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SUPERIOR COURT OF CALIFORNIA

COUNTY OF CONTRA COSTA

ANGELO KALAVERAS and EMAD
MISSREEZADAH,

Plaintiff,

vs.

NCR CORPORATION; and DOES 1-100,
inclusive,

Defendants.

Case No.: MSC20-01186

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES, COSTS, AND CLASS
REPRESENTATIVE SERVICE PAYMENTS

Date: July 27, 2022

Time: 9:00 a.m.

Dept.: 12

Judge: Charles S. Treat

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. SUMMARY OF THE CASE.....	2
A. FACTUAL AND PROCEDURAL SUMMARY.	2
B. DISTRIBUTION OF THE NOTICE.....	3
III. LAW AND ARGUMENT.....	3
A. THE COURT SHOULD APPLY THE COMMON FUND METHODOLOGY TO AWARD PLAINTIFFS’	3
ATTORNEYS’ FEES UNDER THE SETTLEMENT.....	3
B. AN AWARD OF ATTORNEYS’ FEES TO CLASS COUNSEL OF 1/3 OF THE ORIGINAL GSA IS	
REASONABLE AND SHOULD BE APPROVED.	4
1. <i>The Requested Fee is Supported by Awards in Similar Cases.</i>	5
2. <i>The Overwhelmingly Positive Reaction of the Class Supports Approval</i>	6
3. <i>An Award of 1/3 of the Original GSA Is Fair and Reasonable in Light of the Substantial</i>	
<i>Monetary Benefit Obtained and the Risks Faced by Class Counsel.</i>	6
a. The fee request is justified by the positive results achieved.	6
b. The risks associated with this litigation justify the fee request.	7
c. Class Counsel’s skill and the quality of their work justifies the fee request.	7
d. The contingent nature of the fee and financial burden carried by class counsel justifies	
the fee request.	7
4. <i>The Requested Fee Award Fairly Spreads the Litigation Costs Among the Settlement</i>	
<i>Beneficiaries.</i>	8
5. <i>The Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.</i>	10
C. CLASS COUNSEL’S OUT-OF-POCKET EXPENSES ARE REASONABLE.	12
D. THE SERVICE PAYMENTS TO THE CLASS REPRESENTATIVES ARE REASONABLE.	13
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	6
<i>Asare v. Change Grp. of N.Y., Inc.</i> (S.D.N.Y. 2013) 2013 WL 6144764	14
<i>Bates v. Michigan Logistics, Inc.</i> (C.D. Cal. 2023) 2023 WL 2440244.....	13
<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal.App.4th 715	13
<i>Bellinghausen v. Tractor Supply Co.</i> (N.D. Cal. 2015) 306 F.R.D. 245.....	13, 14
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	3, 9
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. 2011) 2011 WL 2648879	14
<i>Carlin v. DairyAmerica, Inc.</i> (E.D. Cal. 2019) 380 F.Supp.3d 998.....	12
<i>Chanel, Inc. v. Doan</i> (N.D. Cal. 2007) 2007 WL 781976.....	11
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	5, 9, 10
<i>Cicero v. DirecTV, Inc.</i> (C.D. Cal. 2010) 2010 WL 2991486.....	5
<i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785.....	13
<i>Deluca v. Farmers Ins. Exchange</i> (N.D. Cal. 2020) 2020 WL 5071700	13
<i>Earley v. Sup. Ct.</i> (2000) 79 Cal.App.4th 1420.....	8, 12
<i>Elliot v. Rolling Frito-Lay Sales, LP</i> (C.D. Cal. 2014) 2014 WL 2761316	10
<i>Fischel v. Equitable Life Assurance Soc’y of U.S.</i> (9th Cir. 2002) 307 F.3d 997	8
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> (N.D. Cal. 2010) 2010 WL 1687832.....	15
<i>Garnes v. Barnhardt</i> (N.D. Cal. 2006) 2006 WL 249522.....	11
<i>Glendora Cmty. Redev. Agency v. Demeter</i> (1984) 155 Cal.App.3d 465	11
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16	12
<i>Hensley v. Eckerhart</i> (1983) 461 U.S. 424.....	10
<i>In re Bluetooth v. Headset Prods. Liab. Litig.</i> (9th Cir. 2011) 654 F.3d 935	10
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	13
<i>In re Heritage Bond Litig.</i> (C.D. Cal. 2005) 2005 WL 1594403	6
<i>In re Magsafe Apple Power Adapter Litig.</i> (N.D. Cal. 2015) 2015 WL 428105	11
<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> (9th Cir. 1994) 19 F.3d 1291	9, 11

