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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

BRIAN HAZEL, on behalf of the State of
California, and on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

HIMAGINE SOLUTIONS, INC., and DOES 1-
100, inclusive,

Defendants.

Case No. RG20068159

[CLASS ACTION]

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 2, 2021

Time: 3:00 p.m.

Judge: Hon. Brad Seligman

Dept.: 23

Reservation No.: R-2273821

Complaint filed: July 20, 2020

Trial date: None set

*Assigned for All Purposes to the Honorable
Brad Seligman, Department 23*

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1 **I. INTRODUCTION**

2 Plaintiff Brian Hazel, on behalf of the State of California, and on behalf of himself and all
3 others similarly situated (“Plaintiff”), seeks final approval of the settlement of this wage and hour
4 class action lawsuit against Defendant Himagine, Inc. (“Defendant” or “Himagine”).¹ Plaintiff and
5 his counsel have achieved an exceptional result for the members of the Class, who are current and
6 former medical records coders for Defendant that work remotely throughout the State of
7 California. The Parties have resolved this matter in the Settlement Agreement (“Settlement”), for
8 which the Court granted preliminary approval on July 2, 2021.² The Settlement provides excellent,
9 immediate monetary payments to Class Members, and the response of the Class has been
10 overwhelmingly positive.³

11 The Settlement features a Total Settlement Amount of \$930,724.96 and is fully non-
12 reversionary.⁴ From the Total Settlement Amount, Plaintiff seeks \$15,000.00 for a service award
13 for his copious efforts on behalf of the Class, as well as \$307,500 for attorneys’ fees (one third of
14 the original Total Settlement Amount) and \$10,724.67 for actual costs for Class Counsel Schneider
15 Wallace Cottrell Konecky LLP (“SWCK”) and Shavitz Law Group, P.A. (“Shavitz”). Plaintiff also
16 seeks approval for the \$30,000.00 LWDA Payment for the State’s share of PAGA Penalties⁵ and
17 \$5,600.00 in actual costs and expenses of the Settlement Administrator, Simpluris, Inc.
18 (“Simpluris”). With these payments, a Net Settlement Amount of approximately \$561,900.29 will
19 be available for distribution to Participating Class Members.

20 The average net award for each of the 199 Class Members is an impressive \$2,817.21, and
21 the estimated largest net recovery is a plenteous \$17,400.58. The net per workweek recovery is an
22 excellent \$60.42, meaning that even short-term employees with a few weeks of tenure will receive

23 ¹ Defendant does not oppose this motion.

24 ² A true and correct copy of the Settlement Agreement (“Settlement”) was attached as **Exhibit 1** to the
25 Declaration of Attorney Carolyn Hunt Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of
26 Class Action Settlement.

27 ³ “[T]here is an overriding public interest in settling and quieting litigation ... particularly ... in class action
28 suits[.]” *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950; *Bell v. American Title Ins. Co.*
(1991) 226 Cal.App.3d 1589, 1607 (noting a “strong public policy” in favor of class action settlements).

⁴ The Total Settlement Amount was set at \$922,500.00 under the Settlement, provided that the number of
Class Members did not exceed 188. As the final tally of Class Members was 199, the Total Settlement
Amount increased *pro rata*, based on the additional workweeks of the 11 additional Class Members, to
\$930,724.96 (an additional \$8,224.96). See Settlement Agreement, ¶¶ II.Y, III.I; see also Declaration of
Meagen Brunner Regarding Notice and Settlement Administration, ¶ 13.

⁵ The total amount attributable to PAGA penalties is \$40,000.00, of which \$30,000.00 will be paid to the
California Labor and Workforce Development Agency (“LWDA”), while \$10,000.00 will be distributed to
Class Members as part of the Net Settlement Amount.

1 payments in the hundreds of dollars. As may be expected, the Class has responded favorably.
2 There have been no objections, no opt outs, and no disputes regarding workweeks from any Class
3 Members. Simpluris disseminated the Class Notice Packet via U.S. Mail and email on August 2,
4 2021, and successfully administered notice to every member of the Class. The opt out and
5 objection period has closed without any objections, opt outs, or disputes, evidencing a thoroughly
6 positive response to the Settlement.

7 The Settlement satisfies all of the criteria for final settlement approval under California law
8 and falls well within the range of reasonableness. Accordingly, the Court should (1) finally
9 approve the proposed Settlement; (2) finally approve Plaintiff as Class Representative; (3) finally
10 approve SWCK and Shavitz as Class Counsel; (4) certify the Class for settlement purposes only⁶;
11 (5) finally approve an allocation of \$40,000.00 for PAGA penalties; (6) finally approve a service
12 award of \$15,000.00 to Plaintiff; (7) finally approve an award of attorneys' fees to Class Counsel
13 in the amount of \$307,500.00, plus reimbursement of Class Counsel's out-of-pocket expenses in
14 the amount of \$10,724.67; (8) finally approve Simpluris as Settlement Administrator and approve
15 the costs of settlement administration in the amount of \$5,600.00; and (9) approve the proposed
16 implementation schedule, set forth in the Notice of Motion, for relevant dates and deadlines
17 regarding the administration of the Settlement.

18 **II. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

19 **A. Factual Background**

20 Plaintiff and the Class Members are Defendant's current and former non-exempt medical
21 records coders in California, who work remotely reviewing medical records and assigning
22 appropriate medical codes to medical treatment and care provided by various medical facilities
23 and practices. *Id.*, ¶ 8; First Amended Class Action and Private Attorney General Action
24 Complaint ("FAC"), ¶ 25. Himage is a privately held healthcare information management
25 outsourcing company, and employs remote Coders throughout the State of California and the
26 United States. See FAC, ¶¶ 4, 23. Himage works with children's and specialty hospitals,
27 academic medical centers, large health systems, small rural and secondary market facilities, and
28 physician and group practices across multiple specialties. *Id.*

⁶ The Class is defined as all current and former employees who worked for Himage in a non-exempt
Coder Position while residing in the State of California, at any time from November 1, 2015 through July 2,
2021. See Settlement, ¶¶ II.B, II.I. Defendant maintains that the class should only be certified for settlement
purposes and reserves all rights to contest class certification in the event that litigation proceeds.

