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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

CHARLES WALTON, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

PRAXAIR DISTRIBUTION, INC., a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20-CIV-03660

[Assigned for all purposes to Department 4,
Hon. Nancy L. Fineman]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR ATTORNEYS' FEES,
COSTS, AND CLASS REPRESENTATIVE
SERVICE AWARD; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of William L. Marder; Declaration of Charles
Walton; [Proposed] Order]*

Date: April 12, 2022
Time: 8:30 a.m.
Department: 4

Complaint Filed: August 28, 2020

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 12, 2022, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 4 of the above-entitled court located at 1050 Mission Road, South
4 San Francisco, California 94080, Plaintiff, Charles Walton, will and hereby does seek an Order
5 awarding payments of (i) \$10,000.00 to Plaintiff for his efforts on behalf of the class and State and for
6 his individual release of claims and waiver of Civil Code section 1542, (ii) \$183,333.33 for Class
7 Counsel's attorneys' fees, and (iii) \$9,888.48 for reimbursement of litigation costs.

8 The Motion is based on this notice, accompanying memorandum of points and authorities, the
9 Agreement and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W.
10 Lee, Simon L. Yang, William L. Marder, and Charles Walton, all pleadings and papers on file herein,
11 and any further oral and documentary evidence as may be presented before or at the hearing of this
12 matter.

13 DATED: February 21, 2022

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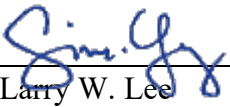
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15 By: 
16 Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

TABLE OF CONTENTS

	Page
SUMMARY OF MOTION.....	1
DISCUSSION	2
I. The Court Should Award the Requested Attorneys’ Fees of 33⅓% of the Settlement Value.	2
A. The Requested Fees Are Reasonable Under the Percentage of the Fund Method.....	2
1. Courts favor the percentage of the fund method for awarding fees.....	2
2. Courts routinely award 33⅓% of a common fund as attorneys’ fees.	3
3. Awarding 33⅓% of a common fund also mimics the legal marketplace.	3
B. Other Factors Support the Reasonableness of the Requested Attorneys’ Fees.	4
1. The results achieved on behalf of the Class support the requested award.....	4
2. The Class’s response to the settlement support the requested award.	5
3. The contingent risk assumed by Class Counsel supports the requested award.	5
4. Class Counsel’s experience supports the requested award.	7
C. A Lodestar Cross-Check Confirms the Requested Fees Are Reasonable.....	7
1. Class Counsel’s hourly rates are reasonable.	7
2. Class Counsel reasonably and efficiently litigated this matter.	8
3. The lodestar multiplier of just 1.19 is reasonable.	9
II. The Requested Litigation Costs Should Be Approved.	10
III. The Requested Class Representative Service Award Should Be Approved.....	10
A. Plaintiff’s Time and Effort Resulted in the Exceptional Result for the Class.	11
B. Plaintiff Took On Risks that Support the Service Award.....	12
C. Plaintiff Gave Up Rights that Support the Service Award.	12
D. Class Members Approve of the Proposed Terms, Including the Requested Award.....	13
CONCLUSION.....	13

TABLE OF AUTHORITIES

Page

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	5
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521, 545 (2021)	3
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010)	10
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	3, 9
<i>Clark v. American Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	12
<i>In re Consumer Privacy Cases</i> , 175 Cal. App. 4th 545 (2009)	7
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	11
<i>Kerkeles v. City of San Jose</i> , 243 Cal. App. 4th 88 (2015)	8
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122 (2001)	5, 6
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	<i>passim</i>
<i>Laffitte v. Robert Half Int'l Inc.</i> , 231 Cal. App. 4th 860 (2016)	3
<i>Lealao v. Beneficial Cal. Inc.</i> , 82 Cal. App. 4th 19 (2000)	3
<i>Northwest Energetic Servs., LLC v. California Franchise Tax Bd.</i> , 159 Cal. App. 4th 841 (2008)	6
<i>PLCM Group v. Drexler</i> , 22 Cal. 4th 1084 (2000)	7
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	2
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495 (2009)	9
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	2, 9

