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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES SIMS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

QG PRINTING II LLC, a Connecticut
limited liability company; 74 QG
PRINTING II LLC, business
organization, form unknown; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 5:20-cv-01632-DMG-KK

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 19, 2024
Time: 10:00 A.M.
Courtroom: 8C
Judge: Hon. Dolly M. Gee

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 19, 2024, at 10:00 A.M., or as soon thereafter as the matter can be heard in Courtroom 8C of the United States District Court, Central District of California, located at 350 West 1st Street, Los Angeles, California, 90012, before the Honorable Dolly M. Gee, Plaintiff James Sims (“Plaintiff”) will and hereby does move this Court for an Order granting Class Counsel’s application for attorneys’ fees in the amount of \$383,333.33 (approximately one-third of the Gross Settlement Amount of \$1,150,000.00), reimbursement of costs in the amount of \$30,489.22, and class representative enhancement payment in the amount of \$10,000.00 to Plaintiff in connection with the class action and PAGA settlement reached between Plaintiff and Defendant QG Printing II, LLC (“Defendant”).

This Motion is based upon this Notice of Motion and Motion for Approval of Attorneys’ Fees, Costs, and Class Representative Enhancement Payment, the attached Memorandum of Points and Authorities, the accompanying Declarations of Larry W. Lee, Kwanporn “Mai” Tulyathan, William L. Marder, James Sims, and the settlement administrator, any oral argument of counsel, the complete files and records in the above-captioned matter, and such additional matters as the Court may consider.

DATED: March 4, 2024

DIVERSITY LAW GROUP, P.C.

By: /s/ Larry W. Lee
Larry W. Lee
Kwanporn “Mai” Tulyathan
Attorneys for Plaintiff and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 By this Motion for Attorneys' Fees, Costs, and Class Representative Enhancement
3 Payment ("Motion for Fees"), Plaintiff James Sims ("Plaintiff" or "Named Plaintiff") and
4 Class Counsel seek an order approving Class Counsel's application for attorneys' fees in
5 the amount of \$383,333.33, reimbursement of costs in the amount of \$30,489.22, and the
6 Class Representative Enhancement Payment of \$10,000. This request was set forth in the
7 Notice of Class Action Settlement mailed to all class members. As set forth in the Joint
8 Stipulation of Class Action Settlement ("Settlement Agreement"), Defendant QG Printing
9 II, LLC ("Defendant") has agreed not to object to the requests sought herein.

10 **I. INTRODUCTION**

11 The preliminarily approved settlement requires that Defendant pay the gross
12 settlement amount of \$1,150,000.00 for resolution of this case. As will be explained in
13 Plaintiff's Motion for Final Approval of Class Action Settlement, this settlement amount
14 is adequate, fair, and reasonable. This current Motion will focus on Class Counsel's
15 request for attorneys' fees and costs, and request for Class Representative Enhancement
16 Payment to Plaintiff. Specifically, Plaintiff and Class Counsel respectfully request that
17 the Court award: (1) Class Counsel one-third of the \$1,150,000.00 common fund, or
18 \$383,333.33, in attorneys' fees; (2) reimbursement of actual litigation costs in the amount
19 of \$30,489.22; and (3) an enhancement payment to Plaintiff in the amount of \$10,000.00.

20 As set forth herein, these requested amounts are well within the range of
21 reasonableness and consistent with recent case authority, including the California
22 Supreme Court's recent opinion in *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503
23 (2016). In *Laffitte*, the Court affirmed an award of attorneys' fee award of \$6,333,333.33,
24 based on 33 1/3% of the \$19 million common fund. The Court further noted that
25 awarding fees based on the common fund is appropriate in wage and hour class actions.

26 Federal courts have followed *Laffitte* in awarding attorneys' fees based on the
27 common fund, including the Central, Eastern, and Northern District Courts, including
28 awarding fees up to 33 1/3% of the common fund. In approving these fee awards, the

1 courts focused on the results obtained for the class, the risks that class counsel faced, and
2 whether the case was taken on a contingency basis. Here, all of these factors are met.
3 Moreover, as Plaintiff will detail, the factors identified in *Vizcaino v. Microsoft Corp.*,
4 290 F.3d 1043 (9th Cir. 2002) relating to whether an increase in the standard 25%
5 benchmark is justified weigh in favor of an increased fee award.

6 Additionally, as set forth herein, Plaintiff's requested fee award is reasonable when
7 compared to the lodestar cross-check. Class Counsel anticipates expending a total of
8 712.3 hours through final approval for this matter, for a total lodestar of \$504,675, which
9 results in a ***negative*** multiplier. As set forth below, the amounts sought are consistent
10 with recent awards in similar wage and hour class action settlements and fall well within
11 the range of reasonableness under the facts and circumstances of this case.