1 Plaintiff alleges that Defendant required Class Members to work off-the-clock and incur
2 necessary business expenses that were never reimbursed. FAC, ¶¶ 6-9. Specifically, Plaintiff
3 alleges that when remote coders begin to work, they must log in and navigate through several
4 applications before they are actually deemed to be “on the clock.” *Id.*, ¶¶ 26-30. Plaintiff alleges
5 that this process typically takes approximately fifteen to twenty minutes per day and is uniform
6 for all coders. *Id.*, ¶ 6. Plaintiff further alleges that Defendant maintains a strict overtime policy,
7 in which all overtime must be pre-approved, and that Defendant maintains efficiency standards
8 based on the number of medical charts coded per hour, both of which drive further unpaid time.
9 *Id.*, ¶¶ 7-8, 27-28. Plaintiff also alleges an expense reimbursement claim, asserting that Defendant
10 did not reimburse for computers, internet access, telephone, and other supplies and services
11 necessary for the job of a remote coder, as a matter of policy.⁷ *Id.*, ¶¶ 9, 31. Plaintiff also alleges
12 that Defendant failed to provide compliant meal and rest periods. *Id.*, ¶ 128.

11 Defendant denied the allegations and contended, *inter alia*, that employees did not
12 experience any uncompensated time navigating applications because they manually keyed in their
13 exact start times every day; Defendant’s timekeeping policies required employees to accurately
14 record all work time and not work “off-the-clock”; Defendant complied with all expense-
15 reimbursement obligations under California law; and Defendant provided employees all meal and
16 rest periods required by California law.

16 Plaintiff brought class action and PAGA claims against Defendant to challenge its alleged
17 policies and practices of failing to compensate Class Members for all hours worked, including at
18 California minimum wage and overtime rates; failing to reimburse Class Members for necessary
19 business expenditures; and related violations for failing to provide Class Members accurate,
20 itemized wage statements and failing to timely pay Class Members wages owed upon the
21 termination of employment. *Id.*, ¶ 3.

21 **B. Procedural History**

22 Plaintiff filed his initial Class Action Complaint in Los Angeles County Superior Court on
23 April 29, 2020 (the “*Hazel I* Action”). Cottrell Decl., ¶ 12. The initial complaint in the *Hazel I*
24 Action asserted claims on an individual and putative class basis against Himage for alleged
25 violations of California wage and hour laws. *Id.* On May 21, 2020, Plaintiff filed a First Amended
26 Complaint in the *Hazel I* Action, which added an overlapping cause of action for alleged

27 ⁷ Defendant began reimbursing coders with a monthly stipend to cover internet usage and related supplies
28 and services for their work, beginning on early 2020. Cottrell Decl., ¶ 65.

1 violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.*, with respect
2 to a proposed California collective. *Id.*, ¶ 13. On July 8, 2020, Himagine removed the *Hazel I*
3 Action to the United States District Court for the Central District of California (the “District
4 Court”), where it was assigned Case No. 2:20-cv-06072. *Id.*, ¶ 14. On July 20, 2020, Plaintiff
5 filed a second complaint against Himagine, alleging PAGA-only claims with respect to the same
6 violations, in the instant action (the “*Hazel II* Action”).⁸ Shortly after the litigation was filed, the
7 Parties agreed to attend early mediation. *Id.*, ¶ 17.

8 The Parties participated in two mediation sessions, both of which were conducted by the
9 Honorable Gail A. Andler (Ret.) of JAMS ADR, a skilled and experienced mediator of wage and
10 hour actions. *Id.*, ¶ 18. Ahead of the mediations, Defendant provided informal discovery including
11 timekeeping and payroll information, hire dates, termination dates, and other information for the
12 entire Class. *Id.*, ¶ 19. The timekeeping and payroll information showed on-the-books data for
13 shifts worked, including dates of work, clock in and clock out times, duration, and amounts of
14 pay. Defendant also provided relevant written policies and employee handbook information in use
15 during the Class Period, as well as paystubs for named Plaintiff. *Id.* Class Counsel used the
16 timekeeping and payroll information produced by Defendant to perform an in-depth analysis of
17 Defendant’s exposure. *Id.*, ¶ 20. This exposure analysis drove Plaintiff’s negotiations with
18 Defendant at mediation. *Id.*

19 On August 6, 2020, the Parties participated in the first mediation session, through which
20 the Parties agreed to settle the expense reimbursement component of the *Hazel I* Action and the
21 *Hazel II* Action. *Id.*, ¶ 21. The Parties finalized this agreement in a prior settlement agreement
22 (the “Prior Agreement”). *Id.* Pursuant to the terms of the Prior Agreement, Plaintiff filed the
23 operative FAC in the instant action on November 2, 2020, which brought the California Labor
24 Code claims and putative California class alleged in the *Hazel I* Action into the *Hazel II* Action.
25 Plaintiff then filed a stipulation to dismiss the *Hazel I* Action in its entirety, without prejudice,
26 which the District Court granted on November 17, 2020. *Id.*, ¶ 22.

27 On December 7, 2020, the Parties participated in the second mediation, again presided over
28 by the Judge Andler. *Id.*, ¶ 23. During the second mediation, the Parties reached agreement on the
terms of a proposed Settlement that would resolve all claims made in the *Hazel II* Action,

⁸ Plaintiff provided notice to the LWDA of his intent to pursue PAGA claims against Defendant on April 30, 2020. A true and correct copy of Plaintiff’s PAGA Notice is attached as Exhibit 1 to the Cottrell Decl. The LWDA did not issue a response. *Id.*, ¶ 15.

1 inclusive of the off-the-clock claims, expense reimbursement claims, meal and rest period claims,
2 and all other matters covered by the Settlement. The Parties first memorialized their agreement in
3 a Settlement Term Sheet and Agreement. *Id.*, ¶ 24. The Parties then negotiated and executed the
4 proposed long-form Settlement, submitted for approval herewith. *Id.*

5 Plaintiff filed his motion for preliminary approval of the Settlement on April 5, 2021. The
6 motion was originally set for hearing on May 4, 2021, in Department 517, though the hearing date
7 was continued pending a complex case determination and potential reassignment.⁹ On May 11,
8 2021, the Court granted complex case status and the matter was reassigned to the instant
9 Department. At the hearing on June 29, 2021, the Court granted Plaintiff's motion for preliminary
10 approval, provided that the Parties make minor changes to the Class Notice to inform Class
11 Members that they could appear and object at the Final Approval Hearing if they did not submit a
12 written objection, and that pleadings and other case documents could be accessed via the
13 DomainWeb system (along with instructions for doing so). The Parties made these modifications
14 via stipulation filed with the Court on July 1, 2021. *Id.*, ¶ 25. The Court signed and entered the
15 preliminary approval order on July 2, 2021.

