market rates
25 charged by litigation attorneys of similar qualifications and experience in San Francisco, San Diego,
26 and similar markets.

27 ///

28 ///

c. Rates found reasonable in other cases.

Set forth below are rates that were awarded by the courts in the following cases:

2010 Rates

(1) *Savaglio, et al. v. WalMart*, Alameda County Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for Attorneys' Fees, filed September 10, 2010, a wage and hour class action, in which the court found the following hourly rates reasonable (before applying a 2.36 multiplier):

Years of Experience	Rate
51	\$875
39	\$750
38	\$600
33	\$775
25	\$550
23	\$650
21	\$625
19	\$610
18	\$600
17	\$585
16	\$570
15	\$560
14	\$550
13	\$525
12	\$515
11	\$510
10	\$505
9	\$500
7	\$460
4	\$435
Law Clerks	\$125-\$260

2009 Rates

(1) *Center for Biological Diversity v. California Fish & Game Commission*, San Francisco Superior Court No. CPF-08-508759, Order Granting Petitioners' Motion for Attorneys' Fees, filed December 1, 2009, in which the court found reasonable the following hourly rates:

Years of Experience	Rate
25	\$650
8	\$375
4	\$250
Law Clerks	\$150

(2) *Kashmiri et al v. Regents of U.C.*, San Francisco Superior Court, Order Granting Plaintiffs' Motion for Common Fund Attorneys' Fees and Expenses, filed September 30, 2008, in which the court found the following rates reasonable, plus a 3.7 lodestar multiplier:

Years of Experience	Rate
40	\$750
22	\$690
14	\$590
7	\$420
4	\$345
2	\$295
Law Clerks	\$200
Paralegals	\$195

(4) *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior Court No. CGC-06-451832, Order Granting Motion for Court Approval of Parties Joint Stipulated Judgment, filed September 22, 2008, in which the court found the following hourly rates reasonable in a Proposition 65 action, plus a 1.25 multiplier:

Years of Experience	Rate
29	\$750
26	\$700
24	\$700
23	\$650
18	\$650
16	\$625
14	\$600
10	\$560
9	\$495-\$575
8	\$475
7	\$450
6	\$395
4	\$325
2	\$300
1	\$250
Paralegals	\$145-\$175
Interns	\$125

(5) *Gardner v. Schwarzenegger*, Alameda County Superior Court No. RG06-278911, Order After Hearing filed April 20, 2009, aff'd by unpublished opinion, 2010 Cal. App. Unpub. LEXIS 1240, in which the court found the following 2008 rates reasonable, plus a 1.75 multiplier:

Years of Experience	Rate
17	\$640
14	\$590
8	\$445
Paralegal	\$170

a. Rate Information from Surveys and Other Cases:

I have reviewed numerous declarations and depositions filed in other cases, as well as various surveys of legal rates. These include the Westlaw CourtExpress Legal Billing Reports for May, August, and December 2009 (attached hereto as Exhibit B). These sources show the hourly rates for litigation undertaken on a non-contingent basis by the following California law firms, listed in alphabetical order.

Altshuler Berzon LLP

2009 Rates:

Years Experience	Rate
32	\$775
15	\$625
8	\$475
Law Clerks	\$200
Paralegals	\$195

2007 Rates:

Years Experience	Rate
23	\$700
15	\$550
5	\$325
Paralegals	\$155-\$190

Cooley Godward Kronish LLP

2008 Rates:

Years Experience	Rate
Partners	\$525-\$980
Associates	\$285-\$570

2007 Rates:

Years Experience	Rate
Partners	\$470-\$875 (average \$673)
Associates	\$250-\$555 (average \$403)

Coughlin Stoia Geller Rudman & Robbins, LLP

2007 Rates:

Years Experience	Rate
42	\$700
19	\$650
14	\$650
14	\$600
13	\$585
11	\$510
6	\$460
5	\$285

Duane Morris LLP

2009 Rates:

Years Experience	Rate
Partners	\$325-\$795
Associates	\$225-\$450

Epstein Becker & Green LLP

2009 Rates:

Years Experience	Rate
Partners	\$350-\$855
Associates	\$180-\$475

Fenwick & West

2007 Rates:

Years Experience	Rate
Partners	\$500-\$775 (average \$590)
Associates	\$245-\$500 (average \$370)

