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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

RIVELINO TAVIRA, an individual, on behalf
of himself and others similarly situated

PLAINTIFF,

v.

GENERAL FOUNDRY SERVICE
CORPORATION; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. RG20072299

[Case Assigned for All Purposes to Hon. Brad
Seligman in Dept. 23]

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF
ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed concurrently with Declarations of
Kelsey M. Szamet, Rivelino Tavira, and Lluvia
Islas, Proposed Order, and Proposed
Judgment]*

Date: August 31, 2021

Time: 3:00 p.m.

Dept.: 23

Reservation No.: R-2257420

Complaint Filed: August 24, 2020

FAC Filed: October 29, 2020

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

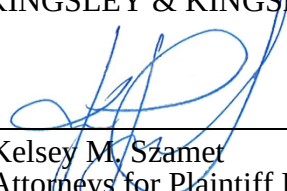
2 PLEASE TAKE NOTICE that on August 31, 2021 at 3:00 p.m. in Department 23 of the
3 above-entitled court, Plaintiff RIVELINO TAVIRA ("Plaintiff") will, and hereby does, move the
4 Court for an Order granting final approval of Class Counsel's Attorneys' Fees and Costs pursuant
5 to the Parties' Joint Stipulation of Class Action Settlement and Release of Claims. Plaintiff also
6 respectfully requests that the Court award an enhancement of \$2,500.

7 Good cause exists for the granting of this Motion because the work of Plaintiff and Class
8 Counsel resulted in an excellent settlement that created a common fund that compensates
9 Settlement Class Members. Class Counsel seek compensation from the common fund.

10 The Motion will be based on this Notice of Motion; the accompanying Memorandum of
11 Points and Authorities; the Declarations of Kelsey M. Szamet; Plaintiff Rivelino Tavira; and
12 Lluvia Islas; all other papers and records on file in this action; and on such oral and documentary
13 evidence as may be presented at the hearing on this Motion.

14 DATED: August 6, 2021

KINGSLEY & KINGSLEY, APC

15
16 By: 

17 Kelsey M. Szamet
18 Attorneys for Plaintiff Rivelino Tavira and the
19 Proposed Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to California Rules of Court, rule 3.769 (b) and California Code of Civil
4 Procedure section 382, Plaintiff RIVELINO TAVIRA (“Plaintiff”) moves this Court for approval
5 of an award of attorneys’ fees and reimbursement of expenses to Class Counsel, pursuant to the
6 terms of the preliminary-approved Joint Stipulation of Class Action Settlement and Release of
7 Claims (“Settlement Agreement” or “Settlement”) between named Plaintiff and Defendant
8 GENERAL FOUNDRY SERVICE CORPORATION (“Defendant”). Class Counsel also
9 respectfully requests that the Court award an enhancement for the named Plaintiff of 2,500.

10 **II. STATUS OF THE SETTLEMENT**

11 In an effort to conserve the Court’s time and resources, Plaintiff will not repeat the
12 Procedural History set forth in the concurrently-filed Motion for Final Approval of Class Action
13 Settlement.

14 The Settlement Agreement has been preliminarily-approved by the Court and the Notice
15 of Class Action Settlement disseminated pursuant to the terms of the Settlement Agreement.
16 (Declaration of Kelsey M. Szamet ¶70 (“Szamet Decl.”); Declaration of Lluvia Islas ¶3 (“Islas
17 Decl.”))

18 As discussed in the Motion for Final Approval of Class Action Settlement, Class Counsel
19 worked diligently on behalf of the preliminarily certified Settlement Class Members in order to
20 obtain this Settlement.

21 **III. THE COURT SHOULD GRANT PLAINTIFF’S APPLICATION FOR AN AWARD**
22 **OF ATTORNEYS’ FEES**

23 A. Class Counsel are Entitled to a Fee From the Common Fund

24 On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half*
25 *International*, which addressed the correct methodology for awarding fees in a class action
26 settlement. (*Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte*
27 Court approved awarding fees as a percentage of the settlement fund in cases like the present one,
28 where a settlement results in the creation of a common fund on behalf of a class:

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
of that fund, the court may determine the amount of a reasonable fee by choosing
an appropriate percentage of the fund created.