16 **C. Notice of the Settlement**

17 Simpluris disseminated the Class Notice Packets via U.S. Mail and email on August 2,
18 2021. Brunner Decl., ¶¶ 6, 8. Prior to the initial mailing, Simpluris completed required data
19 extraction and checked the addresses provided by Defendant through the National Change of
20 Address System. *Id.*, ¶ 4. The opt-out/exclusion date for these notices was set at 45 days after the
21 mailing of the notices, September 16, 2021, pursuant to the Settlement Agreement. *Id.*, ¶¶ 10-12.
22 Simpluris also set up a toll-free call center to handle inquiries from Class Members. *Id.*, ¶ 9.
23 Throughout the notice period, the Settlement Administrator provided weekly status updates to
24 Counsel about the status of the notices and Class Member response.

25 Simpluris successfully administered notice to every Class Member.¹⁰ See *id.*, ¶ 7. After the
26 initial mailing to the 199 Class Members, 11 Class Notice Packets sent via U.S Mail were
27 returned as undeliverable. *Id.*, ¶¶ 6-7. Simpluris employed skip tracing and other techniques to
28 locate updated address information. *Id.* Of the 11 returned Notice Packets, ten were re-mailed to
either a newfound address or to a forwarding address provided by USPS. *Id.* Additionally,
Simpluris successfully emailed the Class Notice Packet to 193 Class Members. *Id.*, ¶ 8. A single

⁹ As this Action was initially filed as a PAGA-only case, it was originally deemed non-complex.

¹⁰ The finalized form of notice is attached as Exh. A to the Brunner Decl.

1 Class Notice Packet was undeliverable via U.S. Mail because Simpluris was unable to find a
2 better address; however, this Class Member was successfully delivered an emailed Notice Packet.
3 *Id.*, ¶ 7.

4 The deadline for Class Members to opt out, object, or dispute workweek amounts (upon
5 which the individual shares of the Settlement were based) was September 16, 2021. *Id.*, ¶¶ 10-12.
6 To date, there have been no objections, no opt outs, and no disputes regarding workweeks. *Id.*
7 Class Members do not have to submit a claim form to receive an award under the Settlement. See
8 Settlement Agreement, ¶ III.E.3.b.

9 **D. Final Approval of the Settlement**

10 If final approval is granted, the Effective Date of the Settlement will occur when the Court
11 enters the Order Granting Final Approval of Class Action Settlement and Entering Final
12 Judgment, and the applicable date for seeking appellate review of the final approval has passed
13 without a timely appeal or request for review having been made (assuming that no appeals have
14 been filed to contest final approval). Settlement Agreement, ¶¶ II.K, II.M. After the Effective
15 Date, Defendant will fund the Settlement according to the implementation schedule. *Id.*, ¶
16 III.E.10. Simpluris will mail Settlement Share checks to Class Members and pay the LWDA
17 Payment, the Class Representative Payment to Plaintiff, and any award of fees and costs to Class
18 Counsel pursuant to the implementation schedule. *Id.*

19 Settlement checks will be negotiable for 180 days following issuance. *Id.*, ¶ III.E.11.
20 Simpluris will issue a reminder postcard to any Class Member whose Settlement Share check is
21 not cashed within 120 days after mailing. *Id.* Any funds from uncashed checks will be re-
22 distributed to those Class Members who cash their checks and/or distributed to Legal Aid at Work
23 as a *cy pres* beneficiary, if the amount is less than \$10 per Class Member or if there are funds
24 leftover from the redistribution. *Id.* Given the successful dissemination of notice and that
25 Simpluris obtained current addresses for virtually the entire Class (along with the robust payments
26 under the Settlement), the Parties do not anticipate a significant number of uncashed checks.

27 **III. CLASS-ACTION SETTLEMENT APPROVAL PROCEDURE**

28 A class action may not be dismissed, compromised, or settled without the approval of the
court. (See California Civil Code § 1781(f); California Rule of Court 3.769; *see also* Federal Rule
of Civil Procedure 23(e).¹¹) California Rule of Court 3.769 describes three distinct steps for

¹¹ This Motion cites Federal Rule of Civil Procedure Rule 23 and federal case law construing it as authority
for class certification and class settlement approval in California courts. The California Supreme Court has

1 approval of class action settlements by California courts: (1) preliminary approval of the proposed
2 settlement after submission of a motion for preliminary approval, the proposed class action
3 settlement, and the proposed class notice; (2) mailing of notice of the settlement to all affected
4 members of the settlement class; and (3) a final settlement approval hearing at which members of
5 the settlement class may be heard regarding the settlement, and at which evidence and argument
6 concerning the fairness, adequacy, and reasonableness of the settlement is presented. This
7 procedure is similar to the procedure and criteria for approval of class actions under federal law.¹²

8 Here, the Court has already granted preliminary approval, notice has been mailed to the
9 Class, and the Class has responded favorably. With this Motion, Plaintiff requests that the Court
10 take the final step in the settlement approval process by granting final approval of the Settlement,
11 the LWDA payment, the service payment, and Plaintiff's application for payment of Class
12 Counsel's attorneys' fees and costs.

13 **IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

14 **A. Final Approval of the Settlement is Appropriate**

15 The decision to approve or reject a proposed settlement is committed to a court's broad
16 discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; *Dunk v. Ford*
17 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "As long as the Court has sufficient information
18 about the nature and magnitude of the claims being settled, as well as impediments to recovery, the
19 Court should be able to make an independent assessment of the reasonableness of the terms to
20 which the parties have agreed. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.
21 Plaintiff provides an abundance of information regarding the claims being settled, and recognizes
22 and appreciates the risks of continued litigation.

23 **1. The best practicable notice was provided to the Class in accordance with 24 the Court-approved notice process**

25 The Parties successfully administered notice to all members of the Class. The notice must
26 be the best "practicable under the circumstances including individual notice to all members who
27 can be identified through reasonable effort." *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8
28 F.3d 1370, 1374; *Wershba*, 91 Cal.App.4th at 251 (the standard is whether the notice has a

authorized and urged California's trial courts to use these federal resources for guidance in considering
class action issues. (*Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.)

¹² It is also endorsed by the nation's leading class action commentator, Professor Herbert Newberg, for
safeguarding class members' procedural due process rights and enabling the court to fulfill its role as the
guardian of the interests of the class. (*See Newberg on Class Actions*, § 11:24 (4th Ed. 2002); *Manual for*
Complex Litigation, §21:63 (4th Ed. 2006).)

1 reasonable chance of reaching a substantial percentage of the class members). “[N]otice mailed
2 by first class mail has been approved repeatedly as sufficient notice of a proposed settlement.”
3 *Langford v. Devitt* (S.D.N.Y. 1989) 127 F.R.D. 41, 45; *Grunin v. International House of*
4 *Pancakes* (8th Cir. 1975) 513 F.2d 114, 121.