1	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	8
2	<i>Knight v. Red Door Salons, Inc.</i> (N.D. Cal. 2009) 2009 WL 248367.....	5
3	<i>Laffitte v. Robert Half Int'l., Inc.</i> (2014) 231 Cal.App.4th 860.....	4
4	<i>Laffitte v. Robert Half Int'l., Inc.</i> (2016) 1 Cal.5th 480	4, 5, 10, 11
5	<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal. App. 4th 19.....	6, 9, 10
6	<i>LeBlanc-Sternberg v. Fletcher</i> (2d Cir. 1998) 143 F.3d 748	11
7	<i>Louie v. Kaiser Found. Health Plan, Inc.</i> (S.D. Cal. 2008) 2008 WL 4473183.....	15
8	<i>McCown v. City of Fontana</i> (9th Cir. 2009) 565 F.3d 1097	6
9	<i>Melendres v. City of L.A.</i> (1975) 45 Cal.App.3d 267	9
10	<i>Missouri v. Jenkins</i> (1989) 491 U.S. 274	11
11	<i>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</i> (2010) 186 Cal. App.4th 399.....	13
12	<i>Nw. Energetic Servs., LLC v. Cal. Franchise Tax Bd.</i> (2008) 159 Cal.App.4th 841	8
13	<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311.....	10
14	<i>Quezada v. Con-Way Freight, Inc.</i> (N.D. Cal. 2017) 2017 WL 6949286.....	5
15	<i>Rider v. Cty. of San Diego</i> (1992) 11 Cal.App.4th 1410.....	12
16	<i>Sav-on Drug Stores, Inc. v. Sup. Ct.</i> (2004) 34 Cal.4th 31.....	14
17	<i>Serrano v. Priest</i> (1977) 20 Cal. 3d 25.....	6, 8, 12
18	<i>Shaw v. Toshiba Am. Info. Sys., Inc.</i> (E.D. Tex. 2000) 91 F.Supp.2d 942.....	5
19	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal. 2010) 2010 WL 219610	5
20	<i>Sirrod v. Dir., OWCP</i> (9th Cir. 2015) 809 F.3d 1082	11
21	<i>Six (6) Mexican Workers v. Az. Citrus Growers</i> (9th Cir. 1990) 904 F.2d 1301	9
22	<i>Staton v. Boeing Co.</i> (9th Cir. 2003) 327 F.3d 938	10
23	<i>Van Vranken v. Atlantic Richfield Co.</i> (C.D. Cal. 1995) 901 F.Supp. 294	12, 13
24	<i>Vandervort v. Balboa Capital Corp.</i> (C.D. Cal. 2014) 8 F.Supp.3d 1200	5
25	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 482	14
26	<i>Viveros v. Donahoe</i> (C.D. Cal. 2013) 2013 WL 1224848	11
27	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	4, 6, 12
28	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	11

1	<i>Wren v. RGIS Inventory Specialists</i> (N.D. Cal. 2011) 2011 WL 1230826	5
2	Statutes	
3	Cal. Civ. Code § 1542	14
4	Treatises	
5	Rubenstein, Conte and Newberg, <i>Newberg on Class Actions</i>	5, 12

1 **I. INTRODUCTION.**

2 Plaintiffs Angelo Kalaveras and Emad Missreezadah (collectively “Plaintiffs”) hereby move
3 the Court for an award of attorneys’ fees of 1/3 of the original \$1,000,000¹ Gross Settlement Amount
4 (“GSA”), or \$333,333.33, \$20,333.76 in litigation costs, and Class Representative Service Payments
5 of \$10,000 each, or a combined 1.98 % of the GSA.² As set forth below, the amounts sought are
6 consistent with California Supreme Court precedent and recent awards in similar wage and hour
7 class action settlements, and fall well within the range of reasonableness. Further, *not one of the 777*
8 *Class Members has objected to the requested awards since receiving the court-approved Class*
9 *Notice.*³

10 The attorneys’ fee award should be approved under the common fund methodology because it
11 serves to spread the costs associated with litigation equally among all the beneficiaries of the fund,
12 mimics the legal market-place, and encourages competent counsel to take on complex contingency
13 cases such as this, and to seek early settlement and avoid unnecessarily prolonging litigation just to
14 increase the justification for fees. Further, the sought fee is appropriate because Class Counsel have (1)
15 obtained a significant monetary benefit for the Class (i.e., the \$1,009,480.28 increased GSA); (2)
16 worked diligently and efficiently despite considerable risks faced in prosecuting this litigation; and (3)
17 carried the financial burden of representing Plaintiffs and the Class on a contingency basis. The
18 \$20,333.76 requested for litigation costs is also reasonable, appropriate, and is actually less than
19 initially anticipated at the time of Settlement.

20 Finally, the \$10,000 service payments are appropriate because Plaintiffs helped procure
21 substantial monetary relief for the Class, assumed considerable financial and reputational risk serving
22 as the class representatives, and spent significant time and had an impactful effect assisting with the
23 prosecution of this case. Further, the service payments are within the range of those granted by courts
24 in similar settlements and, again, ***not a single Class Member has objected to them being awarded.***

25 _____
26 ¹ The actual GSA was increased to \$1,009,480.28 as the result of application of an escalator clause, but Class Counsel
27 has elected to make their fee request only as to 1/3 of the original GSA.

28 ² Capitalized terms herein shall have the same meaning as in the Class Action Settlement Agreement (“Settlement
Agreement”, “Settlement”, or “SA”), a copy of which is attached as **Exhibit 1** to the Declaration of Jenny D. Baysinger
 (“JDB Dec.”) filed concurrently herewith.

³ Defendant NCR Corporation also does not oppose the fees, costs, or service payments sought.

1 **II. SUMMARY OF THE CASE.**

2 **A. Factual and Procedural Summary.**

3 On June 25, 2020, Plaintiff Kalaveras filed the instant action asserting claims on a class-wide
4 basis. JDB Dec. ¶ 4. On October 5, 2020, the matter was removed to the United States District Court,
5 Northern District of California and the Class Claims were dismissed. *Id.* ¶ 5. On January 19, 2021,
6 Plaintiff Missreezadah filed a class action complaint in the Superior Court of California, County of Los
7 Angeles Case No. 21STCV01836 (the “Missreezadah LA Action”); Defendant removed that action to the
8 United States District Court, Central District of California. *Id.* ¶ 7. In March 2021, Kalaveras filed a
9 motion to remand the then PAGA-only action back to this Court—the matter was remanded April 22,
10 2021. *Id.* ¶ 5. Thereafter, counsel for Kalaveras and counsel for Missreezadah began working together.
11 In October 2021, Missreezadah was added to the instant action as an additional named plaintiff/LWDA
12 proxy. *Id.* ¶ 11. In order to facilitate the Settlement, a stipulated Fourth Amended Complaint (“4th AC”)
13 was filed in the instant action on August 18, 2022 to re-plead the Class Claims that had been previously
14 dismissed from this matter and the Missreezadah LA Action. *Id.* ¶ 24. The 4th AC is the operative
15 complaint.