4 (*Id.* at p. 573.) The Court then set out several reasons why the percentage-of-the-fund method is
5 preferred over the alternative lodestar-multiplier approach in California courts:

6 The recognized advantages of the percentage method—including relative ease of
7 calculation, alignment of incentives between counsel and the class, a better
approximation of market conditions in a contingency case, and the encouragement
8 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation [citations]—convince us the percentage method is a valuable tool that
9 should not be denied our trial courts.

10 (*Id.* at p. 573.)

11 An award of 1/3 of the common fund is appropriate here under the “substantial benefit”
12 theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer,*
13 *Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a
14 representative capacity to recover fees when the litigant’s efforts have created a substantial, actual,
15 and concrete benefit for members of an ascertainable class and the court’s jurisdiction over the
16 subject matter makes possible an award which spreads the cost proportionately among the
17 members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th
18 563, 578.)

19 This doctrine rests on the understanding that attorneys should normally be paid by their
20 clients, and that unless attorneys’ fees are paid out of the common fund, those who benefitted from
21 the fund would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979)
22 23 Cal.3d 917, 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent
23 this unfair result, courts exercise their inherent equitable powers to assess attorneys’ fees against
24 the entire fund, thereby spreading the cost of those fees among all those who benefitted. (*Serrano*
25 *III*, 20 Cal.3d at p. 35.) “A court, in the exercise of its equitable discretion, may decree that those
26 receiving the benefit should contribute to the costs of its production.” (*Save El Toro Assn., supra*,
27 98 Cal.App.3d at p. 548.) As this approach “better approximates the workings of the marketplace
28 than the lodestar approach,” there is “a greater judicial willingness to evaluate a fee award as a

percentage of the recovery” in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal. App. 4th 19, 31, 48.)

As detailed fully in the Settlement Agreement and the Motion for Final Approval, the Settlement Agreement provides for Defendant to create a Gross Settlement Amount of \$165,317.73.¹ From that fund, Plaintiff requests an award of attorneys’ fees in the amount of \$55,100.40, or 1/3 of the Gross Settlement Amount created on behalf of the Class Members. (Szamet Decl. ¶71.) This litigation resulted in “a substantial, actual and concrete . . . benefit on the members of an ascertainable class,” *Save El Toro Assn., supra*, 98 Cal.App.3d at p. 548, namely a non-reversionary settlement fund of \$165,317.73. Because none of the Settlement Class Members have paid fees to Class Counsel for their efforts during the litigation, equity requires that they pay a fair and reasonable fee based on what the market would traditionally require, no less than if they had hired private counsel to litigate their cases individually. Class Counsel is therefore entitled to a reasonable contingency fee of 1/3 from the Settlement fund as a whole.

B. The Attorneys’ Fees Requested By Class Counsel Are Well Within the Range of Fees in Comparable Cases

Courts historically award fees in the twenty-to-fifty-percent range, depending on the circumstances of the case. As stated in Newberg:

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 on Class Actions, 3rd Ed., 1992, § 14.03; and see *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn 11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”] Thus, Class Counsel’s requested fee of 33.3% is not only well within the range of reasonableness, but is fair compensation for undertaking this complex, risky, expensive, and time-

¹ The Settlement Agreement provided for a Gross Settlement Amount of \$144,325.00. However, during the Notice process, Defendant identified 8 additional Class Members and a resulting increase of workweeks at issue. (See Ex. 1 at § I.17; III.29.) This caused the Class Settlement Amount to be increased to \$165,317.73 per the terms of the Settlement Agreement. (*Id.*)

1 consuming litigation on a contingent basis.

2 C. The Contingency Fee of 1/3 Requested By Class Counsel Is Reasonable Based on
3 the Risks of Litigation and the Diligent Efforts of Counsel that Led to an
4 Outstanding Settlement for the Class

5 In the present case, Class Counsel asks the Court to award a fee of 1/3 of the common fund,
6 or \$55,100.40, as provided in the Settlement Agreement. This amount is reasonable because Class
7 Counsel's diligent litigation efforts and experience led to an outstanding settlement, with an
8 average net recovery of \$1,432.02 per Settlement Class Member (*See* Islas Decl. ¶12), based on
9 cognizable risks which are discussed in detail in Plaintiff's Motion for Final Approval of Class
10 Action Settlement.