Federal Cases

<i>Alvarez v. AmerisourceBergen Drug Corp.</i> , 2021 WL 2315194 (C.D. Cal. June 7, 2021)	13
<i>Bellinghausen v. Tractor Supply Co.</i> , 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015).....	12
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	2
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984).....	2
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907 (S.D. Ohio 2001)	10
<i>Camden I Condo. Ass’n, Inc. v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991)	2
<i>Cook v. Niedert</i> , 142 F.3d 1004 (7th Cir. 1998)	11
<i>Dyer v. Wells Fargo Bank, N.A.</i> , 303 F.R.D. 326 (N.D. Cal. 2014).....	9
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	4
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	3
<i>Hopkins v. Stryker Sales Corp.</i> , 2013 WL 496358 (N.D. Cal. Feb. 6, 2013)	9
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366 (S.D. Ohio 1990).....	10
<i>In re Rite Aid Corp. Securities Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....	3
<i>In re Washington Pub. Power Supply Sys. Sec. Litig.</i> , 19 F.3d 1291 (9th Cir. 1994)	6
<i>La Fleur v. Medical Mgmt. Int’l, Inc.</i> , 2014 WL 2967475 (C.D. Cal. June 25, 2014)	12
<i>Laguna v. Coverall N. Am.</i> , 753 F.3d 918 (9th Cir. 2014)	4
<i>Matter of Cont’l Illinois Sec. Litig.</i> , 962 F.2d 566 (7th Cir. 1992)	4
<i>Mills v. Elec. Auto-Lite Co.</i> , 396 U.S. 375 (1970).....	2

1	<i>Moreno v. City of Sacramento</i> ,	
2	534 F.3d 1106 (9th Cir. 2008)	8
3	<i>Parker v. Cherne Contracting Corp.</i> ,	
4	2021 WL 5834227 (N.D. Cal. Dec. 9, 2021)	7
5	<i>Rodriguez v. Nike Retail Servs., Inc.</i> ,	
6	2022 WL 254349 (N.D. Cal. Jan. 27, 2022)	8
7	<i>Rodriguez v. West Publishing Corp.</i> ,	
8	563 F.3d 948 (9th Cir. 2009)	10
9	<i>Stanton v. Boeing Co.</i> ,	
10	327 F.3d 938 (9th Cir. 2003)	11
11	<i>Swedish Hospital v. Shalala</i> ,	
12	1 F.3d 1261 (D.C. Cir. 1993)	5
13	<i>Van Vranken v. Atlantic Richfield Co.</i> ,	
14	901 F. Supp. 294 (N.D. Cal. 1995)	10
15	<i>Vincent v. Hughes Air West, Inc.</i> ,	
16	557 F. 2d 759 (9th Cir. 1997)	2
17	<i>Vizcaino v. Microsoft Corp.</i> ,	
18	290 F.3d 1043 (9th Cir. 2002)	9
19	<i>Willner v. Manpower Inc.</i> ,	
20	2015 WL 3863625 (N.D. Cal. June 22, 2015)	9

1 **SUMMARY OF MOTION**

2 On behalf of other non-exempt employees paid overtime wages and as a proxy for the State of
3 California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff,
4 Charles Walton, sued Defendant, Praxair Distribution, Inc. (now known as Linde Gas & Equipment
5 Inc.), for alleged wage statement violations. Plaintiff secured an excellent result for the Class that
6 requires Defendant to pay \$550,000.00 for a classwide resolution. In a separate motion, Plaintiff seeks
7 final approval of the class action settlement he secured on behalf of the Class.

8 This motion requests that the Court award payments of (i) \$10,000.00 to Plaintiff for his efforts
9 on behalf of the Class and the State and for his individual release of claims and waiver of Civil Code
10 section 1542, (ii) \$183,333.33 (representing 33⅓% of the gross settlement amount) to Class Counsel as
11 attorneys’ fees, and (iii) \$9,888.48 for reimbursement of litigation costs in connection with the class
12 action settlement of this matter.

13 The requested service award is reasonable and should be awarded in light of Plaintiff’s
14 willingness to speak up for the Class, the time invested by Plaintiff to pursue the litigation on behalf of
15 the Class, the additional burdens Plaintiff accepted to secure the settlement’s benefits for the Class, and
16 the excellent result Plaintiff’s efforts obtained for the Class.