12 As this Court is aware, this was a heavily litigated case and class certification was
13 highly contested. This included Defendant filing a motion for reconsideration and
14 seeking appellate review in the Ninth Circuit. Significantly, substantial discovery was
15 performed in this case, which included various Defendant's FRCP 30(b)(6) witnesses on
16 a myriad of topics, over a dozen subpoenaed witnesses/class members, and Defendant's
17 expert witness, as well as review of a large document production that included call logs
18 pertinent to the theory in this case. Class Counsel's lodestar cross-check supports the full
19 award of one-third of fees requested given that the lodestar amount far exceeds the
20 amount that is being sought for fees. Further, and critically, to date, ***none of the Class***
21 ***Members have objected to the requested awards since receiving the Court-approved***
22 ***Class Notice explaining the same.***¹

23 Class Counsel's request for costs in the amount of \$30,489.22 should also be
24 awarded, as the Parties' Settlement Agreement expressly permits recovery of costs up to

25 ¹ The Response Deadline as set by the Court is March 25, 2024. Dkt. No. 80. However,
26 due to an unexpected error with Defendant's class list resulting in a slight delay in the
27 mailing of the Class Notice, the Parties agreed to extend the Response Deadline to March
28 29, 2024, to allow class members 65 days from the date of initial mailing to respond to
the Class Notice. Tulyathan Decl. at ¶ 18.

1 \$50,000.00. To date, none of the class members have objected to the costs sought.

2 Lastly, as set forth in Plaintiff's Declaration, Plaintiff has invested significant time
3 and efforts in the prosecution of this case. Here, Plaintiff helped procure substantial
4 monetary and non-monetary relief for the Class, assumed the considerable financial and
5 reputational risk serving as the class representative, and spent significant time and had an
6 impactful effect assisting with the prosecution of this case. Significantly, Plaintiff
7 reviewed documents, prepared for and provided his deposition testimony, and remained
8 available for two mediation sessions. Further, the requested Enhancement Award is well
9 within the range of those granted by courts in similar settlements.

10 In sum, Plaintiff and his counsel respectfully request that this Motion be granted.

11 **II. STATEMENT OF FACTS**

12 **A. Factual Allegations**

13 On June 1, 2020, Plaintiff filed the operative class and representative action
14 complaint against Defendant in the Superior Court of California, County of Riverside.
15 Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 2. On August 14, 2020,
16 Defendant removed the action to federal court. Dkt. No. 1.

17 The operative Complaint alleges the following causes of action: (1) failure to pay
18 wages; (2) violation of Labor Code § 2802; (3) violation of Labor Code § 226(a); (4)
19 violation of Business and Professions Code § 17200, *et seq.*; and (5) violation of Labor
20 Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). Tulyathan Decl. at ¶
21 2. Plaintiff brings claims for (1) failure to pay minimum, regular, overtime, and reporting
22 time wages based on an alleged "call-in" practice of having class members confirm their
23 scheduled shifts off-the-clock prior to their shifts, (2) failure to reimburse business
24 expenses to class members for use of personal cell and/or home phones to check their
25 schedules, (3) failure to provide accurate itemized wage statements to class members
26 (derivative and standalone wage statement violations), and (4) unfair business practices in
27 violation of the California Unfair Competition Law. Specifically, Plaintiff alleges that
28 during his off hours, he was required to use his personal telephone to call a designated

1 telephone number and/or log in via an online website before his scheduled work shift to
2 confirm whether he will in fact be working that particular shift. Plaintiff alleges that he
3 was not paid for the time “calling in” to check his schedule off-the-clock and that he was
4 not reimbursed for the costs incurred in connection therewith. Plaintiff alleges that he
5 was not paid reporting time pay on occasions when he reported to work but was not
6 permitted to work and/or worked less than half of the scheduled shift. Plaintiff also
7 alleges derivative wage statement violations based on the above violations. In addition,
8 Plaintiff asserts independent wage statement violations, alleging that the wage statements
9 identified inaccurate hourly rates of pay for overtime and double time wages, as well as
10 an incorrect legal name of the employer.

11 Prior to filing this Action, Plaintiff sent notice of alleged Labor Code violations to
12 the California Labor and Workforce Development Agency (the “LWDA”) pursuant to
13 Labor Code § 2699.3. Tulyathan Decl. at ¶ 4.