16 Through independent inquiry, research, and informal discovery, Class Counsel thoroughly and
17 diligently investigated and pursued the claims. This process has included, but not been limited to, (1)
18 obtaining and reviewing Plaintiffs’ personnel files, payroll records, and time records through informal
19 discovery; (2) identifying, researching, and pleading the appropriate claims, including amending the
20 Lawsuit to assert additional claims as they ripened and/or were discovered; (3) exhausting
21 administrative remedies; (4) identifying, requesting, securing, and reviewing pertinent policies,
22 practices, and procedures; (5) identifying, requesting, and securing the payroll and time records for
23 736 individual Class Members (nearly the entirety of the 777 member Class) (6) propounding formal
24 and informal discovery to secure relevant policy documents and numerical information regarding the
25 size of the class and the scope of the claims, (7) retaining an expert to analyze the payroll and time
26 data provided by Defendant and personally conducting spot checks to ensure the accuracy of the
27 damages calculations; (8) researching and evaluating the scope of additional and/or previous actions

28 ///

1 and their potential impact on the Class Claims; (9) creating a reliable damages model; and (10)
2 developing and implementing a strategy for mediation and settlement. JDB Dec. ¶¶ 12-18.

3 On April 19, 2022, the Parties participated in an all-day mediation with Mark Rudy and reached
4 an agreement in principle and executed a Memorandum of Understanding. *Id.* ¶ 22. Following months
5 of additional negotiation, a long-form agreement was signed in October 2022. *Id.* ¶ 23, Exh. 1.

6 **B. Distribution of the Notice.**

7 On April 14, 2023, the Class Notice was mailed via First Class mail to the 777 Class Members.
8 Declaration of Stephen Gomez Regarding Notice and Settlement Administration (“Admin. Dec.”) ¶ 8.
9 Prior to mailing the Administrator performed its due diligence including, processing every person on
10 the Class List against the National Change of Address database, maintained by the United States Postal
11 Service. *Id.* ¶ 7. In accordance with the Court’s instructions, the Class Notice informed Class
12 Members about the terms of the Settlement, including the fact Plaintiffs would request: (1) an award of
13 attorney’s fees of 1/3 of the GSA (at the time anticipated to be \$333,333.33), (2) reimbursement of up
14 to \$21,000 in litigation costs, and (3) Service Payments of \$10,000 to each Plaintiff. See Class Notice;
15 Exhibit A to the Admin. Dec. To date, no Class Member has expressed any concern regarding the
16 requested fees, costs or Service Payments. JDB Dec. ¶ 76. ***In fact, not one of the 777 Class Members***
17 ***has objected in any way, to any degree, to the terms of the Settlement including Class Counsel’s***
18 ***requested award of fees and costs or Plaintiffs’ requested service payments or elected to opt-out of***
19 ***the Settlement.*** Admin. Dec. ¶ 14. The overwhelmingly positive reaction of the Class is a clear
20 indication of its approval of the Settlement and the sought fees, costs and service payments.

21 **III. LAW AND ARGUMENT**

22 **A. The Court Should Apply the Common Fund Methodology to Award Plaintiffs’**
23 **Attorneys’ Fees Under the Settlement.**

24 “[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than
25 himself or his client is entitled to reasonable attorneys’ fees from the fund as a whole.” *Boeing Co. v.*
26 *Van Gemert* (1980) 444 U.S. 472, 478. Recently, the California Supreme Court clarified its stance on
27 determining fees in common fund cases, ruling –

28 “We join the overwhelming majority of federal and state courts in holding that when class
action litigation established a monetary fund for the benefit of the class members, and the trial

1 court in its equitable powers awards class counsel a fee out of that fund, the court may
2 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
3 created.”

4 *Laffitte v. Robert Half Int’l., Inc.* (2016) 1 Cal.5th 480, 503. Explaining its ruling, the Court further
5 held that “[t]he recognized advantages of the percentage method – including relative ease of
6 calculation, alignment of incentives between counsel and the class, a better approximation of market
7 conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement
8 and avoid unnecessarily prolonging litigation – convince us the percentage method is a valuable tool
9 that should not be denied by our trial courts.” *Id.*; see also *Vizcaino v. Microsoft Corp.* (9th Cir. 2002)
10 290 F.3d 1043, 1047.

11 Based on this rationale, the California Supreme Court in *Laffite* affirmed a fee award
12 representing one-third of the fund and rejected objections of putative class members to this award.
13 *Laffitte*, 1 Cal.5th at 506. Further, the amount awarded was based on a lodestar that required a
14 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or
15 low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring
16 the imputed multiplier within a justifiable range.” *Id.* at 505. Moreover, in the *Laffitte* intermediate
17 court decision, the court observed that “33 1/3 percent of the common fund is consistent with, and in
18 the range of, awards in other class action lawsuits.” *Laffitte v. Robert Half Int’l., Inc.* (2014) 231
19 Cal.App.4th 860, 871.

20 Class Counsel has created an ascertainable fund, the GSA, which will substantially benefit the
21 Class and from which reasonable attorneys’ fees can be easily calculated and awarded.