5 Simpluris followed all of the procedures set forth in the Court-approved notice plan.
6 Pursuant to the Court’s preliminary approval order, the Class Notice Packet was mailed and
7 emailed to the Class in accordance with the terms of the Settlement. Cottrell Decl., ¶¶ 40-42. The
8 Class Notice provides a description of the case and the proposed Settlement, informs Class
9 Members of their Covered Workweeks and estimated Settlement Share, explains how Class
10 Members can receive payment under the Settlement or exercise their right to opt-out, object, or
11 dispute their workweek amount, and identifies Class Counsel. *Id.*, ¶ 43. Each Class Member
12 received notice via mail, email, or both. *Id.*, ¶ 44. With these measures, reasonable steps have
13 been taken to ensure that all members of the Class received the Class Notice Packets.
14 Accordingly, the notice process satisfies the “best practicable notice” standard.

15 **2. The terms of the proposed Settlement are fair, reasonable, and adequate.**

16 For final approval, courts must ensure that “the agreement is not the product of fraud or
17 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
18 whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998)
19 150 F.3d 1011, 1027. A presumption of fairness exists where: (1) the settlement is reached through
20 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
21 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
22 objectors is small. *Dunk*, 48 Cal.App.4th at 1802. All four of these conditions are satisfied here.

23 A review of the Settlement reveals the fairness of its terms. *See id.*, ¶ 57. The estimated Net
24 Settlement Amount of \$561,900.29, derived from a Total Settlement Amount of \$930,724.96, will
25 result in fair and just relief to the Class Members. *Id.* The average net award is \$2,817.21, the
26 estimated largest net recovery is \$17,400.58, and the net per workweek recovery is \$60.42. The
27 result is not only within the reasonable standard, but Class Counsel believes it is exceptional when
28 considering the nature of Plaintiff’s claims and the difficulty and risks presented by continuing this
litigation. *Id.*

29 **a. The Settlement was reached after extensive investigation, discovery, and analysis of the class claims.**

California courts recognize that “a presumption of fairness exists where . . . [a] settlement
is reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245. Here, the proposed

1 Settlement was reached after two mediation sessions and numerous arm's-length settlement
2 discussions between Class Counsel, counsel for Defendant, and mediator Judge Gail A. Andler
(Ret.). Cottrell Decl., ¶ 58.

3 Class Counsel investigated the applicable law and the facts in this case and extensively
4 analyzed the potential damages that might be recovered following the exchange of documents and
5 information with Defendant. Cottrell Decl., ¶ 59. Defendant provided informal discovery showing
6 the shifts worked and compensation paid to Class Members, including the date of work, daily
7 hours worked on each project, project description, and rate of pay. *Id.* Plaintiff used this
8 information to perform a careful and extensive analysis of the effects of Defendant's timekeeping
compensation policies and practices on Class Members' pay. *Id.*

9 Applying workweek, average pay, and average tenure figures obtained through discovery
10 analysis and further data points to Defendant's compensation policies, Plaintiff prepared a
11 damages analysis that provided the estimated recovery for each cause of action. *Id.*, ¶ 60. Plaintiff
12 estimated the total damages for off-the-clock work at approximately \$434,612.00 and the total
13 damages for unreimbursed business expenses at approximately \$435,964.00. *Id.* Totaling these
14 amounts provides total damages for substantive (non-derivative, non-penalty) violations of
15 approximately \$870,576.00, based on Plaintiff's aggressive assumptions. *Id.* Plaintiff assessed
16 Defendant's exposure for derivative violations (waiting time penalties, wage statement penalties,
17 and PAGA penalties) at approximately \$2,371,574.00. *Id.* Defendant's total exposure, for both
substantive and derivative claims, is estimated at approximately \$3,242,149.00. *Id.*

18 The Settlement was agreed upon following an extensive review of the facts and law in this
19 case. *Id.*, ¶ 61. These figures provided benchmarks for Plaintiff and Class Counsel to gauge
20 settlement offers, compared to a hypothetical maximum that assumes complete success on every
21 claim and overcoming each of Defendant's defenses. *Id.* The \$930,724.96 Total Settlement
22 Amount accounts for over 100% of Plaintiff's estimates of Defendant's exposure for substantive
23 violations, and approximately 28.45% of Plaintiff's estimates of Defendant's exposure for
24 substantive and derivative violations. In light of the challenges that Plaintiff would likely face, as
discussed below, the proposed Settlement is extremely reasonable. *Id.*

25 **b. Litigation of this action not only would delay recovery, but**
26 **would be expensive, time-consuming, and would involve**
substantial risk.

27 If this case were to go to trial as a class action, it is estimated that Class Counsel's fees and
28 costs would exceed \$1,000,000.00. *Id.*, ¶ 62. Litigating the class claims in this action would

1 require substantial additional preparation and discovery and ultimately would involve the
2 depositions of Class Members and experts, the presentation of percipient and expert witnesses at
3 trial, as well as the consideration, preparation, and presentation of voluminous documentary
4 evidence and the preparation and analysis of expert reports. *Id.* The remote nature of coders' work
5 required them to use computers in the performance of their duties and to rely mostly on electronic
6 forms of communication with their supervisors and with Defendant. *Id.* As a result, most of the
7 document production in this case would require expensive and time-consuming retrieval, review,
8 and storage of large amount of Electronically Stored Information (ESI). *Id.* In contrast to the risk
9 and uncertainty of continued litigation, the Settlement will yield a prompt, certain, and substantial
10 recovery for Class Members. Such a result will benefit the Parties and the court system. *Id.*, ¶ 63.

11 **c. Defendant would continue to contest liability on all issues.**

12 The reasonableness of the Settlement is further underscored by the fact that Defendant has
13 legal and factual grounds available to defend this action. *Id.*, ¶ 64. Defendant takes the position
14 that this case is not suitable for class or representative treatment and that it fully complied with its
15 obligations regarding payment of wages and reimbursement of expenses. *Id.* In particular,
16 Defendant vigorously disputed at mediation that Class Members were required to work off-the-
17 clock at all. *Id.*, ¶ 65. Defendant further contends that it maintains written policies and procedures
18 relating to wage and hour issues that are facially compliant with California law, and disputes that
19 Plaintiff and the Class Members are entitled to damages, penalties, or other relief sought. *Id.*

20 **d. Additional risks Plaintiff considered.**

21 Plaintiff would face other significant risks if the litigation were to proceed to trial. *Id.*, ¶ 66.
22 As an initial matter, Defendant changed its policy regarding reimbursement for work-related
23 expenditures by coders in early 2020. *Id.*, ¶ 67. At that time, Defendant began automatically
24 reimbursing coders with a monthly stipend to cover internet usage and related supplies and
25 services for their work. *Id.* This policy and practice may be viewed favorably by the trier of fact,
26 and could result in a decreased assessment of penalties for wage and hour violations. *See, e.g.,*
27 Lab. C. § 2699 (e)(2) ("a court may award a lesser amount" of PAGA penalties "if, based on the
28 facts and circumstances of the particular case, to do otherwise would result in an award that is
unjust, arbitrary and oppressive, or confiscatory").

