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individually and on behalf of all other similarly  
7 situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 KAYLA MILLIGAN, individually and on  
11 behalf of all others similarly situated,

12  
13 Plaintiffs,

14 vs.  
15

16 CWI, Inc. d/b/a Camping World, a  
Kentucky Corporation; and DOES 1-50,  
17 inclusive

18 Defendants.  
19

Case No.: CIVDS2020159

Assigned to the Hon. David Cohn

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
ATTORNEYS' FEES, COSTS, AND  
ENHANCEMENT**

Date: September 7, 2022

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: September 21, 2020

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1                   **I.       INTRODUCTION**

2           In connection with the \$1,500,000 Maximum Gross Settlement Amount secured by Plaintiff  
3 Kayla Milligan (“Plaintiff”) and Class Counsel, on behalf of the Class, Plaintiff respectfully  
4 requests the Court grant Plaintiff’s Motion for Award of Attorneys’ Fees and Costs and Class  
5 Representative Incentive Award by approving this application for an award of one-third of the  
6 common fund or \$500,000.00 for attorneys’ fees and \$14,624.27 for reimbursement of costs  
7 (preliminarily approved not to exceed \$30,000). Further, Plaintiff respectfully requests that this  
8 Court award a \$10,000 incentive award to Plaintiff for their role in obtaining this Settlement for the  
9 Class and in consideration for the general release they are required to enter.

10           The requested fee falls well within the benchmark of 25% to 40% of a common fund and is  
11 fair compensation for undertaking such complex, risky, and time-consuming litigation on a  
12 contingent basis. In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.*,  
13 1 Cal. 5th 480 (2016), the California Supreme Court affirmed an award of attorneys’ fees equal to  
14 1/3 of the common fund, which correlated to the lodestar with a 2 multiplier. Here, Class Counsel’s  
15 lodestar is significantly in excess of the requested fee award (approximately \$183,773.00) and no  
16 positive multiplier is required in connection with this Settlement to reach the requested award.  
17 Plaintiffs’ counsel has expended significant resources, costs and time in litigating this action since  
18 2020. Therefore, Plaintiffs respectfully submit that the requested fee award is well within the range  
19 approved in *Laffitte* and is therefore undoubtedly reasonable.

20           Since the attorneys’ fees requested are well within the range of reasonableness and Counsel  
21 obtained significant positive results for the Class Members, Plaintiff, by and through Class Counsel,  
22 respectfully requests that the Court award the requested fees equal to one-third (1/3) of the  
23 \$1,500,000.00 common fund and approve payment of Class Counsel’s litigation expenses in the  
24 amount of \$14,624.27 in accordance with the preliminarily approved Settlement Agreement. In  
25 addition, Plaintiff respectfully requests the Court award the requested \$10,000 to her as appointed  
26 Class Representative for her efforts and service to the Class.

1                   **II.     THE ATTORNEYS' FEES REQUESTED ARE FAIR AND REASONABLE**  
2                   **AND SHOULD BE APPROVED**

3           In defining a reasonable fee, the Court should mimic the marketplace for cases involving a  
4 significant contingent risk such as this one. Given the unique reliance of our legal system on private  
5 litigants to enforce substantive provisions of law in class actions, attorneys providing these  
6 substantial benefits should be paid an award equal to the amount negotiated in private bargaining  
7 that takes place in the legal marketplace. *Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper*,  
8 445 U.S. 326, 338, *rehg. denied*, 446 U.S. 947 (1980). “When a fee is set by a court rather than by  
9 contract, the object is to set it at a level that will approximate what the market would set. . . . The  
10 judge, in other words, is trying to mimic the market in legal services.” *Gaskill v. Gordon*, 160 F.3d  
11 361, 363 (7th Cir. 1998). The “percentage of the fund method more accurately reflects the results  
12 achieved.” *Laffitte*, 1 Cal. 5<sup>th</sup> at 439; see also *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th  
13 19, 50 (2000) (“...in cases where the class recovery can be monetized with a reasonable degree of  
14 certainty... a trial court should adjust the basic lodestar through the application of a positive or  
15 negative multiplier where necessary to ensure that the fees awarded is within the range of freely  
16 negotiated in the legal marketplace in comparable litigation.”)