22 **B. An Award of Attorneys’ Fees to Class Counsel of 1/3 of the Original GSA is**
23 **Reasonable and Should Be Approved.**

24 Plaintiffs seek an attorneys’ fee award of 1/3 of the original GSA, or \$333,333.33. This fee is to
25 be distributed \$166,666.66 to Mayall Hurley and \$166,666.67 to Blumenthal Nordrehaug Bhowmik De
26 Blouw, LLP. The requested fee award should be approved because: (1) it is consistent with recent
27 Federal and California court awards in similar wage and hour class settlements; (2) the Class has
28 uniformly responded positively to the requested award; (3) it is reasonable in light of the substantial

monetary benefit conferred on the Class; (4) it achieves the dual purposes of a common fund award by spreading the litigation costs among those who benefited from the settlement while rewarding and encouraging competent counsel to handle complex, contingency, class action cases like this; and (5) the lodestar cross-check, while not required, nevertheless confirms the reasonableness of the requested fee.

1. The Requested Fee is Supported by Awards in Similar Cases.

It is well recognized that awarding one-third of the common fund to class counsel is appropriate in wage and hour class action settlements. *Laffitte*, 1 Cal.5th 506. Indeed, 30-50% is commonly awarded in modest common fund cases. See Rubenstein, Conte and Newberg, *Newberg on Class Actions* at § 14:6. Review of California cases “reveals that courts usually award attorneys’ fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million.” *Cicero v. DirecTV, Inc.* (C.D. Cal. 2010) 2010 WL 2991486 *6. Fee awards in the range of one-third are appropriate in such cases because they do not implicate megafunds where a smaller percentage recovery may be more suitable. See also *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1209-10.⁴

In smaller wage-hour class actions like this one, both state and federal courts routinely award attorneys’ fees of percentages equal to or greater than that sought by Plaintiffs in this action.⁵ When viewed in the light of the foregoing authorities, the reasonableness of Plaintiffs’ requested fee award is undeniable.

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⁴“Empirical studies show that, whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (quoting *Shaw v. Toshiba Am. Info. Sys., Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; see also *Knight v. Red Door Salons, Inc.* (N.D. Cal. 2009) 2009 WL 248367, at *6 (“fee awards in class actions average around one-third of the recovery”) (quoting Newberg on Class Actions § 14.6 (4th ed. 2007))).

⁵ See, e.g., *Barrett v. The St. John Cos.* (L.A. Cnty. Super. Ct. July 9, 2009) No. BC354278 (one-third award of \$1.1 million settlement in wage and hour class action); *Tokar v. GEICO* (San Diego Cnty. Super. Ct. July 9, 2004) No. GIC 810166 (award of one-third of recovery); *Davis v. The Money Store, Inc.* (Sacramento Cnty. Super. Ct. Dec. 26, 2000) No. 99AS01716 (one-third of \$6,000,000 settlement); *Big Lots Overtime Cases*, (San Bernardino Cnty. Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (one-third fee recovery). See, e.g., *Wren v. RGIS Inventory Specialists* (N.D. Cal. 2011) 2011 WL 1230826 *29 (approving fee award of 42% in wage and hour class and collective action); *Quezada v. Con-Way Freight, Inc.* (N.D. Cal. 2017) 2017 WL 6949286 *1 (awarding one-third of \$2 million settlement in wage and hour class action); *Singer v. Becton Dickinson and Co.* (S.D. Cal. 2010) 2010 WL 2196104 *8 (approving fee award of one-third as similar to awards in other cited wage and hour class action cases where fees ranged from 30% to 40%); *Cicero*, 2010 WL 2991486, at *6 (noting that fees of one-third are common in wage and hour settlements below \$10 million).

1 **2. The Overwhelmingly Positive Reaction of the Class Supports Approval.**

2 It is well settled that positive reactions by class members support settlement approval. *7-Eleven*
3 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53. The absence
4 of disapproval constitutes strong evidence of the reasonableness of the requested fee award here. See
5 *In re Heritage Bond Litig.* (C.D. Cal. 2005) 2005 WL 1594403 * 21 (“The absence of objections or
6 disapproval by class members to Class Counsel’s fee request further support finding the fee request
7 reasonable.”). Here, the fact that ***not one of the 777 Class Members has objected*** to the fee award or
8 elected to opt out of the Settlement underscores its reasonableness.

9 **3. An Award of 1/3 of the Original GSA Is Fair and Reasonable in Light of the**
10 **Substantial Monetary Benefit Obtained and the Risks Faced by Class Counsel.**

11 In addition to equity and market considerations, courts look to: (1) the results achieved; (2) the
12 riskiness of prosecuting the litigation; (3) the skill and high quality of work by counsel; and (4) the
13 financial burden carried by Class Counsel in prosecuting the case on a contingency basis in evaluating a
14 common fund fee award. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 49; *Lealao v. Beneficial Cal., Inc.*
15 (2000) 82 Cal. App. 4th 19, 26; see also *Vizcaino*, 290 F.3d 1048-50 (internal quotation and citation
16 omitted). Each of these factors supports the fee request.

17 **a. The fee request is justified by the positive results achieved.**

18 The ultimate reasonableness of the fee “is determined primarily by reference to the level of
19 success achieved by the plaintiff.” *McCown v. City of Fontana* (9th Cir. 2009) 565 F.3d 1097, 1102.
20 Here, Class Counsel achieved an excellent result and obtained significant monetary relief for the Class.
21 Participating Class Members (all 777 Class Member that did not opt-out) will receive a share of the
22 increased GSA (\$574,626.95 even after subtracting the fees and costs of class counsel, the service
23 payments, and the administrative costs associated with a settlement of this size). Admin Dec. ¶ 10. It
24 is estimated that the *average* payment to each Participating Class Member will be nearly \$740
25 (\$739.54) with the highest payment topping out at more than \$1,260. Admin. Dec. ¶ 11. This
26 represents substantial monetary relief for the Class given the complexity of the issues, the risk and
27 uncertainty inherent in class action litigation, the myriad defenses advanced by Defendants, and the real
28 possibility that individual Class Members would be forced into arbitration.