14 **B. Procedural Background**

15 The Parties have engaged in significant motion practice since the commencement
16 of this Action, including obtaining class certification and contesting class certification
17 through an appeal in the Ninth Circuit. Tulyathan Decl. at ¶ 5. On August 21, 2020,
18 Defendant filed a Motion to Dismiss Or, In the Alternative, Discretionary Stay Pursuant
19 to First-To-File Rule, based on two prior filed actions alleging similar claims. Dkt. No.
20 10. On January 14, 2021, the Court issued its Order denying Defendant’s Motion, in part,
21 finding that the First-To-File-Rule did not prevent Plaintiff from proceeding with his off-
22 the-clock, reporting time pay, and expense reimbursement claims. Dkt. No. 19. The
23 Court ordered a stay on Plaintiff’s independent Labor Code § 226(a) claim, and his
24 related PAGA claim based on the same violation, pending resolution of that claim in the
25 prior actions. *Id.*

26 On December 17, 2021, Plaintiff filed his Motion for Class Certification, seeking
27 certification of his off-the-clock, reporting time pay, and unpaid reimbursement claims.
28 Dkt. No. 35. Plaintiff submitted various declarations in support of class certification, a

1 reply brief, as well as opposed Defendant's ex parte application. Tulyathan Decl. at ¶ 7.
2 The Court heard oral argument on the class certification motion on March 4, 2022.
3 Following oral argument, on March 4, 2022, the Court issued its Order granting
4 Plaintiff's Motion in part and certified Plaintiff's call-in and reporting time pay claims.
5 In particular, the Court certified a class of "[a]ll current and former non-exempt press
6 production employees of Defendant QG Printing II LLC who worked at Defendant's
7 Riverside and/or Merced facility in the State of California at any time between April 6,
8 2016 through the present." Dkt. No. 47, p. 31.

9 Defendant moved for reconsideration of the Court's Order granting class
10 certification on March 18, 2022, which Plaintiff opposed. Dkt. No. 50. The Parties also
11 submitted supplemental briefing in connection with the Motion for Reconsideration. Dkt.
12 Nos. 62-63. On March 22, 2023, the Court issued its Order Denying Defendant's Motion
13 for Reconsideration of the Order Granting Plaintiff's Motion for Class Certification. Dkt.
14 No. 66.

15 On April 5, 2023, Defendant filed a Petition for Permission to Appeal Order
16 Granting Class Certification under Fed. R. Civ. P. 23(f) in the Ninth Circuit. 9th Cir.
17 Dkt. No. 1. Plaintiff filed his Answer to Defendant's Petition on April 14, 2023. 9th
18 Cir. Dkt. No. 2. The Ninth Circuit issued its Order denying the Petition on June 1, 2023.
19 9th Cir. Dkt. No. 3. While Defendant's Petition was pending in the Ninth Circuit,
20 Defendant also filed a Motion to Stay proceedings in this Court. Dkt. No. 68. On April
21 21, 2023, Plaintiff filed his opposition to the Motion to Stay. Dkt. No. 70. On May 11,
22 2023, the Court denied Defendant's Motion to Stay. Dkt. No. 72.

23 The Parties also participated in two mediation sessions in connection with this
24 Action. On September 7, 2021, the Parties participated in a mediation session with the
25 Honorable Kevin Murphy (Ret.). Despite good faith, arm's length negotiations, the
26 Parties were unable to reach an agreement at the mediation and resumed litigation
27 thereafter. Tulyathan Decl. at ¶ 11.

28 On June 28, 2023, the Parties attempted a second mediation session with

1 experienced neutral Michael J. Loeb, Esq. *Id.* at ¶ 12. While the Parties did not reach a
2 settlement on that date, the Parties engaged in negotiations post-mediation facilitated by
3 the mediator for several months and ultimately reached a settlement. *Id.*

4 **C. Summary of the Investigation and Discovery**

5 The Parties have engaged in extensive formal and informal discovery in this
6 Action. Tulyathan Decl. at ¶¶ 13-16. As part of formal discovery, Plaintiff has taken
7 numerous depositions, including various Defendant's FRCP 30(b)(6) witnesses on a
8 myriad of topics, over a dozen subpoenaed witnesses/class members, and Defendant's
9 expert witness. Plaintiff's counsel has also defended Plaintiff's deposition. *Id.* at ¶ 13.
10 The Parties also engaged in several rounds of written discovery. Defendant has also
11 produced class data, thousands of pages of call logs, and documents pertaining to the
12 relevant policies and practices at issue. The Parties also engaged in expert discovery. *Id.*
13 at ¶ 14. As part of informal discovery, Defendant provided information regarding the
14 size and scope of the class for mediation. *Id.* at ¶ 15. Plaintiff retained an expert witness
15 to conduct data and exposure analysis in connection with mediation. *Id.* at ¶ 16.