17           At the time this case was brought, the result was far from certain. Defendant asserted  
18 numerous defenses to the case that created difficulties with proof and complex legal issues for Class  
19 Counsel to overcome. For example, Defendant contended that they maintained compliant policies,  
20 paid at least minimum wages for all hours worked, paid all overtime wages when legally required,  
21 provided timely meal breaks and rest breaks, timely paid wages upon termination, and provided  
22 compliant wage statements and maintained accurate records, or that any alleged violations, to the  
23 extent Plaintiffs can prove any, are due solely to individual preference. (See Ex. 3, Declaration of  
24 James R. Hawkins in Support of Motion for Preliminary Approval (“Hawkins Prelim. Decl.”) ¶  
25 27.)

26           There was also a significant risk that, if the litigation was not settled, Plaintiff would be  
27 unable to certify the action as a class action and maintain class certification through trial and thereby  
28 not recover on behalf of any employees other than themselves. Throughout the action, Defendant

1 challenged whether Plaintiff can prove commonality or whether a class action trial was manageable  
2 under the standards set forth in *Duran v. U.S. Bank Nat'l Assn.* 59 Cal. 4th 1 (2014). With such  
3 precedent in mind, Defendant alleged any claims involved highly individualized inquiries which  
4 were not appropriate or ripe for class certification. As a result, there was considerable risk that  
5 Plaintiff would not prevail on a motion for certification or that Defendant would prevail on its  
6 defenses, thus, defeating any and all recovery to the Class. Even if Plaintiff were to obtain class  
7 certification, liability was by no means a foregone conclusion. (Hawkins Final Approval Decl. ¶  
8 26.)

9 The Settlement was possible only because Class Counsel was able to convince Defendant  
10 that Class Counsel could potentially prevail on the difficult legal issues regarding liability and  
11 obtain and maintain class certification for the Class through trial and overcome difficulties in proof  
12 as to monetary relief. In successfully navigating these hurdles so as to convince Defendant to settle,  
13 Class Counsel displayed significant skill. (Hawkins Final Approval Decl., ¶ 43.)

14 To represent the Class on a contingent fee basis, Class Counsel had to devote the necessary  
15 time and resources to this contingent case. (Hawkins Final Approval Decl. ¶ 48.) In so doing, Class  
16 Counsel gave up the hourly work that a firm can bank on for the risky contingent fee work in this  
17 case which could have paid Class Counsel nothing. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th  
18 Cir. 2000).

19 **III. THE AGREEMENT FOR THE PAYMENT OF FEES AND EXPENSES IS**  
20 **APPROPRIATE AND SHOULD BE ENFORCED.**

21 The United States Supreme Court has ruled that the parties to a class action properly may  
22 negotiate not only the settlement of the action itself, but also the payment of attorneys' fees. See  
23 *Evans v. Jeff D.*, 475 U.S. 717, 734-35, 738, n.30 (1980). In *Hensley v. Eckerhart*, 461 U.S. 424,  
24 437 (1983), the Supreme Court held that negotiated, agreed-upon attorneys' fee provisions are the  
25 ideal towards which the parties should strive: "A request for attorney's fees should not result in a  
26 second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Id.*

27 The United States Supreme Court has reemphasized this policy and further stressed that the  
28 trial court "has a responsibility to encourage agreement" on fees. *Blum v. Stenson*, 465 U.S. 886,

1 902 n.19 (1984). Here, as part of the Settlement, Defendant agreed not to oppose an award of one-  
2 third (1/3) of the Settlement Fund for attorneys' fees. Such a fee is commensurate with what the  
3 market would provide for similar services and the Court therefore can most certainly enforce the  
4 agreement. As the United States Supreme Court has instructed:

5  
6 Given the unique reliance of our legal system on private litigants to enforce  
7 substantive provisions of law through class and derivative actions, attorneys  
8 providing the essential enforcement services must be provided incentives  
9 roughly comparable to those negotiated in the private bargaining that takes  
place in the legal marketplace, as it will otherwise be economic for  
Defendants to increase injurious behavior.

10 *Deposit Guaranty Nat. Bank, supra*, 445 U.S. at 338.

11 Here, the Settlement is the result of continuing discussions after a full-day of non-collusive,  
12 informed, and arm's-length negotiations between experienced counsel for the Class and Defendant  
13 with the assistance of Jeff Ross, an experienced mediator who has substantial experience mediating  
14 class and PAGA actions asserting violations of the California Labor Code. (Hawkins Prelim.  
15 Approval Decl., ¶ 12.) The requested fee and cost award was negotiated during adversarial  
16 bargaining by counsel for each of the parties, after the substantive terms of the Settlement had been  
17 negotiated. Such arm's length bargaining fairly reflects the marketplace value of the services  
18 rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be  
19 approved.