11 Additionally, it is recognized that one of the primary factors justifying an attorney fee
12 award in cases such as this are the attendant risks inherent in the litigation. As observed in *City of*
13 *Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 470:

14 No one expects a lawyer whose compensation is contingent upon his success to
15 charge, when successful, as little as he would charge a client who had agreed to pay
16 for his services, regardless of success. Nor, particularly in complicated cases
producing large recoveries, is it just to make a fee depend solely on the reasonable
amount of time expended.

17 Class Counsel extensively addressed the perceived risks in this case in the concurrently
18 filed Motion for Final Approval of Class Action Settlement and will not repeat that analysis here.
19 In addition to the complexity of this case, Class Counsel has borne the entire risk and costs of this
20 litigation during the entire time that it has been pending, all on a pure contingency basis. (Szamet
21 Decl. ¶72.) Through the investment of substantial effort and resources, Class Counsel has secured
22 an outstanding Settlement of behalf of the Settlement Class Members. (*Id.*) Defendant vigorously
23 contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.*) It
24 is this kind of situation, involving complex issues, that has been recognized as justifying a
25 substantial attorney fee award. (*Id.*)

26 ///

27 ///

1 **IV. CLASS COUNSEL’S FEE REQUEST IS REASONABLE UNDER A LODESTAR**
2 **CROSSCHECK**

3 Courts may “cross-check” the results of the common fund method against the lodestar
4 method. (*See, e.g., In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar
5 is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano*
6 *v. Priest* (1977) 20 Cal.3d 25, 48-49 (“*Serrano III*”).) Those rates reflect “the general local hourly
7 rate for a fee-bearing case” and do “not include any compensation for contingent risk,
8 extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The
9 court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at p. 254;
10 *Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347; *Serrano III, supra*, 20 Cal.3d at
11 p. 49.)

12 A. Requested Multiplier

13 The purpose of using the lodestar/multiplier method is to mirror the legal marketplace.
14 Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an
15 enhancement is often awarded so that the fee received is commensurate with what attorneys could
16 expect to be compensated for services in similar circumstances. (*See San Bernardino Valley*
17 *Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 755 [an award must
18 be large enough “to entice competent counsel to undertake difficult public interest cases”].) No
19 specific findings reflecting the court’s calculations are required. (*Wershba, supra*, 91 Cal.App.4th
20 at p. 254; *Rebney, supra*, 232 Cal.App.3d at p. 1349.) “The record need only show that the attorney
21 fees were awarded according to the ‘lodestar’ or ‘touchstone’ approach.” (*Ibid.*)

22 Here, a lodestar cross-check confirms that the percentage requested is reasonable. Class
23 Counsel’s aggregate lodestar amounts to \$46,390.00 (without future hours)², which represents
24 76.60 hours of attorney work on this litigation incurred from its inception through the filing of
25 Plaintiff’s Motion for Final Approval. (Szamet Decl. ¶80.) As such, Class Counsel is asking for a
26

27 ² Though Class Counsel will certainly continue to spend time working on this matter for tasks
28 such as preparing for and attending the final approval hearing, overseeing the administration
process, and communicating with Settlement Class Members, Plaintiff’s Counsel are not
requesting approval of future hours.

multiplier of 1.19. (Szamet Decl. ¶81.) Typically, the lodestar is merely the starting point of the calculation of a reasonable fee, and courts often multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work, and the novelty and difficulty of the issues involved. (See *Radar v. Thrasher* (1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251.)

B. The Number of Hours Claimed is Reasonable

Plaintiff's counsel are entitled to be compensated "for all time reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431 [internal quotations omitted]; accord *Serrano v. Unruh* (1982) 32 Cal.3d 621, 633 ["Serrano IV"] [parties should recover for all hours reasonably spent]; *Meister v. Regents of Univ. of Cal.* (1998) 67 Cal.App.4th 437, 447-48 [same].)