Hadsell Stormer

2009 Rates:

Years Experience	Rate
35	\$775
20	\$575

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

2008 Rates:

Years Experience	Rate
Partners	\$515-\$795
Associates	\$275-\$510

2007 Rates:

Years Experience	Rate
Partners	\$495-\$775
Associates	\$275-\$485

Litt, Estuar, Harrison & Kitson, LLP

2009 Rates:

Years Experience	Rate
39	\$800
16	\$550
3	\$320
2	\$285
Paralegals	\$125-\$235
Law Clerks	\$225

Loeb & Loeb

2009 Rates:

Years Experience	Rate
Partners	\$475-\$950
Associates	\$285-\$450

2008 Rates:

Years Experience	Rate
Partners	\$450-\$925
Associates	\$260-\$500

2007 Rates:

Years Experience	Rate
Partners	\$475-\$875 (average \$606)
Associates	\$240-\$500 (average \$400)

Manatt, Phelps & Philips

2009 Rates:

Years Experience	Rate
Partners	\$495-\$850
Associates	\$250-\$505

2008 Rates:

Years Experience	Rate
Partners	\$495-\$850
Associates	\$290-\$505

2007 Rates:

Years Experience	Rate
Partners	\$520-\$785 (average \$600)
Associates	\$265-\$480 (average \$395)

Morrison Foerster

2009 Rates:

Years Experience	Rate
24	\$750

2008 Rates:

Years Experience	Rate
45	\$675
36	\$725
33	\$785
14	\$650
12	\$600
9	\$560
7	\$535
5	\$485
1	\$520
Paralegals	\$185- \$230

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2007 Rates:

Years Experience	Rate
44	\$675
11	\$550
8	\$520
6	\$475
3	\$250

O'Melveny & Myers

2009 Rates:

Years Experience	Rate
36-37	\$860-\$950
21	\$820
16-18	\$700-\$710
14	\$595-\$675
10	\$590
8	\$565
7	\$540-\$565
5-6	\$480-\$520
2-4	\$395-450
Paralegals	\$225-310

Reed Smith

2008 Rates:

Years Experience	Rate
Partners	\$375-\$900 (average \$626)
Associates	\$235-\$580 (average \$423)

2007 Rates:

Years Experience	Rate
Partners	\$350-\$825 (average \$558)
Associates	\$200-\$510 (average \$374)

Rudy, Exelrod & Zieff

2009 Rates:

Years Experience	Rate
Partners 31	\$700
Associates 3	\$305

2007 Rates:

Years Experience	Rate
Partners 29 12	\$700 \$500
Associates 10 8	\$400 \$330
Law Clerk	\$200
Paralegal	\$150

Schonbrun, DeSimone, Seplow, Harris & Hoffman

2009 Rates:

Years Experience	Rate
33	\$750
25	\$625
24	\$625
8	\$375
6	\$370
Paralegals	\$125

Sheppard, Mullin, Richter & Hampton

2008 Rates:

Years Experience	Rate
Partners	\$475-\$795
Associates	\$275-\$455

2007 Rates:

Years Experience	Rate
Partners	\$425-\$795
Associates	\$260-\$550

Townsend and Townsend and Crew

2009 Rates:

Years Experience	Rate
Partners	\$480-\$750
Associates	\$260-\$460

Winston & Strawn

2009 Rates:

Years Experience	Rate
Partners	\$400-\$995
Associates	\$210-\$670

10. The hourly rates set forth above pertain largely to law firms headquartered in the San Francisco Bay Area and Los Angeles. To the extent those law firms handle cases in other jurisdictions, like San Diego, they almost always charge the same rates that they do for litigation in the Bay Area. To the extent Plaintiffs' claim is based upon San Diego rates, however, I also am of the opinion that they are in line with the rates charged by lawyers of comparable skill, experience, and reputation for comparable work, *i.e.*, complex representative litigation in San Diego. I base that opinion on the following facts:

a. In a report filed with the California Public Utilities Commission (attached as Exhibit C), the San Diego Gas & Electric Co. reported that in 2003, it hired outside counsel at rates of from \$477-625 per hour for partners with 13 or more years experience, \$435 per hour for partners with 8-12 years of practice, and \$239-425 per hour for associate attorneys with up to 7 years of practice. Hourly rates have increased significantly since then.

b. San Diego law firm Luce, Forward, Hamilton & Scripps reports that in 2010, its partner rates ranged from \$350 to \$670 per hour, and its associate rates ranged from \$245 to \$445 per hour. In 2009, its partner rates ranged from \$360 to \$650 per hour, and its associate rates ranged from \$240 to \$540 per hour.