20 **IV. CLASS COUNSEL'S FEE AWARD IS PROPERLY CALCULATED AS A**  
21 **PERCENTAGE OF THE TOTAL VALUE CREATED FOR THE BENEFIT**  
22 **OF THE CLASS.**

23 Class Counsel seeks an attorney fee award for their successful prosecution and resolution  
24 of this action, calculated as one-third (1/3) of the cash value of the common fund created by the  
25 Settlement. In cases such as this one, the Courts have long recognized that an appropriate method  
26 for determining the award of attorneys' fees is based on a percentage of the total value of benefits  
27 afforded to class members by the settlement. *Laffitte*, 1 Cal. 5<sup>th</sup> at 494 ("the percentage method has  
28 been generally approved in common fund cases"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478  
(1980); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9<sup>th</sup> Cir. 1989); *Vincent v.*

1 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The awarding of a fee based on a  
2 percentage of the common fund recovered is to “spread litigation costs proportionately among all  
3 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*,  
4 *supra*, 557 F.2d at 769. The Settlement Fund is \$1,500,000.00. Accordingly, Class Counsel  
5 requests \$500,000.00 in attorneys’ fees as it is properly calculated as a percentage (33-1/3%) of the  
6 common fund created for the benefit of the Class.

7 **I. In a Common Fund Case, the Supreme Court Approves an Award Based Upon**  
8 **the Percentage of the Fund**

9 California courts have been expressly authorized to award attorneys’ fees so as “to ensure  
10 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in  
11 comparable litigation.” *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at 50. As *Lealao*  
12 explained, in a representative action, courts must consider the amount of attorney fees typically  
13 negotiated in comparable litigation:

14 Given the unique reliance of our legal system on private litigants to enforce  
15 substantive provisions of law through class and derivative actions, attorneys  
16 providing the essential enforcement services must be provided incentives  
17 roughly comparable to those negotiated in the private bargaining that takes  
18 place in the legal marketplace, as it will otherwise be economic for  
19 Defendants to increase injurious behavior. It has therefore been urged (most  
20 persistently by Judge Richard Posner) that in defining a “reasonable fee” in  
21 such representative actions the law should “mimic the market.”

22 *Id.* at 47.

23 In this case, the fees are being paid from the common fund, accordingly, the fee should be  
24 awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund  
25 cases under *Lealao*. As *Lealao* acknowledged, in cases like this one, the percentage-of-the-benefit  
26 approach should be considered because “it better approximates the workings of the marketplace  
27 than the lodestar approach.” *Id.*, 82 Cal.App.4th at 49; see also *Apple Computer, Inc. v. Superior*  
28 *Court*, 126 Cal.App.4th 1253, 1270 (2005) (observing that “attorney fees awarded under the  
common fund doctrine are based on a ‘percentage-of-the-benefit’ analysis”).

In *Laffitte*, the California Supreme Court confirmed that the percentage of the fund method  
is properly used in a common fund case:

1 We join the overwhelming majority of federal and state courts in holding that when  
2 class action litigation establishes a monetary fund for the benefit of the class  
3 members, and the trial court in its equitable powers awards class counsel a fee out  
4 of that fund, the court may determine the amount of a reasonable fee by choosing an  
5 appropriate percentage of the fund created.

6 *Laffitte*, 1 Cal. 5<sup>th</sup> at 503.

7 The recognized advantages of the percentage method – including relative ease of  
8 calculation, alignment of incentives between counsel and the class, a better  
9 approximation of market conditions in a contingency case, and the encouragement  
10 it provides counsel to seek an early settlement and avoid unnecessarily prolonging  
11 the litigation (*Lealao, supra*, 82 Cal.App.4th at pp. 48–49; *Rawlings v. Prudential-*  
12 *Bache Properties, Inc., supra*, 9 F.3d at p. 516)—convince us the percentage method  
13 is a valuable tool that should not be denied our trial courts.

14 *Id.* The Supreme Court in *Laffitte* went on to approve the trial court’s reliance on a percentage  
15 method for the calculation of the fee award, and ultimately affirmed the fee award that was one-  
16 third (1/3) of the common fund. *Id.*, at 504.