17 The requested attorneys’ fees are consistent with the prevailing practice of awarding attorneys’
18 fees pursuant to the percentage of the fund method and should be awarded. They also are supported by
19 the results obtained for the Class, the Class’s response to the settlement, the risks assumed by Class
20 Counsel, and other considerations. They also are reasonable under a lodestar cross-check.

21 The requested costs are litigation expenses that were necessary to obtain the settlement’s benefits
22 for the Class and should be awarded. Indeed, over 90% of the requested costs result from initial filing
23 fees and mediation fees—without which the Class would not have benefitted. All of the requested costs
24 are reasonable.

25 Plaintiff thus respectfully requests that the Court grant the motion and award the reasonable fees,
26 costs, and service award as requested.
27
28

DISCUSSION

I. The Court Should Award the Requested Attorneys' Fees of 33⅓% of the Settlement Value.

Plaintiff requests that 33⅓% of the gross settlement amount, or \$183,333.33, be awarded for Class Counsel's attorneys' fees. Under the percentage of the fund method for determining attorneys' fees in common-fund settlements, the requested fee is reasonable and should be awarded. Under a lodestar cross-check, the requested fee also is reasonable and should be awarded.

A. The Requested Fees Are Reasonable Under the Percentage of the Fund Method.

Plaintiff's motion for an award 33⅓% of the total settlement value as attorneys' fees presents a routine request under the percentage of the fund method. The requested percentage results in an attorneys' fee award that mimics the market in legal services, is reasonable, and should be awarded.

1. Courts favor the percentage of the fund method for awarding fees.

The Supreme Court has consistently stated that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970). When the Supreme Court considers the award of attorneys' fees under the common fund doctrine, it determines those fees as a percentage of the fund. *E.g.*, *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773 (11th Cir. 1991) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)) (noting that the percentage of fund method is the appropriate method to award attorney's fees in common fund cases).

California state and federal courts also recognize that awarding a percentage of the fund to class members is an appropriate method for determining attorneys' fee awards in common-fund settlements. *E.g.*, *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, ... the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."); *see also Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *accord Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

1 Under California law, the award of attorneys’ fees in common fund wage and hour class action
2 settlements should start with the percentage method, which “is generally favored in common fund
3 cases.” *Laffitte*, 1 Cal. 5th at 493 (quoting *In re Rite Aid Corp. Securities Litig.*, 396 F.3d 294, 300 (3d
4 Cir. 2005)) (internal quotations omitted). As the California Supreme Court has explained, the percentage
5 method has “recognized advantages” over the lodestar-multiplier 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 the litigation.” *Id.* at 503.

9 **2. Courts routinely award 33⅓% of a common fund as attorneys’ fees.**

10 California state courts routinely award 33⅓% of a common fund as attorneys’ fees. *E.g.*, *Laffitte*
11 *v. Robert Half Int’l Inc.*, 231 Cal. App. 4th 860, 871 (2016) (finding “33⅓ percent of the common fund
12 is consistent with, and in the range of, awards in other class action lawsuits”). Indeed, the most recent
13 California authority confirms that “fee awards in class actions average around one-third of the recovery
14 regardless of whether the percentage method or the lodestar method is used.” *Amaro v. Anaheim Arena*
15 *Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021); *see also Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
16 n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar
17 method is used, fee awards in class actions average around one-third of the recovery.”).

18 **3. Awarding 33⅓% of a common fund also mimics the legal marketplace.**

19 Equally important, “attorneys providing the essential enforcement services must be provided
20 incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal
21 marketplace” *Lealao v. Beneficial Cal. Inc.*, 82 Cal. App. 4th 19, 27 (2000). Indeed, under the
22 percentage of the fund method, a court’s objective is to “mimic the market” in fixing a reasonable fee.
23 *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court
24 rather than by contract, the object is to set it at a level that will approximate what the market will set
25 The judge, in other words, is trying to mimic the market in legal services.”).