The amount of time spent on this case (over 76.60 hours), which culminated in a very favorable proposed Settlement for the Settlement Class Members, is reasonable given the complexity and novelty of the issues involved, the vigorous defense, the length and intensity of the litigation, and the exceptional results obtained. (Szamet Decl. ¶82.) Class Counsel litigated this action with great efficiency in light of the amount of work required to achieve the Settlement. (Szamet Decl. ¶83.) Class Counsel has submitted a declaration evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case. (Szamet Decl. ¶¶80-101.) Accordingly, Plaintiff is entitled to full compensation for the hours claimed by Class Counsel.

C. The Hourly Rates Requested Are Reasonable

Class Counsel is entitled to be compensated at hourly rates that reflect the reasonable market value of their legal services, based on their experience and expertise. (See *Serrano IV*, *supra*, 32 Cal.3d at pp. 640-43, n.31.) "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) Payment at full market rates is essential to entice well-qualified counsel to undertake difficult

1 cases, such as this one. (*San Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984)
2 155 Cal. App. 3d 738, 755.) Additionally, calculation of a lodestar based on current hourly rates
3 is appropriate as a means of compensating for delay in payment. (*Missouri v. Jenkins by Agyei*
4 (1989) 491 U.S. 274, 283-84.)

5 The requested hourly rates in this case range from \$400.00 per hour to \$850.00. (Szamet
6 Decl. ¶84.) Class Counsel's hourly rates are fully supported by their experience and reputation in
7 handling complex employment litigation, including wage and hour class actions. (Szamet Decl.
8 ¶85; ¶¶65-66.)

9 Mr. Kingsley is a 24-year attorney with expertise in wage and hour class action lawsuits.
10 (Szamet Decl. ¶86.) He has litigated several hundred such cases, including at the appellate level
11 at the U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court
12 of Appeal. (Szamet Decl. ¶87.) He is also a prolific speaker at various seminars on employment
13 law and has contributed to legal publications on employment topics. (Szamet Decl. ¶88.)
14 Biographical information for the other handling attorneys is included in the concurrently filed
15 Declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶91-92.)

16 Class Counsel's charged rates are commensurate with the prevailing market rates in
17 Alameda County for attorneys of comparable experience and skill handling complex litigation.
18 (Szamet Decl. ¶94.) Furthermore, Class Counsel's rates in calculating the lodestar are the same
19 rates charged to non-contingent hourly clients and thus necessarily reflect the current market value
20 of counsel's legal services.³ (Szamet Decl. ¶95.) Class Counsel has made all reasonable attempts
21 to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing
22 rates. (Szamet Decl. ¶96.)

23 Finally, Class Counsel's rates are in line with the 2020-2021 Laffey Matrix, which is a fee
24 scale that courts often consult in determining the reasonableness of hourly rates. Under the
25 adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr.

26
27 ³ The Court should also note that other California courts approved many of these same rates over
28 15 years ago. (*See, e.g., Bihun v. AT&T Info. Sys., Inc.* (1993) 13 Cal.App.4th 976, 997,
disapproved on other grounds, 6 Cal.4th 644, 664 [\$450 hourly rate was a reasonable fee based
on counsel's knowledge, skill, experience and reputation].)

1 Kingsley, is \$899, a reasonable rate for an attorney with 13 years of experience, such as Ms.
2 Szamet, is \$747, a reasonable rate for an attorney with 3 or less years of experience, such as Mr.
3 Penner is \$378. (Szamet Decl. ¶97; Ex. D [2020-2021 Adjusted Laffey Matrix].)

4 D. The Fees Requested Are Reasonable

5 The trial court has substantial discretion in adjusting the lodestar to account for various
6 factors inadequately reflected therein. (*See Lealao, supra*, 82 Cal.App.4th at pp. 40-45.) A lodestar
7 multiplier is recognized as earned compensation: “The adjustment to the lodestar, e.g., to provide
8 a fee enhancement reflecting the risk the attorney will not receive payment if the suit does not
9 succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor
10 fortuitous.” (*Ketchum, supra*, 24 Cal.4th at p. 1138.)