Before such merits inquiries, however, Plaintiff would have to file a Motion for Class
Certification. *Id.*, ¶ 68. This would require extensive investigation and outreach efforts by Class
Counsel to obtain supporting evidence, and would likely be vigorously contested by Defendant
with significant risk that the motion would be denied. *Id.* In the experience of Class Counsel,

1 putative class actions for off-the-clock claims have traditionally been difficult to certify.¹³ *Id.*
2 Plaintiff's theory of off-the-clock work is based in large part on indirect pressures to work unpaid
3 time, driven by the overtime approval policy and efficiency requirements. *Id.*, ¶ 69. Such
4 pressures may be found to vary from worker to worker. Plaintiff would face considerable risk that
5 the Court would find that individual issues predominate over common questions of law and fact.
Id.

6 Even assuming that the motion is granted, Plaintiff would then have to establish classwide
7 liability, and prove up various issues regarding damages and penalties. *Id.*, ¶ 70. Proving liability
8 and damages issues would also be complicated by any individualized differences in wage and
9 hour experiences across the coders, and would be vigorously disputed by Defendant. *Id.* Plaintiff
10 and Class Counsel would be confronted with a lack of documentary evidence regarding off-the-
11 clock time and unreimbursed expenses, as neither the amounts of time nor expenditures were
12 logged or tracked. Obtaining class certification, establishing liability, and proving damages would
13 likely take years, and would necessitate expert witness testimony and significant additional
litigation. *Id.*

14 Additionally, Plaintiff's derivative claims regarding waiting time penalties and wage
15 statements rise and fall with Plaintiff's other wage payment claims. *Id.*, ¶ 71. For example,
16 Plaintiff would recover nothing under § 203 if he was unable to prove the underlying claims or
17 defeat a "good faith" dispute defense. *See* Cal. Code Regs. Tit. 8, § 13520 (good faith dispute,
18 based in law or fact, precludes award of waiting time penalties). While Plaintiff believes that he
19 would have prevailed on these issues and others, Plaintiff recognizes the risk that a fact finder
20 may have found for Defendant on one or more of these issues and or found damages to be
significantly less than what Plaintiff claims. *Id.*, ¶ 73.

21 Defendant, represented by experienced employment lawyers, raised the above arguments,
22 and more, in mediation and would have done so in continued litigation. *Id.*, ¶ 74. Despite
23 Plaintiff's confidence in his ability to prove his claims on a classwide basis, any one of the above
24 defenses, if decided in favor of Defendant, could have reduced or even eliminated any potential
damages award. *Id.*

25
26 ¹³ *See, e.g., In re AutoZone, Inc., Wage & Hour Employment Practices Litig.* (N.D. Cal. 2012) 289 F.R.D.
27 526, 539, *aff'd*, No. 17-17533, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Kilbourne v. Coca-Cola Co.* (S.D.
28 Cal. July 29, 2015) No. 14CV984-MMA BGS, 2015 WL 5117080, at *14; *York v. Starbucks Corp.*, (C.D.
Cal. Nov. 23, 2011) No. CV 08-07919 GAF PJWX, 2011 WL 8199987, at *30.

e. Class Counsel are experienced class action litigators.

Class Counsel are experienced and respected class action litigators. See *id.*, ¶¶ 5-7. Based on Class Counsel's knowledge and expertise in this area of law, Class Counsel believes this Settlement will provide an excellent benefit to the Class Members. *Id.*, ¶ 76; Quiles Decl., ¶ 13.

f. The proposed Settlement is well within the range of reasonableness.

The Settlement calls for a Net Settlement Amount of approximately \$561,900.29. *Id.*, ¶ 77. This amount will be available to the 199 Class Members, exclusive of attorneys' fees and costs, administrative costs and other expenses, the LWDA Payment, and the service award. *Id.* This amount provides an estimated average recovery of \$2,817.21 per Class Member., *Id.*

This is a recovery that easily falls within the range of reasonableness. See, e.g., *In Re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.") (citation omitted); Cottrell Decl., ¶ 78. It is equally well-settled that a proposed settlement is not to be measured against a hypothetical ideal result that might have been achieved. See, e.g., *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 (quoting *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 with approval: "This court has aptly held that 'it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.'). The excellent result easily satisfies these standards.

g. The Class approves the Settlement.

The response of the Class has been positive. Cottrell Decl., ¶ 79. The deadline for Class Members to opt-out or submit written objections has passed, and to date, there are no objections, no opt outs, and no disputes. *Id.* The lack of objections and opt outs shows widespread support for the Settlement among Class Members, and give rise to a presumption of fairness. See *Dunk*, 48 Cal.App.4th at 1801.

B. The Service Award to Plaintiff for His Efforts on Behalf of the Class Is Reasonable

Courts award service payments to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class, as well as to compensate class representatives for their time, effort and inconvenience. *In Re California Indirect Purchases* (1998) 1998 WL 1031494, *11. It is well-established that representative plaintiffs are

1 eligible for reasonable incentive payments to compensate them for the expense or risk they have
2 incurred in conferring a benefit on other members of the class. *Munoz v. BCI Coca-Cola Bottling*
3 *Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.

4 Plaintiff Brian Hazel's involvement in this case has been extensive. Given that there were
5 two mediations, a prior settlement, and the instant, ensuing Settlement, Plaintiff has devoted large
6 amounts of time in bringing about this excellent result for the Class. Additionally, Plaintiff has
7 subjected himself to considerable risk by serving as the named Plaintiff, particularly with respect
8 to future employment opportunities.