17 The Court in *Laffitte* indicated that the trial courts may utilize a “lodestar cross-check” to  
18 double check the reasonableness of the percentage fee award. *Id.* In *Laffitte*, the Supreme Court  
19 affirmed the propriety of a lodestar cross-check where the multiplier exceeded 2. Indeed, the Court  
20 explicitly held that the lodestar is a cross check that should not override the primary use of the  
21 percentage method:

22 [W]e emphasize the lodestar calculation, when used in this manner, does not  
23 override the trial court's primary determination of the fee as a percentage of the  
24 common fund and thus does not impose an absolute maximum or minimum on the  
25 potential fee award.

26 A lodestar cross-check is simply a quantitative method for bringing a measure of the  
27 time spent by counsel into the trial court's reasonableness determination; as such, it  
28 is not likely to radically alter the incentives created by a court's use of the percentage  
method.

*Id.* at 505.

Because the Settlement Fund is a pure common fund, and the percentage of the fund is the  
comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao* support an  
award based upon the percentage of the common fund. Here, as noted above, one-third is within  
the reasonable range of comparable awards for common fund cases, which establishes the requested  
award as reasonable. Moreover, as discussed below, the use of the lodestar cross-check in this case

1 further supports the reasonableness of the percentage fee award as it falls squarely within the range  
2 approved in *Laffitte*. See also *Taylor v. Fedex Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D.  
3 Cal. 2016) (following *Laffitte* to approve 30% fee award with cross-check lodestar multiplier of  
4 2.26).

5 **II. The Percentage Fee Award is Supported by a Lodestar Cross-Check**

6 The reasonableness of the requested attorneys' fee of \$500,000 is also established by  
7 reference to Class Counsel's lodestar cross-check in this matter. Class Counsel's total lodestar is  
8 approximately \$193,737.25 not including certain fees still to be incurred to complete final approval  
9 and the settlement process.<sup>1</sup> (Hawkins Final Approval Decl. ¶ 52.) Here Class Counsel seeks a  
10 multiplier of 3.87 to reach the requested attorneys fees of \$500,000. An award which seeks a  
11 multiplier that was approved in *Laffitte* is undoubtedly fair, reasonable and justified under  
12 California law.<sup>2</sup>

13 In a common fund settlement "[t]he lodestar method is merely a cross-check on the  
14 reasonableness of a percentage figure". *Vizcaino v. Microsoft Corp.*, *supra*, 290 F.3d 1043, 1050,  
15 n.5. (9<sup>th</sup> Cir. 2002). In this case, consideration of Class Counsel's overall lodestar as a cross-check  
16 to the percentage figure strongly supports the reasonableness of the requested fee award. In  
17

18  
19 <sup>1</sup> Class Counsel's hourly rates used in the lodestar are also reasonable. Class Counsel's hourly  
20 rates have been approved by Court's throughout California, including the Courts in the Superior  
21 Court of California. The reasonableness of Class Counsel's hourly rates is further confirmed by  
22 comparing such rates with the rates of comparable counsel practicing complex and class litigation  
23 as detailed in the National Law Journal Billing Survey. See *Zest IP Holdings, LLC v. Implant*  
24 *Direct MFG., LLC*, 2014 U.S. Dist. LEXIS 167563 (S.D. Cal. 2014) (finding that "Mayer  
Brown's \$775 average billing rate for partners" and "Mayer Brown's \$543 average associate  
billing rate" are reasonable rates when compared within 21 other firms practicing in the Southern  
District of California.) See Hawkins Decl., Exhibit 5 - 2011 NLJ Bill Survey.

25 <sup>2</sup> Lodestar cross-checks with multipliers far in excess of 2 are commonly approved. See *e.g.*,  
26 *Pellegrino*, 182 Cal.App.4th at 293; *Vizcaino*, *supra*, 290 F.3d at 1051 (3.65 multiplier approved  
because of substantial risk); *Rievman v. Burlington Northern Railroad Co.*, 118 F.R.D. 29, 35  
27 (S.D.N.Y. 1987) ("In recent years, multipliers between 3 and 4.5 have been common"); *Amaral v.*  
28 *Cintas Corporation No. 2*, 163 Cal. App.4th 1157, 1174 (2008) (approving lodestar with a 1.65  
multiplier in a fee-shifting case); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549  
(S.D.Fla. 1988) (court applied multiplier of 3, noting that this was "average" for a large  
complicated class action where multipliers ranged from 2.26 to 4.5).