11. My research regarding attorneys' fees in California has indicated a consistent increase in fees over the last several years. Most firms increased their rates over these periods. Consistent with this market, I raised my rates in 2009 and 2010, and will raise it again in 2011, to reflect both the

1 demand for my services and inflation in costs and legal rates; my rate is still significantly less than
2 many attorneys with comparable experience, expertise, and skills at other firms.

3 12. The hourly rates set forth above are those charged where full payment is expected
4 promptly upon the rendition of the billing and without consideration of factors other than hours and
5 rates. If any substantial part of the payment were to be deferred for any substantial period of time, for
6 example, or if payment were to be contingent upon outcome or any other factor, the fee arrangement
7 would be adjusted accordingly to compensate the attorneys for those factors.

8 13. In my experience, fee awards are almost always determined based on current rates, i.e.,
9 the attorney's rate at the time a motion for fees is made, rather than the historical rate at the time the
10 work was performed. This is a common and accepted practice to compensate attorneys for the delay in
11 being paid.

12 C. Plaintiffs' Counsel's Requested Percentage Fee

13 14. I understand that Plaintiffs request an award of fees under the common fund doctrine as a
14 percentage of the fund recovered in this litigation sufficient to provide them with a reasonable fee. This
15 is an appropriate request because this is a fully-paid, non-reversionary settlement in which the value of
16 the class recovery is fully monetized at \$2,000,000, inclusive of fees, expenses, and settlement
17 administration costs. Under these circumstances, courts award fees as percentages of the common fund
18 where they are in line with the range of fees freely negotiated in the legal marketplace in comparable
19 litigation.

20 15. Based on the information I have gathered and my own experience and expertise, it is my
21 opinion that the 33 1/3% common fund fee recovery requested by Class Counsel is, in the
22 circumstances of this case, reasonable and consistent with awards approved by other California state
23 courts reviewing class action settlements, based on the factors discussed below.

24 16. My opinion is based in part on the fact that, as a common fund case with the fund
25 consisting of \$2 million, Plaintiffs' claimed fee of 33 1/3% is entirely consistent with the legal
26 marketplace for attorneys' services in contingency fee cases involving similar financial recoveries. In
27 the course of my practice, I have become familiar with the contingency fee percentages charged by law
28 firms to sophisticated institutional clients in large damage cases. Based on that knowledge and my

1 experience in the attorneys' fees field generally, it is my opinion that if competent and experienced
2 attorneys and a sophisticated client were to negotiate a contingency fee agreement under the
3 circumstances where (a) a high risk, complex case was being contemplated, (b) it is anticipated that the
4 opposition would be vigorous, and (c) the attorneys would not be paid unless and until they were able to
5 obtain significant relief for the client, the sophisticated client would be more than willing to enter into a
6 retainer agreement under which the client would pay only the litigation out-of-pocket costs, and the
7 attorneys could reasonably expect to recover 5% to 35% of the total value of any recovery as fees.

8 17. An award of 33 1/3% of the common fund requested by Class Counsel here is consistent
9 with legal marketplace for attorneys' services in contingency fee cases because of (a) the high risk
10 involved in litigating an incentive compensation plan case on behalf of nearly 100 California
11 employees; (b) the vigorous defense presented by the large defense firm that represents Defendant here;
12 (c) the relatively small size of the common fund, which weighs toward a higher percentage; and (d) the
13 fact that here, unlike in the paradigm market practices situation described in the previous paragraph,
14 Class Counsel were obligated to advance the substantial litigation costs on a contingent basis with risk
15 of delay in repayment as well as possible non-repayment, and to represent Plaintiffs through appeal of
16 any judgment in this case. This award would also be appropriate to encourage settlement, reward
17 counsel for maximizing their clients' recoveries, and promote the private enforcement of the wage and
18 hour laws Plaintiffs allege were violated.