9 Throughout this litigation, Plaintiff worked with Class Counsel and assisted in the
10 development of the case. Hazel Decl., ¶ 20. He provided extensive information and documents
11 including pay statements and policies during Class Counsel's initial investigation and the
12 preparation of Plaintiff's complaints. *Id.*, ¶ 11. Moreover, he provided important information
13 during the lead-up to mediation, including detailed background regarding his understanding of
14 Defendant's policies, procedures, and systems that governed when coders would be considered "on
15 the clock." *Id.*, ¶14; Cottrell Decl., ¶ 81. As the alleged off-the-clock work is borne from these
16 systems, Class Counsel's ability to analyze and articulate them at mediation enhanced the Class
17 Members' claims and likely contributed to an increased recovery. Cottrell Decl., ¶ 81. At both
18 mediations, Plaintiff spent much of the day on telephone calls with Class Counsel, during which he
19 provided crucial, timely information that assisted Class Counsel in responding to several
20 arguments presented by Defendant's Counsel in the mediation process. Hazel Decl., ¶ 15; Cottrell
21 Decl., ¶ 82. Plaintiff has taken part in the Settlement decision and remained apprised of the case at
22 all times during Class Counsel's pre-suit investigation of these claims and during approximately
23 1.5 years of litigation. *Id.*, ¶ 20.

24 Additionally, Plaintiff has taken on significant risk in coming forward to represent the
25 interests of his fellow employees. *Id.*, ¶ 8. He has subjected himself to risk with regards to future
26 employment opportunities by his participation in this action. *Id.*, ¶¶ 9, 21. His service as the named
27 Plaintiff in a wage and hour class action lawsuit may be discerned by potential employers and
28 members of the community, creating a very real risk of future repercussions, particularly with
respect to his future job opportunities in the medical coding industry. *Id.*

In evaluating the appropriateness of service awards, courts may consider the amount of time
and effort spent by the class representative on the litigation, the degree to which the class
representative's efforts benefitted the class, and the risk to the class representative in commencing
suit, both financial and otherwise, among other factors. *Staton v. Boeing Co.* (9th Cir. 2003) 327
F.3d 938, 977. Numerous California courts have awarded \$15,000 service awards to class
representatives in wage and hour actions. See, e.g., *Amaraut v. Sprint/United Mgmt. Co.* (S.D. Cal.

Aug. 5, 2021) 2021 WL 3419232, 2021 U.S. Dist. LEXIS 147176, at *23; *Villalpando v. Exel Direct Inc.* (N.D. Cal. Dec. 9, 2016) 2016 WL 7785852, 2016 U.S. Dist. LEXIS 182130, at *2.¹⁴ In the context of such awards, the amount of the requested service award is fair and reasonable.

As a result of Plaintiff's efforts and his willingness to step forward, the Class Members will receive significant recoveries. *Id.*, ¶ 85. On the other hand, if Plaintiff did not serve as a Class Representative or assist in the prosecution of this case, the matter would never have been brought on a class basis. The Class Members would not be getting any recovery, and Defendant's alleged conduct would have gone unchecked. Plaintiff has committed large amounts of time to this case and assumed significant risk to obtain the favorable result. *Id.*, ¶¶ 80-84. The Service Award is just 1.61% of the Total Settlement Amount, and is exceeded by the individual recoveries of numerous Class Members. Payment to the Plaintiff in the amount of \$15,000.00 is reasonable in light of the efforts he made and the risks he took in filing and prosecuting this action to obtain this \$930,724.96 Settlement. *Id.*, ¶ 87.

C. The Proposed Payment of Attorneys' Fees and Costs Is Reasonable and Should Be Finally Approved

Plaintiff seeks reasonable attorneys' fees and expenses on a common fund basis. *Id.*, ¶ 88. Pursuant to the terms of the Settlement, Class Counsel seek an award of one third of the Total Settlement Amount, or \$307,500.00. *Id.* The requested attorneys' fees are reasonable when compared to Class Counsel's lodestar amount, which currently stands at \$301,567.00.¹⁵ *Id.*, ¶ 85.

1. California courts routinely approve attorneys' fees awards of one third of the common fund

The California Supreme Court has "join[ed] the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, . . . the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503. The object of a common fund award is to set a fee that approximates the probable terms of a contingent fee contract negotiated by a sophisticated lawyer and client in comparable commercial litigation, as evidenced by awards in other cases, in an amount intended to "mimic" the market. *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 47-50.

¹⁴ See also *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 300 (approving an award of \$50,000 for the named plaintiff); *Hose v. Wash. Inventory Serv.* (S.D. Cal. July 2, 2020) No. 14-cv-2869-WQH-AGS, 2020 U.S. Dist. LEXIS 117242, at *51 (approving a \$20,000 service award for the named plaintiff in a wage and hour suit).

¹⁵ This is comprised of approximately 305.4 hours, for a lodestar amount of \$215,862.00, for SWCK; and approximately 160.6 hours, for a lodestar amount of \$85,705.00, for Shavitz. *Id.* Summaries of the firm's lodestars are included at Exhs. 2-3 to the Cottrell Decl. and in the Quiles Decl.

1 In *Laffitte*, the Court approved the award of attorneys’ fees in the amount of one third of the
2 gross \$19 million settlement (e.g., an award of \$6.33 million) under the common fund theory in a
3 wage and hour action. 1 Cal.5th at 503. By awarding counsel a percentage of the total recovery,
4 rather than fees based on hours worked, the common fund method encourages attorneys to
5 efficiently litigate to achieve the best results possible for the class. See *Laffitte*, 1 Cal.5th at 492-
6 494. Indeed, “the percentage method is generally favored in common fund cases because it allows
7 courts to award fees from the fund in a manner that rewards counsel for success and penalties it for
8 failure.” *Id.* at 493 (quoting *In re Rite Aid Corp. Securities Litig.* (3d Cir. 2005) 396 F.3d 294, 300
(internal quotations omitted)).¹⁶

9 Fee awards in class actions average around one third of the monetary recovery. *Chavez v.*
10 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11. California state and federal courts routinely
11 uphold attorneys’ fees equaling one third of the common fund. See, e.g., *id.*; *Laffitte*, 1 Cal.5th at
12 506 (“33 1/3 percent of the common fund is consistent with, and in the range of, awards in other
13 class action lawsuits”); Eisenberg & Miller, Attorney Fees in Class Action Settlements: An
14 Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35
(independent studies of class action litigation nationwide conclude that fees representing one third
of the total recovery are consistent with market rates).

15 Countless California Superior Courts have granted attorneys’ fees in this range.¹⁷ Moreover,
16 federal courts and secondary sources confirm that attorneys’ fees in this range are reasonable.¹⁸

17
18 ¹⁶ See also *In re Capacitors Antitrust Litig.* (N.D. Cal. Sept. 21, 2018) No. 3:17-md-02801-JD, 2018 WL
19 4790575, at *2 (“Indeed, the percentage of the fund method is *preferred* when counsel’s efforts have
20 created a common fund for the benefit of the class”) (collecting cases); *Fleury v. Richemont N. Am., Inc.*
21 (N.D. Cal. Apr. 14, 2009) No. C-05-4525 EMC, 2009 WL 1010514, *3 (“Contingent fees that may far
22 exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal
profession as a legitimate way of assuring competent representation...; [i]f this ‘bonus’ methodology did
not exist, very few lawyers could take on the representation of a class client given the investment of
substantial time, effort, and money, especially in light of the risks of recovering nothing”) (internal citation
omitted); *Swedish Hosp. Corp. v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1271 (“a percentage of the fund
method is the appropriate mechanism for determining the attorney fees award in common fund cases.”).