1 addition, Class Counsel anticipates performing additional work that is not included in this current  
2 lodestar amount.

3 **III. The Percentage Award is Supported by 1) the Results Achieved; 2) the Risks of**  
4 **Litigation, 3) the Skill Required and the Quality of Work, 4) The Contingent**  
5 **Nature of the Fee and the Financial Burden, and 5) Awards in Similar Cases.**

6 What has now emerged in most fee award decisions is a recognition that fee determinations  
7 in both common fund and statutory fee situations are incapable of mathematical precision because  
8 of the intangible factors that must be resolved in the court's discretion based on the circumstances  
9 of each particular case. See, A. Conte, *Attorney Fee Awards*, 2nd Ed., 207, at 44. In determining  
10 an appropriate fee in a common fund case, a court must decide, based on the unique posture of each  
11 case, what percentage of the common fund would most reasonably compensate Class Counsel given  
12 the nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt, supra*,  
13 886 F.2d at 272 (the benchmark percentage fee may be adjusted to account for the circumstances  
14 involved in this case.) Courts apply a five-part test in reviewing a reasonable percentage fee in  
15 common fund cases:

16 (1) the results achieved; (2) the risk of litigation; (3) the skill required and the  
17 quality of work; (4) the contingent nature of the fee and the financial burden  
carried by the Plaintiff; and (5) awards made in similar cases.

18 *In re Omnivision Technologies, Inc.*, 2007 WL 4293467 at \*9 (N.D. Cal. 2007).

19 Here, each of these five factors strongly support an award of the percentage fee (33-1/3%)  
20 requested in this case.

21 **1. The Results Achieved**

22 “The overall result and benefit to the class from the litigation is the most critical factor in  
23 granting a fee award.” *Omnivision*, 2007 WL 4293467 at \*9; See also *In re Heritage Bond Litig.*,  
24 2005 U.S. Dist. LEXIS 13627, at \*27-28 (C.D. Cal. June 10, 2005). Class Counsel obtained a very  
25 favorable result in this case for the Class Members. The Settlement provides meaningful monetary  
26 benefits to the Class Members that are comparable to or even exceed those recovered in similar  
27 wage and hour class actions. The Settlement is particularly advantageous to the Class Members  
28

1 because the proceeds will be distributed in the near term without waiting additional years for a  
2 similar, or possibly, less favorable result.

3       There is little question that the result achieved in this litigation is favorable. The average  
4 estimated payment amongst the Settlement Class Members is estimated to be \$1,261.90 and the  
5 highest settlement payment is \$4,648.26 (Hawkins Final Approval Decl. ¶ 38.)

## 6                   **2.       The Risks of Litigation**

7       “The risk that further litigation might result in Plaintiffs not recovering at all, particularly a  
8 case involving complicated legal issues, is a significant factor in the award of fees” *Omnivision*,  
9 2007 WL 4293467 at \*9.

10       As detailed above, at the time this case was brought, the result was far from certain.  
11 Defendant’s numerous defenses to the case created difficulties with proof and complex legal issues  
12 for Class Counsel to overcome. Here, a number of defenses asserted by Defendant presented  
13 serious threats to the claims of Plaintiffs and the other Class Members. (Hawkins Final Approval  
14 Decl. ¶ 25; Ex. 3, Hawkins Prelim. Decl. ¶ 23.)

15       As discussed above, there was also a significant risk that, if the litigation was not settled,  
16 Plaintiffs would be unable to obtain and maintain class certification through trial and thereby not  
17 recover on behalf of any employees other than themselves. Defendant also steadfastly challenged  
18 Plaintiffs’ ability to obtain class certification and, if certified, to demonstrate a viable trial plan and  
19 ability to manage the potential individual issues a trial under *Duran*, (2014) 59 Cal. 4th 1, arguing  
20 that individual issues precluded class-wide recovery. With such precedent in mind, Defendant  
21 contended that any claims involved highly individualized inquiries which were not appropriate or  
22 ripe for class certification. As a result, there was considerable risk that Plaintiff would not prevail  
23 on a motion for class certification and/or Defendant would prevail on their defenses, thus, defeating  
24 any and all recovery to the class. Even if Plaintiff successfully obtained class certification of her  
25 wage and hour claims, proving class-wide liability was by no means a foregone conclusion.  
26 (Hawkins Final Approval Decl. ¶ 26.)

27       All of these were very substantial risks any of which could have resulted in the Class  
28 receiving nothing if the claims were litigated.