1 **b. The risks associated with this litigation justify the fee request.**

2 Class counsel has taken considerable risk in litigating this case—not just because it was done on
3 a wholly contingency basis, but also because complex, representative wage-and-hour litigation is an
4 ever-emerging area under the law. As set forth in greater detail in Plaintiffs’ Motion for Final
5 Approval, while Class Counsel believes evidence exists from which the trier of fact could
6 conclude Defendant engaged in a pattern and practice of violating the law, continued litigation is
7 guaranteed to be costly, time consuming and uncertain. Defendant asserted and would have continued
8 to assert legal and factual grounds to defend itself including, but not limited to, the existence of
9 allegedly enforceable arbitration agreements with class waivers, and the substantive challenges to both
10 certification and ultimate liability facing the Class Claims. Appellate proceedings would only further
11 delay and jeopardize recovery by the Class. By contrast, the proposed Settlement ensures timely and
12 substantial recovery for the Class. JDB Dec. ¶¶ 53-64; Declaration of Kyle Nordrehaug (“KRN Dec.”)
13 ¶ 11.

14 **c. Class Counsel’s skill and the quality of their work justifies the fee request.**

15 Class counsel has demonstrated substantial skill, diligence, and high quality of work in
16 orchestrating the Settlement and creating a GSA of \$1,009,480.28. The Settlement, and the substantial
17 monetary benefit it confers, was obtained efficiently and effectively without wasted effort or years of
18 needless, costly litigation. As a result of the skill and tremendous effort of Class Counsel, Plaintiffs
19 were well-positioned to reach a favorable settlement for the Class, which itself required significant
20 expertise, a mediation, and protracted negotiations to achieve.

21 **d. The contingent nature of the fee and financial burden carried by class**
22 **counsel justifies the fee request.**

23 A law firm that prosecutes class action cases does not get paid in every case. Sometimes, it gets
24 nothing or is awarded fees equal to only a small percentage of the amount actually incurred. Where
25 plaintiffs’ counsel does succeed, therefore, it is appropriate to compensate the firm for the risks the firm
26 regularly undertakes. As the California Supreme Court has explained:

27 “[A] contingent fee must be higher than a fee for the same legal services paid as they are
28 performed. The contingent fee compensates the lawyer not only for the legal services he
 renders but for the loan of those services. The implicit interest rate on such a loan is higher

1 because the risk of default (the loss of the case, which cancels the debt of the client to the
2 lawyer) is much higher than that of conventional loans. A lawyer who both bears the risk of not
3 being paid and provides legal services is not receiving the fair market value of his work if he is
4 paid only for the second of these functions. If he is paid no more, competent counsel will be
5 reluctant to accept fee award cases.”

6 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33 (internal citation and quotation omitted).

7 Accordingly, courts have recognized that “[i]t is an established practice in the private legal market to
8 reward attorneys for taking the risk of non-payment by paying them a premium over their normal
9 hourly rates for winning contingency cases.” *Fischel v. Equitable Life Assurance Soc’y of U.S.* (9th
10 Cir. 2002) 307 F.3d 997, 1008.

11 In this case, Class Counsel worked diligently on this case since May 2020, and in effect loaned
12 their legal services to the Class since that time. Class Counsel prosecuted this case wholly on a
13 contingency basis, at great risk of never receiving any compensation due to the uncertain nature of class
14 action litigation in general, and also due to the numerous factual and legal defenses of Defendant.
15 Class Counsel took a tremendous risk by taking on this case, and persevered to attain the Settlement on
16 behalf of the Class. To date Class Counsel has collectively spent \$20,333.76 in litigation costs and
17 expended more than 470 hours of time, with additional work remaining to be done, without receiving
18 any compensation at all. JDB Dec. ¶¶ 97-99, Exh. 4; KRN Dec. ¶¶ 14-15, Exhs. 2-3. Meanwhile, all of
19 this entailed passing on other lucrative cases. JDB Dec. ¶ 94.

20 **4. The Requested Fee Award Fairly Spreads the Litigation Costs Among the 21 Settlement Beneficiaries.**

22 The percentage-of-the-fund approach is an appropriate method for reviewing attorneys’ fees
23 here because it allows Plaintiffs and Class Counsel to create “a fund from which others will benefit
24 [and] to require those other beneficiaries to bear their fair share of the litigation costs.” *Nw. Energetic
25 Servs., LLC v. Cal. Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 878 (citing *Serrano*, 20 Cal. 3d
26 35). This approach ensures that the class members, who have accepted the benefits from a common
27 fund recovery, also accept their fair *pro rata* responsibility to contribute towards the attorneys’ fees and
28 costs that created the fund in the first place. *Earley v. Sup. Ct.* (2000) 79 Cal.App.4th 1420, 1436. In
other words, “[t]hose who benefit from the creation of the fund should share the wealth with the

1 lawyers whose skill and effort helped create it.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (9th
2 Cir. 1994) 19 F.3d 1291, 1300. Based on the above principles, the attorneys’ fees to be awarded are to
3 be calculated based on a percentage of the entire settlement fund. *Boeing Co.*, 444 U.S. 478; *Six (6)*
4 *Mexican Workers v. Az. Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311. Accordingly, the
5 percentage-of-the-fund approach is appropriate here and supports Class Counsel’s request for an award
6 of a percentage of the common fund (i.e., 1/3 of the initial \$1,000,000 GSA).