23 ¹⁷ See, e.g., *El Pollo Loco Wage and Hour Cases* (Orange County Super. Ct., JCCP No. 4957, Jan. 31,
24 2020) (approving 33.3% fee award in wage and hour class action); *Asalati v. Intel Corp.* (Santa Clara
Super. Ct., No. 16cv302615, Oct. 29, 2018) (approving 33.3% fee award); *Ochoa v. Haralambos Beverage*
25 *Co.* (Los Angeles Super. Ct., No. BC319588, Feb. 1, 2007) (approving 33.3% fee award); *Big Lots*
Overtime Cases (San Bernardino Super. Ct., JCCP No. 4283, Feb. 4, 2004) (approving 33.3% fee award);
26 *Barela v. Ralph’s Grocery Company* (Los Angeles Super. Ct., No. BC070061, June 5, 1998) (same).

27 ¹⁸ See, e.g., *Marshall v. Northrop Grumman Corp.* (C.D. Cal. Sep. 18, 2020) No. 16-CV-6794 AB (JCx),
28 2020 U.S. Dist. LEXIS 177056, at *23 (“An attorney fee of one third of the settlement fund is routinely
found to be reasonable in class actions.”); *McGrath v. Wyndham Resort Dev. Corp.* (S.D. Cal. Jan. 30,
2018) No. 15cv1631 JM (KSC), 2018 U.S. Dist. LEXIS 16095, at *21; *Beaver v. Tarsadia Hotels* (S.D.

1 These authorities establish that Class Counsel’s request for one third of the Total Settlement
2 Amount is within the range customarily approved by courts in California and should be approved.

3 **2. A fee of one third of the Total Settlement Amount is fair and reasonable in**
4 **light of the excellent result and the risks inherent in this Action**

5 Among the factors considered in determining whether the requested fee percentage is
6 reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of
7 plaintiff’s counsel and the quality of work performed by plaintiff’s counsel; (4) the contingent
8 nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar
9 cases. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors
10 support an award here of one third of the common fund. Cottrell Decl., ¶ 91.

11 First, Class Counsel’s efforts resulted in the exceptional \$930,724.96 common fund
12 settlement amount for the Class Members in this Action. Cottrell Decl., ¶ 92. This is an excellent
13 settlement for 199 Class Members, and an especially good result in light of the challenges the
14 Plaintiff and Class Counsel would face in litigating the claims on a representative basis. *Id.* This
15 result was achieved by the work and success of Class Counsel, who negotiated the Settlement after
16 extensive review and substantial negotiations. *Id.* Notably, no Class Members have objected to the
17 requested fee award, though it was fully disclosed in the Class Notice. *Id.*

18 Second, Class Counsel faced significant risks going forward with the litigation. Cottrell
19 Decl., ¶ 93. Defendant has always contended that it properly paid Class Members and that it
20 maintained compliant policies and practices. *Id.*, ¶ 94. If litigation proceeded, Plaintiff and Class
21 Counsel faced significant risks in litigating on a representative basis, and any class certification
22 motion would have been vigorously opposed. *Id.* Defendant argued that any issues with coder pay
23 are individualized. *Id.* Assuming Plaintiff could get the case past these procedural hurdles, Plaintiff
24 would still need to overcome Defendant’s substantive arguments challenging the viability of the
25 claims. *Id.*, ¶ 95. Defendant maintains that its systems readily captured all hours worked, that
26 reimbursement of expenditures at issue was not required, and that in any event, Defendant changed
27 its policy regarding reimbursement for work-related expenditures by coders in early 2020. *Id.*
28 Plaintiff would also face evidentiary issues in proving up liability and damages, given that the
alleged off-the-clock work and expenditures were not logged or tracked. *Id.* Defendant,
represented by skillful and experienced Counsel, would undoubtedly raise all of its defenses in

Cal. Sept. 28, 2017) No. 11-CV-01842-GPC-KSC, 2017 U.S. Dist. LEXIS 160214, at *28 (“California
courts routinely award attorneys’ fees of one-third of the common fund.”); Newberg on Class Actions,
§11:24 (4th Ed. 2002); Manual for Complex Litigation, §14:6.

1 certification proceedings and at trial. *Id.*, ¶ 96. Accordingly, Class Counsel faced serious risks in
2 moving forward with the case, and it would have taken several more years to realize any recovery
(if a recovery could be attained at all). *Id.*

3 Third, Class Counsel are experienced representative action litigators. See Cottrell Decl., ¶¶
4 5-7; Quiles Decl., ¶¶ 5-9. The excellent result achieved in the face of considerable risks confirms
5 the considerable skill that Class Counsel brought to bear. This skill, expertise, and experience,
6 combined with the high quality of work performed in this case, resulted in the Settlement
7 achieved. *Id.*, ¶ 97.

8 Fourth, Class Counsel have been representing Plaintiff and the Class Members in this matter
9 strictly on a contingency basis. Cottrell Decl., ¶ 98; Quiles Decl., ¶ 16. Class Counsel had to
10 forego opportunities to litigate other cases and incurred the risk of non-recovery after a substantial
11 investment of time, money, and resources—and have done so since the inception of the Action
12 without any payment or compensation. *Id.* This is no easy burden for any firm. *Id.* If, despite these
13 hardships and risks, Class Counsel are paid only basic hourly rates multiplied by the number of
14 hours worked on the case, they might not be fairly compensated for the hardships and serious risks
15 they incurred. See Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) (“A contingent
16 fee must be higher than a fee for the same legal services paid as they are performed ... because the
17 risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much
higher than that of conventional loans.”). More generally, plaintiff’s attorneys would not be
incentivized to take on similar representative cases in the future.

18 Fifth, as discussed above, the request for attorneys’ fees in the amount of one third of the
19 common fund falls well within the range accepted by state and federal courts in California in
20 comparable class actions. Again, the award of a one third fee recovery under the common fund
21 doctrine was approved by the California Supreme Court in *Laffitte*, 1 Cal.5th at 503.

22 For all of these reasons, a fee award in the amount of one third of the common fund created
23 by Plaintiff and Class Counsel is fair and reasonable.