26 Attorneys’ fee awards of 33⅓% of a common fund thus are within the expected range for the
27 “market in legal services.” Such an award “mimics the market” and “is supported by the fact that typical
28 contingency fee agreements provide that class counsel will recover 33% if the case is resolved before

trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008) (finding studies of contingency fee agreements support reasonableness of fee award of 34% of a fund) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11) .

Here, Defendant agreed that a fee award of 33⅓% of the settlement was not objectionable and reasonable. Courts have recognized that the negotiated fee is the best indication of the market price for fees. In a common fund case, the object “is to give the lawyer what he would have gotten in the way of a fee in an arm’s-length negotiation, had one been feasible.” *Matter of Cont’l Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (Posner, J.). As Judge Posner has explained, the negotiated fee reflects a market-based price because it encompasses both parties’ best estimate and view as to the value of the legal services and what the court might have awarded if the matter had been litigated. *Id.* For this reason, while courts must examine the reasonableness of a fee request, they should give substantial weight to the parties’ agreement on fees, which is the product of negotiations in the legal marketplace. Indeed, because “the parties are compromising to avoid litigation,” the court “need not inquire into the reasonableness of the fees at even the high end with precisely the same level of scrutiny as when the fee amount is litigated.” *Laguna v. Coverall N. Am.*, 753 F.3d 918, 922 (9th Cir. 2014) (internal quotations omitted).

For the foregoing reasons, the requested fee award of 33⅓% of the settlement value is reasonable and should be awarded.

B. Other Factors Support the Reasonableness of the Requested Attorneys’ Fees.

In considering the reasonableness of a requested fee award, California courts may also consider other factors, including (i) the results achieved on behalf of the Class, (ii) the response of the Class to the settlement, (iii) the contingent risk assumed by Class Counsel, and (iv) Class Counsel’s experience. *E.g., Laffitte*, 1 Cal. 5th at 504-05 (listing other factors relevant to the reasonableness of fee awards).

1. The results achieved on behalf of the Class support the requested award.

The requested fees are supported by the results obtained by Class Counsel. The settlement—requiring Defendant to pay \$550,000.00, almost \$1,000 per Class Member, based on focused allegations alleging violations of Labor Code section 226(a), and thus requiring similarly limited Class Member

1 releases, also tied to violations of Labor Code section 226(a)—is an exceptional win for the Class. As
2 the motion for preliminary approval summarized and the motion for final approval further explains, the
3 settlement exceeds a fair, reasonable, and adequate result for the Class; it achieves an excellent result for
4 the Class.

5 **2. The Class’s response to the settlement support the requested award.**

6 That the settlement is a substantial win for the Class is confirmed by the Class’s response to the
7 settlement. Following the Court’s January 7, 2022 order preliminarily approving the settlement (the
8 “Preliminary Approval”), on January 20, 2022, a Notice of Class Action Settlement (“Class Notice”) explaining the settlement terms was sent to 562 Class Members. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 7, Ex. A. The Class Notice specifically notified Class Members that Class Counsel would be
10 seeking \$183,333.33 of the settlement fund as attorneys’ fees.

12 “[T]he response of the class members to attorneys’ fee notice, though not decisive, is relevant to
13 the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C.
14 Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the market” for
15 fees is well supported. *Id.* at 1269. Here, as of February 18, 2022,¹ the Administrator has received no
16 requests for exclusion from the settlement. Yang Decl. ¶ 7, Ex. A. Nor has it received even a single
17 objection to the settlement or the requested fees. *Id.* ¶ 9. There presently are no outstanding disputes. *Id.*
18 The Class participation rate thus is 100%.

19 As the response to the Class Notice suggests, the Class favors final approval of the preliminarily
20 approved terms of the settlement—including the proposed fee award of 33⅓% of the settlement. *E.g.*, 7-
21 *Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1152-53 (explaining a small number of
22 objections is a strong indicator that a settlement is fair and reasonable).

23 **3. The contingent risk assumed by Class Counsel supports the requested award.**

24 California courts and the Ninth Circuit recognize a need to reward plaintiffs’ counsel who accept
25 cases on a pure contingency basis. In *Ketchum v. Moses*, 24 Cal. 4th 1122 (2001), the California
26 Supreme Court explained why contingency risks require upward adjustments of fee awards:

27
28

¹ Class Members have through March 7, 2022, to respond. Yang Decl. ¶ 7.