7 In addition to spreading the litigation costs among all the beneficiaries, common fund fee
8 awards are essential to furthering the important societal goal of attracting competent counsel to handle
9 these often-complex contingency cases “who will be more willing to undertake and diligently prosecute
10 proper litigation for the protection or recovery of the fund if [attorneys are] assured that [they] will be
11 promptly and directly compensated should [their] efforts be successful.” *Melendres v. City of L.A.*
12 (1975) 45 Cal.App.3d 267, 273. “Given the unique reliance of our legal system on private litigants to
13 enforce substantive provisions of law through class and derivative actions, attorneys providing the
14 essential enforcement services must be provided incentives roughly comparable to those negotiated in
15 the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for
16 defendants to increase injurious behavior.” *Lealao*, 82 Cal.App.4th 47. Without such incentives,
17 meritorious class actions such as this would not be brought and thus the private enforcement of
18 important statutory rights would be undermined.

19 California courts further recognize “the amount of attorney fees typically negotiated in
20 comparable litigation should be considered in the assessment of a reasonable fee in representative
21 actions in which a fee agreement is impossible.” *Ibid.* By doing so, courts can ensure that the awarded
22 fee approximates the legal marketplace by being comparable to what clients and counsel would have
23 likely negotiated at the outset of the matter. Notably, the typical contingency fee contract ranges from
24 20 to 40 percent of the total recovery—leaving Plaintiffs’ requested attorneys’ fee in the middle bottom
25 of the spectrum. *Chavez*, 162 Cal.App.4th 64-65.

26 Here, Plaintiffs’ requested fee award constitutes a fair charge in light of the substantial
27 monetary relief obtained for the Class. Because each Class Member who did not opt-out (which is *all*
28 777) will receive compensation, equity requires each also contribute to the attorneys’ fees that netted

1 them this positive result. Moreover, the requested fee is equal to or less than 1) typical fees awarded in
2 small wage and hour class actions like this one, 2) most contingency fee retainer agreements, and 3) the
3 fee that Class Counsel would have expected if they had negotiated individual retainer agreements with
4 each Class Member. *Ibid.*; see also JDB Dec. ¶ 93; KRN Dec. ¶ 13. The requested award ensures that
5 Class Counsel receives an appropriate fee for the actual benefit conferred on the Class, particularly
6 where it would be impossible *ex ante* to enter a fair fee arrangement with each Class Member.

7 **5. The Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.**

8 The California Supreme Court has held that trial courts have discretion to award fees as a
9 percentage of the common fund, with or without conducting a lodestar cross-check. *Laffitte*, 1 Cal.5th
10 506 (“We further hold that trial courts have discretion to forgo a lodestar cross-check and use other
11 means to evaluate the reasonableness of a requested percentage fee.”). Although not required, courts
12 may perform a “lodestar cross-check” as a means of determining whether the requested percentage is
13 reasonable in relation to the amount and value of the time expended by counsel. See *Lealao*, 82
14 Cal.App.4th 47-50. The goal under either the percentage or lodestar approach is to award a reasonable
15 fee to compensate counsel for their efforts.⁶ *Laffitte*, 1 Cal.5th 504.

16 This cross-check starts with the basic lodestar calculation but may then “evaluate the lodestar as
17 a percentage of the recovery and adjust it accordingly if it can be determined that the lodestar is
18 significantly different from the range of percentage fees freely negotiated in comparable litigation.”
19 *Lealao*, 82 Cal.App.4th 821. Under the first step of the cross-check, the “lodestar” figure is calculated
20 by multiplying “the number of hours [the prevailing party] reasonably expended on the litigation [] by
21 a reasonable hourly rate.” See *Hensley v. Eckerhart* (1983) 461 U.S. 424, 433; *Press v. Lucky Stores,*
22 *Inc.* (1983) 34 Cal.3d 311, 322.

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24
25 ⁶ The common fund method is a better fit for this situation due to the creation of the GSA to benefit the Class and its
26 encouragement of better incentives regarding attorney billing practices that actually serve a plaintiff class. Courts have also
27 acknowledged the merits of awarding attorneys’ fees under the common fund approach “[b]ecause the benefit to the class is
28 easily quantified in common-fund settlements” and it avoids the “often more time-consuming task of calculating the
lodestar.” *In re Bluetooth v. Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942; *Staton v. Boeing Co.* (9th Cir.
2003) 327 F.3d 938, 967; see also *Elliot v. Rolling Frito-Lay Sales, LP* (C.D. Cal. 2014) 2014 WL 2761316 at *9 (“There
are significant benefits to the percentage approach, including consistency with contingency fee calculations in the private
market, aligning the lawyers’ interests with achieving the highest award for the class members, and reducing the burden on
the courts that a complex lodestar calculation requires”).

1 Class Counsel, to date, have expended more than 470 hours to bring this settlement to the brink
2 of finalization. These hours reflect time reasonably spent litigating this case, which Class Counsel
3 sought to efficiently manage, staff, assign, and divide the work between their respective attorneys and
4 to avoid duplication of effort. JDB Dec. ¶ 94; KRN Dec. ¶ 14; Exhs. 2-3 Class Counsel will spend
5 further time preparing for and attending the Final Approval Hearing, overseeing the administration of
6 the Settlement, and reporting to the Court. JDB Dec. ¶ 100. Class Counsel's customary hourly rate in
7 plaintiff's employment class action cases ranges from \$733/hr (shareholder with 11 years' experience
8 litigating plaintiffs' employment cases) to \$997/hr (senior partner with nearly 40 years of experience)
9 and have been approved by numerous courts across the state. *Id.* ¶ 96.^{7,8} Applying the appropriate
10 hourly rates to the number of hours worked yields a collective lodestar of \$320,796.30. This
11 reasonable lodestar is supported by detailed and contemporaneous billing records maintained by Class
12 Counsel. Summaries of these billing records are attached to and described in Class Counsel's
13 declaration for the Court's review. JDB Dec. ¶¶ 97-98, Ex. 4, KRN Dec. ¶¶ 14-15, Exhs. 2-3.