11 In California, courts regularly use a multiplier of 2.0 or greater in statutory fee cases to
12 approximate market fees.⁴ In fact, “[m]ultipliers in the 3-4 range are common in lodestar awards
13 for lengthy and complex class action litigation.” (*Van Vracken v. Atlantic Richfield Co.*
14 (N.D.Cal.1995) 901 F.Supp. 294, 298; *see also, Wershba, supra*, 91 Cal.App.4th at p. 255
15 [“Multipliers can range from 2 to 4 or even higher.”].) Here, Class Counsel is requesting a
16 multiplier of 1.19. (Szamet Decl. ¶100.)

17 The court may augment the lodestar upon consideration of various factors, including, but
18 not limited to: (1) the novelty and difficulty of the questions involved, (2) the skill displayed in
19 presenting them, (3) the extent to which the nature of the litigation precluded other employment
20 by the attorneys, and (4) the contingent nature of the fee award, both from the point view of
21 eventual victory on the merits and of establishing eligibility for an award. (*See Serrano III, supra*,
22 20 Cal.3d at pp. 41, 49.)

23 Each of the multiplier factors articulated in *Serrano III* supports the Court awarding the
24 requested enhancement of Class Counsel’s aggregate lodestar.

25 ///

26 ⁴ See, for example, *Mangold v. Cal. Pub. Utils. Comm’n*, 67 F.3d 1470, 1478-79 (9th Cir. 1995)
27 (2.0); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 82-85 (2.34); *Coal. for*
28 *L.A. County Planning v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251 (slightly above
2.0); *Crommie v. State of Cal. Public Utilities Comm’n* (N.D. Cal. 1994) 840 F.Supp.719, 726
(2.0 multiplier in employment case).

1 i. Novelty and Difficulty of Questions Presented

2 This case dealt with difficult legal and factual questions. Significantly, the risk attendant
3 to the underlying claims in this matter was great considering Defendant's defenses. As discussed
4 in detail in the extensive risk analysis section in Plaintiff's Motion for Preliminary Approval of
5 Settlement, were this case to proceed, Defendant would have a strong incentive to litigate
6 tenaciously. (Szamet Decl. ¶102.) There are genuine issues in dispute. (*Id.*)

7 ii. Skill Displayed in Presenting Questions Presented

8 Class Counsel are skilled wage and hour practitioners with decades of experience who
9 diligently prepared and litigated this matter as discussed. (Szamet Decl. ¶103; *Id.* at ¶¶86-99.)

10 iii. Preclusion of Other Employment By Attorneys

11 To achieve the ultimate result in this case, Co-lead Class Counsel had to incur substantial
12 risk and expense, and were precluded from taking other fee generating employment for over 76.60
13 hours of attorney time. (Szamet Decl. ¶104.)

14 iv. Contingent Nature of the Fee Award

15 This matter had been handled purely on a contingency fee basis and Class Counsel have
16 advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee
17 that any of the fees incurred or costs advanced would ever be recovered, and diverting significant
18 firm resources to prosecution of this matter. (Szamet Decl. ¶105.)

19 v. Success Achieved

20 Class Counsel believe this is an exceptional result that has been well received by Settlement
21 Class Members. (Szamet Decl. ¶106.)

22 vi. Rate of Acceptance of Benefits Offered to Class Members

23 There have been zero opt-outs or objections to date. (Islas Decl. ¶¶9-10.)

24 Accordingly, Plaintiff's multiplier request is justified and the lodestar/multiplier cross-
25 check confirms the reasonableness of Class Counsel's fee request. The Court should therefore
26 approve the attorneys' fee award for time spent in the successful prosecution of this matter.

27 ///

28 ///

1 **V. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
2 **COSTS**

3 In addition to their request for fees, Class Counsel further request reimbursement of the
4 reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
5 litigation, in the amount of \$4,137.20. (Szamet Decl. ¶107.) To date, Kingsley and Kingsley has
6 incurred \$3,537.20 in costs. (Szamet Decl. ¶108.) Class Counsel anticipates incurring an
7 additional \$600.00 in costs to file, serve, and copy this motion; to prepare for and attend the
8 hearing; and for future copy charges. (Szamet Decl. ¶109.) As such, Class Counsel is requesting
9 a cost reimbursement of \$4,137.20. (Szamet Decl. ¶110.)