16 **D. The Court Granted Preliminary Approval of the Settlement**

17 On December 28, 2023, this Court issued an order granting Plaintiff's Motion for
18 Preliminary Approval. Dkt. No. 80. Having reviewed Plaintiff's Motion for Preliminary
19 Approval of Class Action Settlement and the substantive terms of the Settlement, the
20 Court (1) preliminarily approved the settlement as fair, reasonable, and adequate, (2)
21 approved the Settlement Class², (3) appointed Larry W. Lee and Kwanporn "Mai"

22 ² The Court certified the following Settlement Class for settlement purposes under Fed.
23 R. Civ. P. 23(e):

- 24 a. All current and former non-exempt press production employees at the Merced and
25 Riverside California plants who used Defendant's scheduling hotline or Inside
26 Quad for purposes of checking their schedule during the period of April 6, 2016
27 through December 28, 2023 ("Group 1"); and
28 b. All other current and former non-exempt employees in California (who are not part
of Group 1) and who were issued wages during the period of July 20, 2022 through
December 28, 2023 ("Group 2").

1 Tulyathan of Diversity Law Group, and William L. Marder of Polaris Law Group as
2 Class Counsel, (4) appointed James Sims as the Class Representative, (5) approved
3 Phoenix Settlement Administrators as the Settlement Administrator, (6) approved the
4 Class Notice, (7) authorized distribution of the Class Notice to Class Members, and (8)
5 set a Final Approval and Fairness Hearing for April 19, 2024 at 10:00 a.m. *Id.* at 2-5.

6 **E. Dissemination of Class Notice**

7 As ordered by the Court, the Settlement Administrator provided notice to the Class
8 Members of the proposed settlement, which included the amount Class Counsel requested
9 in fees. *See* Declaration of Lluvia Islas Regarding Notice and Settlement Administration
10 (“Admin Decl.”), Ex. A. On January 24, 2024, the Court-approved Class Notice was
11 mailed to each Class Member via First Class Mail. Admin Decl. at ¶ 5. After skip
12 tracing and re-mailing undeliverable packets, 1,002 out of 1,008 (or 99.4% of the Class)
13 Class Notices were successfully delivered. Admin. Decl. at ¶ 6.

14 In accordance with the Court’s instructions, the Class Notice informed Class
15 Members about the terms of the Settlement, including the fact that Plaintiff would
16 request: (1) an award of attorneys’ fees of \$383,333.33 to be paid from the gross
17 settlement amount, (2) reimbursement of up to \$50,000.00 in litigation costs, and (3) a
18 Class Representative enhancement payment of \$10,000.00. *See* Class Notice; Exhibit A
19 to the Admin. Decl. Notably, to date, not one of the 1,008 Class Members have objected
20 to the terms of the Settlement including Class Counsel’s requested award of fees and
21 costs or Plaintiff’s requested enhancement payment. Admin. Decl. at ¶ 9. Further, no
22 Class Members have opted out of the Settlement. Admin. Decl. at ¶ 8. The
23 overwhelmingly positive reaction of the Class is a clear indication of its approval of the
24 Settlement and the amount of fees, costs, and enhancement payment requested.³

25
26 _____
Dkt. No. 80, p. 3.

27 ³ As stated above, the Response Deadline is March 29, 2024. After the Response
28 Deadline has passed, Plaintiff will file a subsequent declaration from the settlement

III. THE COURT SHOULD APPROVE THE ATTORNEYS' FEES AND COSTS

A. The Award Requested

The fee sought relates to all efforts expended by Class Counsel for the complete handling of the class and representative Action, including any additional work remaining to be performed by Class Counsel in securing final approval of the Settlement, and later following through to ensure that the Settlement is fairly administered and fully implemented. As shown above, a significant amount of work on the part of Class Counsel went into achieving this resolution. Based upon the factors relating to approval of percentage of the fund fee awards, Class Counsel submit that the effort and result justify the requested percentage fee requested. As a secondary “cross-check” to the percentage of the common fund award, Class Counsel is also providing this Court with time and task charts in their declarations, which break down the tasks and time spent, so that the Court can conduct a lodestar analysis.

Judge Marilyn Patel remarked, in an oft quoted and prescient ruling, that in essence the task of tracking the tasks was itself a potential morass of its own making and, thus, favored the application of the percentage of the fund approach. *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1375 (N.D. Cal. 1989). Notwithstanding Judge Patel’s observation, time and task charts are offered here and show in this case that Class Counsel’s lodestar is \$476,100, which means that counsel seeks a negative multiplier. As discussed in more detail below, under the common fund, or lodestar approach, Class Counsel’s fees are reasonable and should be awarded.