14 Under the second step of the analysis, the reasonableness of the requested fee award is
15 confirmed by the application of a modest multiplier. In wage and hour actions, California and Ninth
16 Circuit courts both approve reasonable multipliers on the class counsel's lodestar, which range from 2
17 to 4 times, to reward counsel for accepting the contingent risk of the litigation or obtaining excellent
18 results. See, e.g., *Laffitte*, 1 Cal.5th 506 (approving one-third fee award with multiplier between 2.03
19 and 2.13); see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (noting that
20 multipliers can range from 2 to 4 or higher); *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155
21 Cal.App.3d 465, 479-481 (affirming multiplier of 12).

24 ⁷These rates are based upon the Adjusted Laffey Matrix for the District of Colombia, a matrix that has been used by
25 California district courts in determining reasonable hourly rates. *Chanel, Inc. v. Doan* (N.D. Cal. 2007) 2007 WL 781976
26 *6-7; *Garnes v. Barnhardt* (N.D. Cal. 2006) 2006 WL 249522 *7; *Viveros v. Donahoe* (C.D. Cal. 2013) 2013 WL 1224848,
27 *5-6. Moreover, the prevailing rate is to be determined with respect to the forum in which the court sits, which in this case
28 is the Northern California/Sacramento area. *Sirrod v. Dir., OWCP* (9th Cir. 2015) 809 F.3d 1082, 1086. Similar and higher
rates are commonly approved in the Northern California/Sacramento region. See e.g., *In re Magsafe Apple Power Adapter*
Litig. (N.D. Cal. 2015) 2015 WL 428105 * 12.

⁸ Calculating the lodestar using Class's Counsel's current rates is appropriate given the deferred nature of counsel's
compensation. See *LeBlanc-Sternberg v. Fletcher* (2d Cir. 1998) 143 F.3d 748, 764 ("[C]urrent rates, rather than historical
rates, should be applied in order to compensate for the delay in payment . . .") (citing *Missouri v. Jenkins* (1989) 491 U.S.
274, 283-84); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1305.

1 Where Class Counsel are able to obtain a settlement prior to overcoming certain hurdles, such
2 as class and collective certification motions, courts recognize they should not be penalized by use of a
3 straight lodestar in determining the reasonableness of requested fees. See *Vizcaino*, 290 F.3d 1050 n.5
4 (“We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a case
5 quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for
6 class members in need of immediate relief.”); *In Re Activision Secs. Litig.* (N.D. Cal. 1989) 723
7 F.Supp. 1373, 1378 (noting “Where attorneys must depend on a lodestar approach there is little
8 incentive to arrive at an early settlement.”). Here, a very small multiplier is required to get to the
9 \$333,333.33 in fees sought collectively (1.04). This is well below the “3-4 range [that] are common in
10 lodestar awards for lengthy and complex class action litigation” (*Van Vranken v. Atlantic Richfield Co.*
11 (C.D. Cal. 1995) 901 F.Supp. 294, 298) and well below within the 1.9 to 5.1 typically approved (4
12 NEWBERG ON CLASS ACTIONS § 14.7). The fees requested are entirely reasonable. See *Carlin v.*
13 *DairyAmerica, Inc.* (E.D. Cal. 2019) 380 F.Supp.3d 998, 1023 (recognizing that a small multiplier
14 “strongly” supports the reasonableness of a fee request). Because the lodestar cross-check confirms the
15 common fund fee request is reasonable and appropriate, it should be approved.

16 **C. Class Counsel’s Out-of-Pocket Expenses Are Reasonable.**

17 The Settlement allows Class Counsel to request reimbursement for up to \$21,000 of out-of-
18 pocket expenses incurred during this litigation. Reimbursement of these expenses is appropriate for the
19 same reason attorneys’ fees should be paid out of the fund: all beneficiaries should bear their fair share
20 of the costs of the litigation that counsel traditionally bill to paying clients. See *Serrano*, 20 Cal.3d 35
21 (common fund doctrine permits class counsel to recover attorneys’ fees and costs); *Rider v. Cty. of San*
22 *Diego* (1992) 11 Cal.App.4th 1410, 1423 n.6; *Earley*, 79 Cal.App.4th 1436; see also *Harris v.*
23 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.

24 To date, Class Counsel have incurred \$20,333.76 in actual out-of-pocket expenses which
25 consist of routine litigation costs typically charged to fee-paying clients, including filing fees, copying,
26 postage, the cost of the mediator, etc. JDB Dec. ¶¶ 102-103; Exhibit 4, KRN Dec. ¶ 17, Exhs. 2, 4.
27 These costs were necessarily incurred, are reasonable in relation to the size and scope of the case, and
28 should be reimbursed.