10 All of the requested costs are reasonable in amount and were necessarily incurred by Class
11 Counsel in prosecuting this litigation. (Szamet Decl. ¶111; Ex. 5 [Cost Report].)

12 Expenses in this matter to date include costs for filing fees, research, mediation,
13 employment of a database expert to synthesize the tens of thousands of lines of payroll and
14 timekeeping data produced by Defendant to assist with preparation of Plaintiff's damage model,
15 and additional costs for the prosecution of this case evidenced in the costs spreadsheet attached to
16 the Declaration of Kelsey M. Szamet. All of these costs have been incurred in the course of this
17 litigation, and all costs advanced have already been paid by Class Counsel. (Szamet Decl. ¶112.)

18 Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses
19 advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court
20 should approve the request for reimbursement in the amount of \$4,137.20.

21 **VI. THE NAMED PLAINTIFF'S ENHANCEMENT SHOULD BE APPROVED**

22 Finally, Plaintiff's Counsel request an enhancement of \$2,500 to the named Plaintiff
23 Rivelino Tavira for his work on behalf of the Class. (Szamet Decl. ¶113.) As set forth in detail in
24 Plaintiff's Motion for Final Approval of Class Settlement and Rivelino Tavira's declaration,
25 Plaintiff Tavira invested significant time and effort in this case. (Szamet Decl. ¶114; Tavira Decl.
26 ¶¶5-11.)

27 Plaintiff Tavira was also at risk of for paying Defendant's legal fees and costs in the event
28 that Defendant prevailed at trial. (Szamet Decl. ¶119.)

1 The Class has benefited from Mr. Tavira's action in stepping forward on their behalf to
2 bring this lawsuit. (Szamet Decl. ¶120.) The average settlement payment is \$1,432.02 for a
3 Settlement Class Member with a high of \$1,570.05. (Islas Decl. ¶12.)

4 Further, The Class Notice disclosed the enhancement award. (See Settlement Agreement
5 Ex. 1 [class notice], p. 3.) (Szamet Decl. ¶121.) As of today, no Settlement Class Member has
6 objected to the proposed enhancement. (Szamet Decl. ¶122.)

7 Under the circumstances, a representative payment of \$2,500 is justified and the Court
8 should award this payment to RIVELINO TAVIRA from the Gross Settlement Amount as
9 provided in the Settlement Agreement. (Szamet Decl. ¶123.)

10 **VII. PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE**
11 **DEVELOPMENT AGENCY**

12 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Attorneys' Fees
13 and Costs ("Motion") was uploaded to the Labor and Workforce Development Agency's
14 ("LWDA") website on the date this Motion was filed as required by statute. Proof of submission
15 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
16 receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6". (Szamet Decl. ¶124.)

17 **VIII. CONCLUSION**

18 Class Counsel respectfully requests that the Court award a fee equal to 1/3 of the gross
19 settlement amount, or \$55,100.40 and reimbursement of costs of \$4,137.20. Class Counsel also
20 respectfully requests that the Court award an enhancement for the named Plaintiff of \$2,500. For
21 the above reasons, all of these requests are appropriate and justified as part of the overall
22 Settlement, and the Court should approve them as reasonable and fair.

23 DATED: August 6, 2021

KINGSLEY & KINGSLEY, APC

24
25 By:

26 Kelsey M. Szamet
27 Attorneys for Plaintiff Rivelino Tavira and the
28 Proposed Class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On August 6, 2021, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF ATTORNEYS' FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Charles H. Goldstein
Joseph A. Goldstein
cgoldsteinesq@gmail.com
josephgoldsteinesq@gmail.com
The Goldstein Law Firm, PC
8912 Burton Way
Beverly Hills, CA 90211

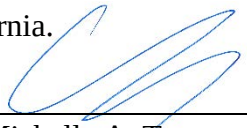
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 6, 2021, at Woodland Hills, California.



Michelle A. Tanzer