1 A lawyer who both bears the risk of not being paid and provides legal services is not receiving
2 the fair market value of his work if he is paid only for the second of these functions. If he is paid
no more, competent counsel will be reluctant to accept fee award cases.

3 *Ketchum*, 24 Cal. 4th at 1133.

4 Similarly, the Ninth Circuit underscored the importance of rewarding attorneys who take cases
5 on a contingency basis:

6 It is an established practice in the private legal market to reward attorneys for taking the risk of
7 non-payment by paying them a premium over their normal hourly rates for winning contingency
cases. See Richard Posner, *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986).
8 Contingent fees that may far exceed the market value of the services if rendered on a non-
contingent basis are accepted in the legal profession as a legitimate way of assuring competent
9 representation for plaintiffs who could not afford to pay on an hourly basis regardless whether
they win or lose.

10 *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) (“[I]n the
11 common fund context, attorneys whose compensation depends on their winning the case, must make up
12 in compensation in the cases they win for the lack of compensation in the cases they lose.”).

13 As discussed above, even before considering the contingent risk that Class Counsel assumed in
14 prosecuting the action on behalf of the Class, the requested attorneys’ fee award would mimic the
15 market in legal services and compensate the fair market value of Class Counsel’s efforts. But Class
16 Counsel also took the action on a pure contingency basis. To date, Class Counsel have willingly invested
17 hundreds of hours of their time (and more than \$10,000 in costs) to pursuing claims on behalf of the
18 Class—all with no assurance of compensation. Absent a settlement, Class Counsel were and continue to
19 be committed to pursuing claims on behalf of the Class through judgment—again with no assurance of
20 compensation.

21 Nor are these contingent risks hypothetical. For example, in *Magadia v. Wal-Mart Assocs., Inc.*,
22 384 F. Supp. 3d 1058 (N.D. Cal. 2019), Class Counsel filed suit in 2016, certified a class in 2018, and
23 prevailed on the trial of class claims in 2019. In 2021 the judgment was vacated in part and reversed in
24 part. The contingent reality is that five years of efforts on behalf of a class go uncompensated.

25 Considering the contingent risk that Class Counsel assumed in prosecuting the action on behalf
26 of the Class again confirms the requested attorneys’ fee award is reasonable and should be awarded.

1 **4. Class Counsel’s experience supports the requested award.**

2 The “skill and experience of the attorneys and nature of work performed” are also evaluated
3 under California law in connection with a fee motion. *Northwest Energetic Servs., LLC v. California*
4 *Franchise Tax Bd.*, 159 Cal. App. 4th 841, 880 (2008). As the Court previously noted in granting
5 preliminary approval, “Plaintiff’s counsel is experienced in class litigation.” January 7, 2022
6 Preliminary Approval Order at 1. Indeed, Plaintiff’s counsel have extensive class action and litigation
7 experience and have been approved as class counsel in numerous wage and hour class actions.
8 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 8-10; Yang Decl. ¶¶ 8-11; Declaration of William L.
9 Marder (“Marder Decl.”) ¶¶ 4-11.

10 **C. A Lodestar Cross-Check Confirms the Requested Fees Are Reasonable.**

11 As discussed above, the Court should determine the requested fee award is reasonable and
12 supported by the percentage of the fund method. The Court may also apply a lodestar “cross-check”—
13 though the California Supreme Court has expressly opined that a lodestar calculation “does not override
14 the trial court’s primary determination of the fee as a percentage of the common fund and thus does not
15 impose an absolute maximum or minimum on the fee award.” *Laffitte*, 1 Cal. 5th at 505.

16 In conducting a lodestar cross-check, the Court first determines a lodestar value by multiplying
17 the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly rate. *In re Consumer*
18 *Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). The Court then compares the lodestar to the
19 requested fee award to determine a multiplier. Here, a lodestar “cross-check” confirms the
20 reasonableness of the requested fee award.