B. Courts, Including the California Supreme Court, Have Endorsed and Followed the Percentage of the Fund Approach

The Ninth Circuit has recognized a “ground swell of support for mandating a percentage-of-the-fund approach in common fund cases.” *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th

administrator in support of his Motion for Final Approval by April 5, 2024, as set by the Court. *See* Dkt. No. 80, p. 7.

1 Cir. 1995) (affirming attorney’s fee of 33% of the recovery). Although the Ninth Circuit
2 has typically found that 25% of the common fund is “benchmark,” numerous courts in
3 the Ninth Circuit have awarded higher amounts. *See Stetson v. West Publishing Corp.*,
4 Case No. 13-57061, at *11 (9th Cir. May 11, 2016). The twenty-five percent benchmark
5 may be adjusted upward or downward depending on the circumstances presented by the
6 particular case. Indeed, the Ninth Circuit and district courts therein have routinely
7 permitted recovery in the amount of 33.33%, 40%, and even up to 50% of the common
8 fund. *See, e.g., In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989)
9 (listing Ninth Circuit cases).

10 Seeking a fee based on a percentage of the gross recovery, which is what Class
11 Counsel is seeking here, is appropriate and even desirable in cases like this. *See Newberg*
12 *on Class Actions*, Fourth Edition, vol. 4, p. 556, §14.6 (noting that percentage of the fund
13 awards are preferable because they align the interests of the attorney with the client, as
14 the attorney is not incentivized to bill unnecessary hours to generate a greater fee);
15 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Unlike the lodestar method which
16 can encourage class counsel to devote unnecessary hours to generate a substantial fee,
17 under the POR [percentage of recovery] method, the more the attorney succeeds in
18 recovering money for the client, and the fewer legal hours expended to reach that result,
19 the higher dollar amount of fees the lawyer earns. Thus, one of the primary advantages of
20 the POR method is that it is thought to equate the interests of class counsel with those of
21 the class members and encourage class counsel to prosecute the case in an efficient
22 manner.

23 The California Supreme Court has also held that the award of attorneys’ fees in
24 common fund wage and hour class action settlements should start with the percentage
25 method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
26 overwhelming majority of federal and state courts in holding that when class action
27 litigation establishes a monetary fund for the benefit of the class members, and the trial
28 court in its equitable powers awards class counsel a fee out of that fund, the court may

determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”).

Indeed, the California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or low [should] the trial court consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

Federal courts have followed *Laffitte*, 1 Cal. 5th 480, in awarding attorneys’ fees in class actions based on the percentage of the fund approach. For example, the Central District Court followed *Laffitte* in awarding \$13,500,000 in attorneys’ fees in *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1262 (C.D. Cal. 2016). *Spann* involved claims for unfair advertising under California statutes. *Id.*

Similarly, the Eastern District in *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No. 1:13-CV-00474-DAD-BAM, 2017 WL 749018, at *7 (E.D. Cal. Feb. 27, 2017), followed *Laffitte* in awarding 33% of the common fund. As the *Emmons* Court explained, “[t]he California Supreme Court recently held that the percentage-of-fund method of calculating attorneys’ fees survives in California courts.” *Id.*; see also *Zepeda v. Ulta Salon, Cosmetics & Fragrance, Inc.* U.S.D.C. E.D. Cal. Case No. 1:17-cv-00853-DAD (Dkt. No. 55) (awarding \$1,133,333.33 (1/3) of the common fund of \$3,400,000).

Further, in *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 894 (C.D. Cal. 2016), the Central District Court further reiterated that, “[i]n diversity actions...the Ninth Circuit **applies state law to determine the right to fees and the method for calculating fees.**” *Id.* (emphasis added, citing *Mangold v. Cal. Public Util. Comm’n*, 67 F.3d 1470, 1478 (9th Cir. 1995)).

C. The Vizcaino Factors Support a Common Fund Award Greater Than the 25% Benchmark

Courts consider the following factors in issuing an award under the common fund

1 approach:

2 [T]he extent to which class counsel achieved exceptional results
3 for the class, whether the case was risky for class counsel,
4 whether counsel's performance generated benefits beyond the
5 cash settlement fund, the market rate for the particular field of
6 law (in some circumstances), the burdens class counsel
7 experienced while litigating the case (e.g., cost, duration,
8 foregoing other work), and whether the case was handled on a
9 contingency basis.

10 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (internal
11 quotation marks omitted) (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50
12 (9th Cir. 2002)).