1 **D. The Service Payments to the Class Representatives Are Reasonable.**

2 The Court should also approve the \$10,000 service payment to each Plaintiff because they are
3 just, fair, and reasonable. Courts regularly approve incentive awards so that class representatives can
4 “be compensated for the expense or risk they have incurred in conferring a benefit on other members of
5 the class.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394 (quoting *Clark*
6 *v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 806; *see also Bell v. Farmers Ins. Exch.*
7 (2004) 115 Cal.App.4th 715, 725-26 (upholding service payments to class representatives); *Munoz v.*
8 *BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App.4th 399, 412 (upholding incentive awards to
9 plaintiffs that, when added to their individual recoveries, amounted to more than twice as much as the
10 average payment to class members).

11 In deciding whether to approve an incentive award, a court should consider: “(1) the risk to the
12 class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal
13 difficulty encountered by the class representative; (3) the amount of time and effort spent by the class
14 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed
15 by the class representative as a result of the litigation.” *In re Cellphone Fee Termination Cases*, 186
16 Cal.App.4th 1394-95 (internal quotation marks omitted); *see also Van Vranken*, 901 F.Supp. 299
17 (applying similar factors to determine reasonableness of service payments). All of the aforementioned
18 factors support the Service Payments requested here. The \$20,000 service payments sought by
19 Plaintiffs are (a) in line with those commonly awarded by courts in similar wage and hour class actions,
20 (b) collectively just 1.98% of the increased GSA, and (c) fair, reasonable and appropriate under the
21 circumstances. *See Bates v. Michigan Logistics, Inc.* (C.D. Cal. 2023) 2023 WL 2440244 * 9
22 (awarding \$10,000 service payment in connection with \$1.7 million settlement with no objectors);
23 *Deluca v. Farmers Ins. Exchange* (N.D. Cal. 2020) 2020 WL 5071700 * 8 (approving \$10,000 service
24 payments and collecting cases); *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245,
25 267-268 (awarding Plaintiff \$15,000 service payment in connection with \$1 million settlement).

26 Here, Plaintiffs took on substantial risk in bringing this class action and exposed themselves to
27 notoriety and personal difficulties from serving as the named Plaintiffs in this lawsuit. First, Plaintiffs
28 bore the significant financial risk of Defendant’s costs in the event they lost at trial. This financial risk,

1 in a complex employment class action involving 777 current and former employees, could easily total
2 tens, if not hundreds, of thousands of dollars. Plaintiffs also risked damage to their professional
3 reputations. It is well established that plaintiffs in the employment context “face[] the risk that new
4 employers would learn that they were class representatives in a lawsuit against their former employer
5 and take adverse action against them. Moreover, each time they change jobs, they will risk retaliation
6 in the hiring process.” *Asare v. Change Grp. of N.Y., Inc.* (S.D.N.Y. 2013) 2013 WL 6144764 *15; see
7 also *Bellinghausen*, 306 F.R.D. 267. Plaintiffs, who worked diligently with Class Counsel throughout
8 this entire litigation, including participating in discovery and the Parties’ informal information
9 exchange, taking numerous calls with Class Counsel, and participating telephonically in the mediation,
10 should be rewarded for taking the initiative to pursue these claims on behalf of their coworkers, and for
11 their role in reaching a substantial settlement providing for valuable relief to the Class. Plaintiffs’
12 commitment is further underscored by the fact that, had the Settlement not been reached, their
13 participation may well have been required for several more years. JDB Dec. ¶¶ 85-89; Declaration of
14 Emad Missreezadah at ¶¶ 7-8; Declaration of Angelo Kalaveras at ¶ 15. Additionally, Plaintiffs
15 receive no special treatment under the terms of the Settlement with respect to the calculation of
16 individual awards yet are the *only* individuals executing full and complete waivers (including Cal. Civ.
17 Code § 1542) and releasing *any and all* potential claims against Defendant. SA ¶ 58.c. Moreover, by
18 actively pursuing this action, Plaintiffs furthered the twin California public policy goals of enforcing
19 the Labor Code and making appropriate use of the class action device. See *Sav-on Drug Stores, Inc. v.*
20 *Sup. Ct.* (2004) 34 Cal.4th 319, 340.

21 The reasonableness of the requested service payments is further confirmed by the fact that
22 combined they represent just 1.98% of the increased GSA and ***not one Class Member has objected to***
23 ***it.*** Admin. Dec. ¶ 14. The requested service payments are also consistent with, and actually lower
24 than, awards approved by courts in other similar wage and hour cases.⁹ Accordingly, all of the
25 aforementioned factors support the approval of the \$10,000 service payments.

26 _____
27 ⁹ See e.g. *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award each to
28 two representatives in a meal break class action); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482,
493 (approving service awards of \$10,000 each from a \$300,000 settlement in a wage and hour class action); *Castellanos v.*
Pepsi Bottling Group, Inc. (Alameda Cnty. Sup. Ct., March 11, 2010) No. RG07332684 (approving incentive award of

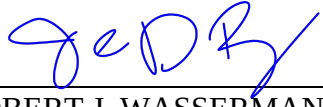
1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should grant final approval to the Parties' proposed class
3 action Settlement, award Class Counsel attorneys' fees in the amount of \$333,333.33, costs of
4 \$20,333.76, and awards of \$10,000 to each Plaintiff for his service as Class Representative.

5 **DATED:** July 3, 2023

MAYALL HURLEY P.C.

6
7 By


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Attorneys for Plaintiffs and the Putative Class

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27 \$12,500 in a wage and hour class action); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. 2008) 2008 WL 4473183 *2
28 (approving "\$25,000 incentive award for each Class Representative" in wage an hour settlement); *Garner v. State Farm*
Mut. Auto. Ins. Co. (N.D. Cal. 2010) 2010 WL 1687832 *17 n.8 ("Numerous courts in the Ninth Circuit and elsewhere have
approved incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong
commitment to the class").