21 **1. Class Counsel’s hourly rates are reasonable.**

22 To determine whether hourly rates are reasonable, courts look to the prevailing rate for similar
23 work in the pertinent geographic region. *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000)
24 (using prevailing hourly rate in community for comparable legal services even though party used in-
25 house counsel). Here, the average hourly rate for Class Counsel’s lodestar is just \$722.11 per hour. Lee
26 Decl. ¶¶ 12-13; Yang Decl. ¶ 14; Marder Decl. ¶¶ 13-14.

27 These hourly rates are comparable to, or less than, those charged for similar work in Northern
28 California. For example, as Northern District of California district courts routinely recognize, an average

hourly rate of approximately \$750 per hour for all attorney time in wage and hour class actions is “reasonable and in line with prevailing rates in this district.” *E.g., Parker v. Cherne Contracting Corp.*, 2021 WL 5834227, at *7 (N.D. Cal. Dec. 9, 2021) (finding total lodestar of \$1,133,580 for approximately 1,500 attorney hours consistent with prevailing rates for wage and hour class action litigation in the Northern District of California).

Indeed, the most recent Northern California court to consider Class Counsel’s hourly rates confirms their reasonableness. *Rodriguez v. Nike Retail Servs., Inc.*, 2022 WL 254349, at *6 (N.D. Cal. Jan. 27, 2022) (awarding Class Counsel’s requested fees; “The hourly rates charged by Class Counsel have been approved by multiple courts across California and the Court finds the number of hours expended to be reasonable.”).

2. Class Counsel reasonably and efficiently litigated this matter.

In conducting a lodestar cross-check, the court is not “required to closely scrutinize each claimed attorney-hour.” *Laffitte*, 1 Cal. 5th at 505. An evaluation may be done by reviewing “counsel declarations summarizing overall time spent.” *Id.* In determining the reasonableness of the hours expended, “the court should defer to the winning lawyer’s professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.” *Kerkeles v. City of San Jose*, 243 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)). Here, Class Counsel efficiently litigated this matter.

To date Class Counsel has billed a total of approximately 190.5 hours. Lee Decl. ¶ 12 (51.6 hours); Yang Decl. ¶ 14 (114.1 hours); Marder Decl. ¶ 14 (24.8 hours). In addition, Class Counsel expect to expend an additional 23.0 hours to attend the final approval hearing, address any matters necessary to obtain final approval on behalf of the Class, and to administer the settlement and respond to any inquiries from class members. Lee Decl. ¶ 12 (15.0 hours); Yang Decl. ¶ 14 (5.0 hours); Marder Decl. ¶ 14 (3.0 hours). The total attorney hours expended in this matter filed 18 months ago are reasonable and in line with comparable cases.

To the extent that there is any concern that any time spent was duplicative, Class Counsel divided attorney responsibilities to ensure there was minimal duplication.² Moreover, countering any potential duplication of work is the elimination of work from the lodestar submission, as it excludes all paralegal time and fees. In addition, as the Ninth Circuit has noted, there may be “duplication, of course, but it's *necessary* duplication; it is inherent in the process of litigating over time.” *Moreno*, 534 F.3d at 1112 (vacating and remanding reduction in fee award lacking sufficient explanation). Ultimately, the actual total number of billed hours shows that Class Counsel efficiently litigated this matter.

3. The lodestar multiplier of just 1.19 is reasonable.

Multiplying Class Counsel’s hours by their reasonable hourly rates yields a lodestar of \$154,170.00. Lee Decl. ¶¶ 12-13 (66.6 hours at \$750 per hour); Yang Decl. ¶¶ 13-14 (119.1 hours at \$700 per hour); Marder Decl. ¶¶ 13-14 (27.8 hours at \$750 per hour). Applying a modest 1.19 multiplier to that lodestar exceeds the requested fees.

Only where the “multiplier calculated by means of a lodestar cross-check is extraordinarily high or low” should the court “consider whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Laffitte*, 1 Cal. 5th at 505. When a lodestar cross-check multiplier is within a normal range, a lodestar-cross check does not warrant a reduction to a fee award. Here, a 1.19 multiplier is not “extraordinarily high.”