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### 3. The Skill Required and the Quality of Work

Practice in the narrow areas of wage and hour and class action litigation requires skill, knowledge, and experience in two distinct subsets of the law. Expertise in one does not necessarily translate into expertise in the other. Class Counsel must have expertise in both. The issues presented in this case required more than just a general appreciation of wage and hour law and class action procedure as this area of practice is still developing as evidenced by the California Supreme Court's ruling in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012).

The Settlement was possible only because Class Counsel was able to convincingly argue that Plaintiff could potentially prevail on the difficult legal issues regarding liability, maintain class certification, overcome difficulties in proof as to monetary relief and take the case to trial. (Hawkins Final Decl. ¶ 28.) In successfully navigating these hurdles Class Counsel displayed the necessary dual skill set. The high quality of the work in this case was mandated by the very vigorous and contentious defense presented by counsel for Defendant. Class Counsel was required to invest substantial time and resources in investigation, informal discovery, formal discovery, motion practice, and determination of potential damages, mediation, negotiations, and preliminary and final approval. (Hawkins Final Decl. ¶ 56.)

The contingent fee practice of Class Counsel does not accommodate the investment of unnecessary time in a case. This case was litigated on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Moreover, the favorable result obtained by the settlement further supports the skill and quality of work.

### 4. The Contingent Nature of the Fee and the Financial Burden

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to the bank with his fee. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). The attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a market place contingent fee taking into account the risk and other factors of the undertaking. *Id.* at 1257. Otherwise, the contingent fee attorney receives nothing. *Id.*

1 In this case, Class Counsel subjected themselves to this contingent fee market risk in this  
2 all or nothing contingent fee case wherein the necessity and financial burden of private enforcement  
3 makes the requested award appropriate. Counsel retained on a contingency fee basis, whether in  
4 private matters or in class action litigation, is entitled to a premium in order to compensate for both  
5 the risks and the delay in payment. See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734 (9<sup>th</sup>  
6 Cir. 2016) (courts “must” apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9<sup>th</sup>  
7 Cir. 2016) (abuse of discretion not to apply risk multiplier). The simple fact is that despite the most  
8 vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner*, 378 F.2d  
9 872, 875 (4th Cir. 1967). Indeed, if counsel is not adequately compensated for the risks inherent  
10 in difficult class actions, competent attorneys will be discouraged from prosecuting similar cases.  
11 *Steiner v. BOC Financial Corp.*, 1980 U.S. Dist. LEXIS 14561 at \*6- \*7 (S.D.N.Y. 1980). Class  
12 Counsel has invested time and money into contingency cases which ultimately generated no fee,  
13 which further emphasizes the need for contingent cases to provide premium compensation when  
14 successful.

15 Here, the contingent nature of the fee award, both from the point of view of eventual  
16 settlement and the point of view of establishing eligibility for an award, also warrant the requested  
17 fee award. Many difficult issues, the adverse resolution of any one of which could have doomed  
18 the successful prosecution of the action, were present here. As discussed above, attorneys’ fees in  
19 this case were not only contingent but extremely risky, with a very real chance that Class Counsel  
20 would receive nothing at all for their efforts, having devoted time and advanced costs.

21 Class Counsel were required to advance all costs in this litigation. Accordingly, because  
22 the risk of advancing costs in this type of litigation can be significant, it is therefore cost  
23 prohibitive to many attorneys. The financial burdens undertaken by Plaintiff and Class Counsel  
24 in prosecuting this action on behalf of the Class were substantial. To date, Class Counsel  
25 advanced \$14,624.27, in costs which could not have been recovered if this case had been lost.  
26 (Hawkins Final Decl. ¶ 53; Exhibit 5, Class Costs; Exhibit 6, PAGA Costs.)

27 Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel  
28 also support the fee requested.

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## 5. Awards in Similar Cases

The attorneys' fees requested by Class Counsel are within the range of fees awarded in comparable cases. A review of class action settlements over the past 10 years shows that the courts have historically awarded fees in the range of 20% to 50%, depending upon the circumstances of the case. *In re Warner Communications Sec. Lit.*, 618 F.Supp. 735, 749-50 (S.D. N.Y. 1985). Class Counsels' requested fees are one-third (1/3) of the total value of the case, a percentage well within the range of reasonableness given the significant results obtained for the Class, the risks undertaken, and the skill of the prosecution. See *Laffitte*, 1 Cal. 5<sup>th</sup> at 486, 506 (approving one-third (1/3) attorneys fee award).