13 Looking at the first factor of whether "exceptional results" were achieved for the
14 Class, Plaintiff points to the fact that class certification was highly contested in this case.
15 The Parties heavily litigated class certification, including Defendant filing a motion for
16 reconsideration and subsequently a petition for review in the Ninth Circuit. Plaintiff also
17 points to the fact that the issues presented, particularly the call-in theory, were novel and
18 the law pertaining to the call-in claims was unsettled.

19 Second, the risk of further litigation resulting in no recovery is a "significant
20 factor" in evaluating an attorney fee award. *Vizcaino*, 290 F.3d at 1048. Here, the risks
21 inherent to all class actions apply to this matter as well – specifically, the risks of losing
22 at trial. For this case, there was also risk that Defendant would prevail at summary
23 judgment in light of the new evidence Defendant presented after class certification
24 indicating that a significant portion of class members may not have been subjected to the
25 call-in practice at issue.

26 Third, the skills required to prosecute and manage the litigation are also evaluated.
27 *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2007). Here, Class
28 Counsel litigated a novel call-in claim and obtained class certification. Class Counsel
also engaged in extensive discovery, participated in two separate mediations, achieved a
favorable settlement for the Class, and thus far, have ably guided the settlement through

1 the approval process.

2 Fourth, Class Counsel have spent three and a half years prosecuting this matter on
3 a contingency basis without any certainty of recovery. This weighs in favor of an
4 increased fee award. *Potter v. Big Text Trailer Manufacturing, Inc.*, 2020 WL 1942619 at
5 *7 (C.D. Cal. March 2, 2020) (“Since [counsel] have faced the risk of walking away with
6 nothing, the Court finds that this factor favors an upward departure.”)

7 Finally, numerous other courts have issued fee awards at the same level. *See, e.g.*,
8 *Brown v. CVS Pharm., Inc.*, 2017 WL 3494297, at *6-*7 (C.D. Cal. Apr. 24, 2017)
9 (awarding 30 percent of the common fund in attorneys’ fees in a wage and hour class
10 action settlement); *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856 (C.D.
11 Cal. July 21, 2008) (awarding 34 percent of the common fund in attorneys’ fees in a wage
12 and hour class action settlement; *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575
13 (E.D. Cal. Oct. 31, 2012) (approving fees in the amount of 33 percent of the common
14 fund); *Knight v. Red Door Salons, Inc.*, No. 2009 WL 248367, at *17 (N.D. Cal. Feb. 2,
15 2009) (“nearly all common fund awards range around 30%”); *Vasquez v. Coast Valley*
16 *Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to wage and hour cases
17 where courts approved awards ranging from 30 to 33 percent); *Singer v. Beckton*
18 *Dickinson and Co.*, 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (approving an
19 attorneys’ fee award of 33.33 percent). *Vandervort v. Balboa Capital Corp.*, 8 F. Supp.
20 3d 1200, 1209-10 (C.D. Cal. 2014) (court awarded 33 1/3%); *Boyd v. Bank of Am. Corp.*,
21 2014 U.S. Dist. LEXIS 162880 at *22-*23 (C.D. Cal. Nov. 18, 2014) (awarded 1/3 of the
22 common fund based on a 2.58 multiplier of the lodestar); *In re Pacific Enterprises Sec.*
23 *Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming fee award equal to 33% of fund);
24 *Cordy v. USS-Posco Indus.*, 2014 WL 212587, at *3 (N.D. Cal. Jan. 17, 2014) (“a
25 proposed attorney’s fee award of not more than 33% appears to be reasonable”).

26 In sum, Plaintiff and his counsel respectfully request that the Court award one-third
27 of the common fund pursuant to *Laffitte* and all of the authority cited above.

28 //

IV. THE LODESTAR CALCULATION “CROSS-CHECK”

A. The Lodestar Exceeds the Requested Fee Award.

It has been noted that it is sometimes helpful to courts to “cross-check” a percentage award by employing a lodestar with a multiplier analysis. While the lodestar method is generally considered inappropriate in a common fund case where real cash benefits (as opposed to coupons or non-monetary benefits) are made available to class members, its use can provide further validation of the appropriateness of the percentage award approach. *See In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 106 F. Supp. 2d 721 (D.N.J. 2000). Such is the case here.

For example, the District Court in *Perkins v. Am. Nat. Ins. Co.*, No. 3:05-CV-100CDL, 2009 WL 111631, at *1 (M.D. Ga. Jan. 14, 2009), noted that “the duration of time spent by Class Counsel and their legal team in litigating this case (and other cases against the same defendant)” justified the class action settlement attorney fee award. *Id.* (emphasis added).