The normal range for a multiplier on a lodestar cross-check “can range from 2 to 4 or even higher.” *Wershba*, 91 Cal. App. 4th at 255. Courts thus routinely accept multipliers of up to 4 on a lodestar cross-check. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (affirming fee award with cross-check multiplier of 3.65 and explaining that multipliers “ranging from one to four are frequently awarded”); *see also Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, 162 Cal. App. 4th at 66 (applying a 2.5 multiplier); *accord Willner v. Manpower Inc.*, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (approving a 2.10 multiplier on Labor Code class action); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D.

² To the extent there is some overlap amongst attorneys in reviewing and making edits, each attorney is assigned to handle a task, and other attorneys review the work and provide edits or comments. Importantly, Class Counsel submit that these efforts are required by their obligation to adequately represent Class Members and vigorously pursue their interests.

326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations).

The lodestar cross-check confirms the requested award is reasonable and should be approved.

II. The Requested Litigation Costs Should Be Approved.

The request for reimbursement of \$9,888.48 in litigation costs is fair and reasonable. Labor Code sections 218.5, 226(e), and 2699(g)(1) authorize the Court to award the costs. The Agreement also authorizes the reimbursement of the costs. As identified in the supporting declarations of Class Counsel, the requested costs are all litigation-related expenses that were incurred to benefit the Class. Lee Decl. ¶ 14, Ex. B. For example, over 90% of the requested costs result from initial filing fees and mediation fees—both of which were prerequisites to obtaining the benefits secured for the Class. *Id.* Plaintiff thus respectfully requests that the costs be awarded.

Moreover, the requested costs amount to much less than what both Class Members and Defendant considered reasonable. Specifically, Defendant agreed not to oppose a request for reimbursement of up to \$15,000 in litigation costs—more than 1.5 times the amount actually sought. Agreement § 5.1.1. Likewise, the Class Notice estimated that Plaintiff would seek reimbursement of up to \$15,000 in costs; the lack of any objections by Class Members to that amount confirms that the request for reimbursement of just \$9,888.48 in litigation costs is warranted. Yang Decl. ¶ 7.

III. The Requested Class Representative Service Award Should Be Approved.

Plaintiff requests a modest class representative service award of \$10,000. Agreement § 5.1.2. Class representative service awards “are fairly typical in class action cases.” *E.g., Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming \$10,000 award). Generally speaking, incentive awards are meant to “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaking in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.38 (4th ed. 2002) and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. REV. 1303 (2006)).

Courts routinely granted approval of settlements containing such enhancements. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 F. App'x 452 (9th Cir. 2009) (considering objections to but awarding requested \$25,000 incentive to each of four plaintiffs who “placed something at risk by putting their names on a complaint”); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 award to class representative in ERISA case).

In awarding class representative service awards, a non-exhaustive list of factors that courts may also consider includes (i) the risk to the class representative in commencing the suit, both financial and otherwise; (ii) the notoriety and personal difficulties encountered by the class representative; (iii) the amount of time and effort spent by the class representative; (iv) the duration of the litigation; and (v) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *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)).

Here, any relevant considerations support the requested service award.

A. Plaintiff's Time and Effort Resulted in the Exceptional Result for the Class.

Plaintiff has spent approximately 20 hours working with his attorneys to assist with the class action. Declaration of Charles Walton (“Walton Decl.”) ¶ 4. He has been continuously apprised of the status of the matter. *Id.* Despite Defendant's initial efforts to litigate its defenses, Plaintiff's prompt assistance in refuting whether alternate wage statement formats were furnished to employees assisted his Counsel in obtaining Defendant's agreement to schedule mediation, without Defendant conducting Plaintiff's deposition or serving formal discovery. Yang Decl. ¶¶ 3-5.