19 **D. Plaintiffs' Counsel's Lodestar Multiplier**

20 18. Courts often cross-check a percentage-based fee against a lodestar based fee to determine
21 if it is reasonable. I understand that Plaintiffs' lodestar here is \$332,383.88 on non-fees work. The
22 \$666,667 fee award requested represents a 2 multiplier on the non-fees lodestar.

23 19. The expense and risk of public interest litigation has not diminished over the years; to
24 the contrary, these cases are in many ways more difficult than ever. As a result, fewer and fewer
25 attorneys and firms are willing to take on such litigation, and the few who are willing to do so can only
26 continue if their fee awards reflect true market value. Attorneys who litigate on a wholly or partially
27 contingent basis expect to receive significantly higher effective hourly rates in cases where
28 compensation is contingent on success. As the case law recognizes, this does not result in any

1 "windfall" or undue "bonus." In the legal marketplace, a lawyer who assumes a significant financial
2 risk on behalf of a client rightfully expects that his or her compensation will be significantly greater
3 than if no risk was involved (i.e., if the client paid the bill on a monthly basis), and that the greater the
4 risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to
5 reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes
6 them competitive in the legal marketplace, helping to ensure that meritorious cases will be brought to
7 enforce important public interest policies and that clients who have meritorious claims will be more
8 likely to obtain qualified counsel.

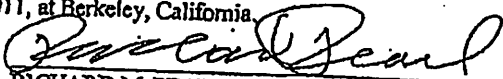
9 20. In my experience, lodestar multipliers of 2 to 4 are typical for class actions such as this
10 case. Plaintiffs' requested fee falls well within this range.

11 E. Plaintiffs' Counsel's Out-of-Pocket Expenses.

12 21. I have reviewed the billing practices of hundreds of attorneys in California. Based on
13 my experience and knowledge of these billing practices, I am aware that it is a common practice for
14 firms to bill their clients for out-of-pocket expenses incurred in litigation on a monthly basis as they are
15 incurred. Such expenses include, but are not limited to, charges incurred for copying, long-distance
16 telephone calls, postage, messengers, travel, deposition and hearing transcripts, legal and non-legal
17 computer research services, mediation services, and expert witnesses. I am informed that Plaintiffs
18 expended \$16,258.08 in out-of-pocket litigation expenses in this case, including \$8,000 for the services
19 of an experienced and skilled mediator, David Rotman, who brokered the settlement in this case. Based
20 on my knowledge and experience of such costs and billing practices, it is my opinion that these
21 expenses are reasonable given the complex nature of this case.

22 If called as a witness, I could and would competently testify from my personal knowledge to the
23 facts stated herein. I declare under penalty of perjury under the laws of the state of California the
24 foregoing is true and correct.

25 Executed this 4th day of January, 2011, at Berkeley, California

26 
27 RICHARD M. PEARL
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within entitled action; my business address is 8822 West Olympic Boulevard,
Beverly Hills, California 90211.

5 On January 18, 2023, I served the following document(s) described as:

6 **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION**
7 **SETTLEMENT; ENHANCEMENT AWARD, REASONABLE ATTORNEYS' FEES AND**
8 **COSTS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF**
JAMES A. DE SARIO IN SUPPORT THEREOF

9 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope,
10 with postage thereon fully prepaid, addressed as follows:

11 Bret Martin, Esq.
12 Fisher & Phillips LLP
13 4747 Execute Drive, Suite 1000
San Diego, California 92121

14 Courtesy Copy By Emai: bmartin@fisherphilips.com

15 BY MAIL: I am readily familiar with our office's practice for collection and processing of
16 correspondence and other materials for mailing with the United States Postal Service. On this
17 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
18 collection and mailing on this date at the address stated above, following our office's ordinary
business practices. The envelope(s) will be deposited with the United States Postal Service on this
date, in the ordinary course of business.

19 I declare under penalty of perjury under the laws of the State of California that the above is
20 true and correct and that this Proof of Service was executed on January 18, 2023, at Beverly Hills,
California.

21
22
23 /s/ Alejandra Beltran
24 Alejandra Beltran
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