The declarations of Class Counsel evidence the fact that they devoted approximately 687.3 hours of time to this litigation to date. Declaration of Larry W. Lee (“Lee Decl.”) at ¶ 11; Tulyathan Decl. at ¶ 28; Declaration of William L. Marder (“Marder Decl.”) at ¶ 15. Class Counsel’s hours are summarized in the time and task charts attached to the attorney declarations submitted in support of this Motion. And, to the extent that any argument is made that the time spent was duplicative, Class Counsel took measures to ensure there was minimal duplication of work within their own actions.⁴ More importantly, as recently noted by the Ninth Circuit in *Stetson v. West Publishing Corp.*, Case No. 13-57061, at *13 (9th Cir. May 11, 2016), “some amount of duplicative work is ‘inherent in the process of litigating over time.’”

⁴ Moreover, to the extent there is some overlap amongst attorneys in reviewing and making edits, identical to the way defense firms staff and handle cases, each attorney is assigned to handle a task and other attorneys review the work and provide edits and/or comments.

1 In addition, as explained above, Class Counsel expect to expend an additional 25
2 hours through the final approval hearing, including attending the final approval hearing,
3 handling any issues that may arise with the settlement administrator and class members,
4 handling calls from class members, and further conferring with settlement administrator
5 class members regarding the case post-final approval. Lee Decl. at ¶ 11; Tulyathan Decl.
6 at ¶ 29.

7 Applying the various hourly rates of the lawyers in this matter, a lodestar of
8 \$504,675 is established for the amount of work spent through final approval (712.3
9 hours). Lee Decl. at ¶ 11; Tulyathan Decl. at ¶¶ 28-30; Marder Decl. at ¶¶ 15-16. The
10 fee award of \$383,333.33 sought by Class Counsel, measured against the lodestar, would
11 entail a ***negative multiplier*** of approximately 1.32. Thus, the fee application is supported
12 whether by the cross-check method or by the percentage of the common fund method
13 discussed above.

14 **B. Class Counsel's Lodestar is Reasonable**

15 The hourly rates employed by Class Counsel, as declared in the attorney
16 declarations, are reasonable. Courts have found that reasonable rates are those charged by
17 private attorneys of comparable skill, reputation, and experience for similar litigation, as
18 measured by the prevailing rates charged by corporate attorneys of equal caliber. *See In*
19 *re Walgreen Co. Wage and Hour Litig.*, CV 11-7664 PSG, at 13 (FFMx) (C.D. Cal. Oct.
20 3, 2014) (finding that hourly rates up to \$820 were reasonable) (citing *Clifford v.*
21 *American Drug Stores*, 2005 WL 2002376 (Ct. App. Cal. Aug 22, 2005) (confirming
22 attorneys' fees award with attorney hourly rate of \$800 per hour).

23 The background and experience of Class Counsel are fully set forth in the
24 declarations filed in support of this Motion. The basic hourly rates listed for each firm are
25 fair, and representative of the combination of years of experience and the clear successes
26 they have had in the past in connection with class action litigation. The time and task
27 charts summarize the total hours devoted to the matter by the various law firms, along
28 with the hourly rates as set forth in the supporting declarations, and the total billed.

1 As discussed in their supporting declarations, Class Counsel are well-experienced
2 litigators, including class action litigation. Lee Decl. at ¶¶ 8-10; Tulyathan Decl. at ¶¶
3 24-27; Marder Decl. at ¶¶ 11-14. Under California law, counsel are entitled to
4 compensation for all hours reasonably spent on the matter. *Ketchum vs. Moses*, 24 Cal.
5 4th 1122, 1133 (2001). Reasonableness of hours is assessed by “the entire course of the
6 litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics,
7 and the trial itself...” *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal. App. 4th 440,
8 447 (2000). In addition, the attached time and task charts clearly reflect the many hours
9 which were necessarily spent on the case.

10 In the Statement of Facts section above and in the accompanying attorney and
11 Plaintiff declarations, the nature and extent of the proceedings held throughout the Action
12 are set forth in detail. Without repeating the same, it is incorporated herein. The total
13 hours and billings thus generated are all supported herein. In sum, it is submitted that the
14 reasonableness of Class Counsel’s lodestar is manifest. In the present case, Class
15 Counsel’s lodestar far exceeds the one-third of attorneys’ fees that is being sought in this
16 case. Thus, the lodestar cross-check heavily favors granting the full amount of
17 \$383,333.33 in fees requested in this case.

18 **V. THE COURT SHOULD APPROVE THE REQUEST FOR**
19 **REIMBURSEMENT OF COSTS**

20 The request for reimbursement of costs, in the amount of \$30,489.22 is fair and
21 reasonable. The costs are all litigation related costs, which have been detailed in the
22 supporting declaration of Class Counsel. Tulyathan Decl. at ¶ 31, Ex. B. The authority
23 for the Court to award costs is the Parties’ Settlement Agreement and California Labor
24 Code §§ 226(e), and 2699(g)(1).