In *In re Warner Communications Sec. Lit.*, Judge Keenan concluded that percentage fees in common fund cases range from 20% to 50%. *Id.*, 618 F.Supp. at 749-50. Professor Newberg is in accord:

No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.

Newberg, *Newberg on Class Actions*, 3rd Ed., 14.03, at 14-13.

A fee award of one-third (1/3) of the common fund in this case is therefore reasonable in light of the prevailing fees that have been awarded in other cases.

## IV. Class Counsel's Costs Were Reasonably Incurred

Class Counsel requests reimbursement for expenses and costs in the amount of \$14,624.27, which is below the amount preliminary approved by the Court. These litigation expenses are detailed in Exhibits 5 and 6 to the Hawkins Declaration. (Hawkins Final Decl. ¶ 53; Exs. 5-6.) These expenses primarily involve the costs incurred for initial filing fees, mediation fees, and also include the amounts paid for court filing fees and service charges, document copying fees, and attorney service charges, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter. (*Id.*). Class Counsel only requests \$14,624.27 as that is below the amount that was preliminarily approved.

1                   **V.     THE CLASS REPRESENTATIVE SHOULD RECEIVE THE REQUESTED**  
2                   **SERVICE PAYMENT**

3               Plaintiffs respectfully submit that for their service as the Class Representative, Plaintiff  
4 should be awarded \$10,000.00 as the agreed Class Representative Enhancement Award. Defendant  
5 has agreed not to oppose the payment of this amount to Plaintiff.

6               As the Class Representative, Plaintiff has selflessly performed their duties to the Class  
7 admirably and without exception. Plaintiff provided valuable information and documents from their  
8 employment which were instrumental in Class Counsel's understanding of the case. Plaintiff also  
9 provided Class Counsel with evidence for use at mediation and in litigation. She was also involved  
10 in the settlement negotiations and provided invaluable assistance and information which ultimately  
11 resulted in the settlement benefitting the Class. (See generally Declaration of Plaintiff Kayla  
12 Milligan.)

13              Plaintiff also assumed the risk, among other things, that they might possibly be liable for  
14 costs incurred in connection with this case and risked being "blacklisted" by other future employers  
15 for having sued Defendant in a class action. See *Guippone v. BH S&B Holdings LLC*, 2011 U.S.  
16 Dist. LEXIS 126026, at \*\*4, 20 (S.D.N.Y. Oct. 28, 2011) ("[T]he fact that a Plaintiffs has filed a  
17 federal lawsuit is searchable on the internet and may become known to prospective employers when  
18 evaluating the person . . . Even where there is not a record of actual retaliation, notoriety, or personal  
19 difficulties, class representatives merit recognition for assuming the risk of such for the sake of  
20 absent class members.").

21              Without Plaintiff's support, cooperation and information, none of the other employees  
22 would have received any benefit. The payment of the enhancement award to a successful class  
23 representative is appropriate and the amount of \$10,000 is a small portion of the total Settlement  
24 secured on behalf of the Class.

25              This payment to compensate Plaintiff for her effort and risk in bringing this case to benefit  
26 the other 348 participating employees and secure a total settlement of \$1,500,000. Plaintiff's effort  
27 in the lawsuit have conferred a substantial benefit on the Class Members. Accordingly, Class  
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1 Counsel respectfully requests that the Court approve the requested Class Representative  
2 Enhancement Award.

3 **V. CONCLUSION**

4 The representation of the Class provided by Class Counsel has been wholly contingent.  
5 Class Counsel's fee request is well within the realm of reasonableness for fee requests approved  
6 by courts given the efforts expended in this case and the stage of proceedings at the time of the  
7 Settlement. Moreover, Class Counsel undertook great risks on a contingent fee basis and  
8 achieved a favorable result for the benefit of Class Members. Based on the foregoing, Class  
9 Counsel respectfully requests approval of the application for award of attorneys' fees of  
10 \$500,000.00, reimbursement of litigation costs of \$14,624.27, and an enhancement award of  
11 \$10,000 to Plaintiff as Class Representative.

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14 Dated: August 15, 2022

**JAMES HAWKINS APLC**

15  
16 By:

  
James R. Hawkins  
Christina M. Lucio

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19 Attorneys for Plaintiff  
20 and the Conditionally Certified Class  
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