For the benefit of the Class, Plaintiff spent time providing information and documents to his counsel, meeting with them, reviewing documents upon their request, and generally making himself available to answer questions and discuss the claims. Walton Decl. ¶ 4. In addition to discussing the

1 claims with his counsel, Plaintiff was prepared to appear for deposition to discuss the claims with
2 Defendant. *Id.* ¶ 5. Plaintiff reviewed written discovery that was served on Defendant, reviewed
3 Defendant’s responses to the discovery, and was prepared to produce any documents requested by
4 Defendant. *Id.* Plaintiff also remains willing to make himself available for trial or any further proceeding
5 as required to represent the interests of the Class. *Id.*

6 **B. Plaintiff Took On Risks that Support the Service Award.**

7 In addition to the invaluable services that Plaintiff provided, the requested service award is also
8 warranted by Plaintiff’s willingness to accept significant risks in pursuing the claims on behalf of the Class.
9 “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be
10 compensated for the expense or risk they have incurred in conferring a benefit on other members of the
11 class.” *Clark v. American Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

12 Here, the alleged claims permit the payment of costs to the prevailing party. As a result, Plaintiff
13 could have possibly been liable for Defendant’s costs had he not prevailed in this action. Nonetheless,
14 Plaintiff agreed to pursue the matter on behalf of the Class. Moreover, regardless of who ultimately
15 prevailed, Plaintiff assumed a risk of prejudice in future employment immediately upon the filing of the
16 Complaint. *E.g., Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding
17 “personal detriment” since future employers can easily learn that a prospective employee served as a plaintiff
18 through the internet). Even though future employers are less likely to hire individuals who have filed
19 employment-related lawsuits, Plaintiff willingly accepted the risk of significant prejudice in future
20 employment. Plaintiff took these risks upon himself to obtain financial benefit for the Class.

21 **C. Plaintiff Gave Up Rights that Support the Service Award.**

22 Similarly, the requested service award is also warranted by the significant rights Plaintiff would give
23 up. Instead of pursuing individual claims following the termination of his employment while on a paid leave,
24 Plaintiff pursued this lawsuit for the benefit of the Class. Walton Decl. ¶ 2. As part of the settlement,
25 Defendant required Plaintiff to agree to provide a full, complete, and general release of any individual
26 claims—something that the Class Members do not have to provide. Agreement § 6.3. Plaintiff’s agreement
27 to give up his rights enabled the Class to benefit from a settlement. *E.g., La Fleur v. Medical Mgmt. Int’l,*
28 *Inc.*, 2014 WL 2967475, at *8 (C.D. Cal. June 25, 2014) (approving \$15,000 enhancement payment in part

1 because “the named plaintiffs have released all claims against [defendant], unlike the remainder of the
2 Class”).

3 **D. Class Members Approve of the Proposed Terms, Including the Requested Award.**

4 Class Members received notice of the proposed settlement terms, including the requested service
5 award. There have been no objections. There have been no opt outs. Every indication is that Class
6 Members want to participate in the settlement and that they approve of the proposed settlement terms.
7 Ultimately, Plaintiff provided invaluable information, evidence, and documents that resulted in a
8 settlement that provides substantial benefit to the Class. The requested award should be approved for
9 Plaintiff’s commitment, dedication, and service on behalf of the Class. Class Members did not have to file
10 individual lawsuits and bear the risk of payment of costs if they did not prevail. They did not have to assist
11 Class Counsel in obtaining the settlement. They do not have to shoulder the potential for prejudice in future
12 employment. They do not have to agree to a general release. Instead, they will benefit because Plaintiff did.
13 Plaintiff’s efforts secured an exceptional result for the Class. These are each significant factors that weigh
14 in favor of granting the requested award.

15 Indeed, the payment of a service award to a successful class representative is appropriate and the
16 requested amount is well within the typically accepted range. When similar considerations apply, similar
17 plaintiffs in Class Counsel’s similar settlements are routinely found to be deserving of similar awards.
18 *E.g., Alvarez v. AmerisourceBergen Drug Corp.*, 2021 WL 2315194, at *2 (C.D. Cal. June 7, 2021)
19 (awarding \$10,000.00 of \$500,000 total settlement to class representative).

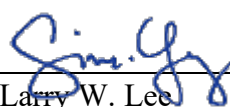
20 For the above reasons, Plaintiff respectfully requests that the Court approve the service award.

21 **CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests that the Court grant the motion and
23 award the requested attorneys’ fees, costs, and service award.

24 DATED: February 21, 2022

DIVERSITY LAW GROUP, P.C.

25 By: 
26 _____

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27 Attorneys for Plaintiff
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