25 Pursuant to the Settlement Agreement, Defendant has agreed not to oppose any
26 request for reimbursement of costs up to \$50,000.00, but the actual costs that are being
27 sought are much less than the amount allotted in the Settlement Agreement. Thus, the
28 unclaimed costs in the amount of \$19,510.78 will be allocated to the Net Settlement

Amount available for distribution to Class Members, as more fully explained in Plaintiff's Motion for Final Approval. Accordingly, the Court should award Class Counsel's requested costs.

VI. THE COURT SHOULD AWARD PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT

Finally, Plaintiff's Enhancement Payment is also justified given the duration of the litigation and his participation in the lawsuit. Plaintiff respectfully requests that the full amount of the service payment be awarded to Plaintiff for the efforts undertaken on behalf of the Class Members. When evaluating a requested enhancement, courts typically consider: (1) the risk to the class representative in commencing the suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412 (2010) (citing *Stanton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003)). Each of these factors favors the service awards requested in the present case.

Plaintiff is the only representative in this case. Plaintiff met with his attorneys to provide information regarding the facts involved. Declaration of James Sims ("Sims Decl.") at ¶ 7. Plaintiff has made himself available to answer questions, including during two sessions of mediation, review the pleadings and documents, including the settlement agreement, and sign declarations in support of the various motions that have been brought in this case, including Plaintiff's Motion for Class Certification, Preliminary Approval, and the instant Motion. *Id.* at ¶¶ 7-10. Plaintiff also met with his attorneys to prepare for his deposition and provided a full day of deposition testimony. *Id.* at ¶ 9.

Plaintiff took these risks upon himself from which the whole Class benefitted. Class Members did not have to file individual lawsuits, nor did they have to bear the risks of payment of fees and costs should they not prevail. Class Members also do not have to

1 face the risk of potential retaliation or risk of future employment, due to Plaintiff's
2 efforts.

3 The payment of an enhancement award to a successful class representative is
4 appropriate and the amount of \$10,000.00 to Plaintiff is within the typically accepted
5 range. Indeed, numerous District Courts in California have awarded enhancements of
6 \$10,000. *See e.g., Herrera v. Federal Express Corporation*, 2020 WL 2951122 at *7
7 (C.D. Cal. March 31, 2020)(noting that case law supports enhancements of \$10,000);
8 *Potter v. Big Text Trailer Manufacturing, Inc.*, 2020 WL 1942619 at *10 (C.D. Cal.
9 March 20, 2020) (awarding \$10,000 enhancement where plaintiff spent 30-40 hours on
10 the matter and entered into a general release); *Smith v. Experian Information Solutions,*
11 *Inc.*, 2020 WL 6689209 at *7 (C.D. Cal. Nov. 9, 2020); *Aikhan v. Goodrich Corporation*,
12 2020 WL 49191382 at *9 (C.D. Cal. June 25, 2020); *Thomas v. Cognizant Technology*
13 *Solutions U.S. Corporation*, 2013 WL 12371622 at *9 (C.D. Cal. June 24, 2013); *Djukich*
14 *v. AutoNation, Inc.*, 2015 WL 13756099 at *14 (C.D. Cal. Nov. 12, 2015). Moreover, a
15 \$10,000.00 service payment represents a mere **0.87%** of the Gross Settlement Amount.
16 It should also be noted that to date, there have been no objections by any members of the
17 Class to the proposed Enhancement Payment. For such reasons, Plaintiff respectfully
18 requests that this Court find the Service Award of \$10,000.00 to Plaintiff as fair,
19 reasonable, and adequate and that the Enhancement Payment be awarded to Plaintiff.

20 **VII. CONCLUSION**

21 Based on the foregoing, Plaintiff and Class Counsel respectfully request that the
22 Court approve Class Counsel's fee request of \$383,333.33, costs requested in the amount
23 of \$30,489.22, and Class Representative Enhancement Payment of \$10,000.00. The
24 Parties have reached this settlement following extensive litigation and discovery, ongoing
25 case discussions, and thorough, arm's length negotiations. Plaintiff respectfully requests
26 that the Court grant Plaintiff's Motion in its entirety.

1 DATED: March 4, 2024

DIVERSITY LAW GROUP, P.C.

2 By: /s/ Larry W. Lee

3 Larry W. Lee

4 Kwanporn “Mai” Tulyathan

5 Attorneys for Plaintiff and the Class