24 **3. A lodestar cross-check confirms the reasonableness of the fee award**

25 The trial court may use an abbreviated lodestar “cross-check” for common fund awards if
26 the court considers it useful, and Class Counsel’s lodestar in this Action confirms that the
27 requested fee is reasonable. *Laffitte*, 1 Cal.5th at 504-05. Under *Laffitte*, the cross-check is not
28 meant to displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme
Court expressly instructed that “the lodestar calculation, when used in this manner, does not

1 override the trial court’s primary determination of the fee as a percentage of the common fund and
2 thus does not impose an absolute maximum or minimum on the fee award.” *Id.* at 505.

3 The Court in *Laffitte* emphasized that only where the “multiplier calculated by means of a
4 lodestar cross-check is extraordinarily high or low” should the court “consider whether the
5 percentage should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.*
6 Multipliers on the lodestar cross-check “can range from 2 to 4 or even higher.” *Wershba*, 91
7 Cal.App.4th at 255. When the cross-check multiplier is within a normal range, the lodestar cross-
8 check does not provide a basis for a court to adjust the fee award. Furthermore, in conducting a
9 lodestar cross-check, the court is not “required to closely scrutinize each claimed attorney-hour.”
10 *Laffitte*, 1 Cal.5th at 505. An evaluation may be done by reviewing “counsel declarations
11 summarizing overall time spent.” *Id.*

12 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees
13 by multiplying the time reasonably spent by plaintiffs’ counsel on the case by reasonable hourly
14 rates. *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-57. To determine whether
15 the requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent
16 geographic region. *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1096-97 (using prevailing
17 hourly rate in community for comparable legal services even though party used in-house counsel).
18 Here, Class Counsel’s hourly rates are comparable to, or less than, those charged by other class
19 action plaintiffs’ counsel and the firms defending class actions, and have been approved by
20 numerous federal and state courts.¹⁹

21 Class Counsel’s aggregate lodestar is currently estimated at approximately \$301,567.00,
22 based on approximately 466 hours of attorney and staff time. *Id.*, ¶ 99; Quiles Decl., ¶ 14. This
23 results in a reasonable multiplier of approximately 1.02. *Id.* Class Counsel’s lodestar will increase
24 as a result of preparation for and attendance at the Final Approval Hearing and the settlement
25

26 ¹⁹ In particular, the hourly rates for SWCK and Shavitz, as set forth in this motion and accompanying
27 declarations, were recently found to be reasonable for purposes of a lodestar crosscheck by Judge William
28 Q. Hayes of the Southern District of California in *Amaraut v. Sprint/United Mgmt. Co.* (S.D. Cal. Aug. 5,
2021) No. 19-cv-411-WQH-AHG, 2021 WL 3419232, 2021 U.S. Dist. LEXIS 147176, at *18 (approving a
one third fee award, and in August 2021, finding that “the fee award is further supported by a lodestar
crosscheck, whereby it finds that the hourly rates of Schneider Wallace Cottrell Konecky LLP and Shavitz
Law Group, P.A., are reasonable, and that the estimated hours expended are reasonable.”). Judge Hayes
found that Class Counsel “has significant experience in class action and wage and hour litigation and has
demonstrated significant skill during this contentious litigation.” Judge Laurel Beeler recently found
SWCK’s rates reasonable in *Villafan v. Broadpectrum Downstream Services, Inc., et al.* (N.D. Cal. Apr. 8,
2021) Case No. 3:18-cv-06741-LB, ECF 150.

administration process. The multiplier confirms that the one third fee award is very reasonable. See, e.g., *Wershba*, 91 Cal.App.4th at 255; *Vizcaino*, 290 F.3d at 1047 (multipliers “ranging from one to four are frequently awarded ... when the lodestar method is applied”; affirming fees where the cross-check multiplier is 3.65); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28, 2012) No. C 11-03796 LB, 2012 U.S. Dist. LEXIS 169922, at *20-21 (the “customary range” for multipliers in class action lawsuits includes multipliers up to 4 times class counsel’s lodestar).

Courts routinely accept significant multipliers when utilizing a lodestar cross-check. See, e.g., *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.* (N.D. Cal. May 11, 2018) No. 16-cv-03698-NC, 2018 U.S. Dist. LEXIS 80219, at *20 (finding multiplier of 4.37 to be reasonable); *In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.* (N.D. Cal. Dec. 6, 2017) 2017 U.S. Dist. LEXIS 201108, at *21 (finding multiplier of 3.66 to be “well within the range of awards in other cases.”). Indeed, courts following *Laffitte* have reaffirmed that significant positive multipliers are reasonable and warrant judicial approval. See, e.g., *Spann v. J.C. Penney Corp.* (C.D. Cal. Sept. 30, 2016) 211 F. Supp. 3d 1244, 1265 (finding that a 3.07 multiplier is “well within the range for reasonable multipliers” under *Laffitte*).

Here, the fee award requested represents a reasonable multiplier of Class Counsel’s lodestar. The one third fee award is a reasonable and fair payment to Class Counsel, and should be approved.

4. The litigation costs are fair and reasonable

Class Counsel also requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this Action, in the amount of \$10,724.67.²⁰ Class Counsel incurred costs including filing fees, service of process costs, research costs, and mediation fees. These expenses were incidental and necessary to the effective representation of the Class Members. Cottrell Decl., ¶ 101, Exh. 4; Quiles Decl., ¶ 20.

Attorneys are permitted to recover their litigation costs and expenses under the common fund doctrine. See *Serrano v. Priest* (1977) 20 Cal.3d 25, 35; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6. Class Counsel’s costs are reasonable and uncontested, and are less than the “not to exceed” amount of \$12,000.00 under the Settlement. For these reasons, the Court should approve the reimbursement of costs in the amount of \$10,724.67 to Class Counsel.

²⁰ This is comprised of \$7,173.17 for SWCK and \$3,551.50 for Shavitz. Cottrell Decl., ¶ 101; Quiles Decl., ¶ 19.

1 **V. THE PROPOSED IMPLEMENTATION SCHEDULE**

2 Plaintiff respectfully requests that the Court approve the implementation schedule for the
3 Settlement. The implementation schedule is reflected in the Plaintiff's Notice of Motion and
4 Motion for Final Approval of Class Action Settlement.

5 **VI. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion for
7 Final Approval and enter proposed Order Granting Final Approval of Class Action Settlement and
8 Entering Final Judgment.

9 Respectfully submitted,

10 Dated: October 8, 2021



11 _____
12 Carolyn Hunt Cottrell
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