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on behalf of himself and all others similarly situated

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

SCOTT CAHN, individually and on behalf
of himself and all others similarly situated,

Plaintiff,

v.

J.J.R. ENTERPRISES, INC., doing business
as CALTRONICS BUSINESS SYSTEMS, a
California Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 34-2020-00284704

Assigned for All Purposes to:

Hon. Lauri A. Damrell

Dept. 28

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

Date: January 26, 2024

Time: 9:00 a.m.

Dept.: 28

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1 **I. INTRODUCTION**

2 In connection with the \$425,000.00 common fund settlement secured by Plaintiff Scott
3 Cahn (“Plaintiff”) and Class Counsel, on behalf of the Class, Plaintiff respectfully requests the
4 Court grant Plaintiff’s Motion for Award of Attorneys’ Fees and Costs and Class Representative
5 Enhancement Payment by approving this application for an award of one-third (33-1/3%) the
6 common fund or \$141,666.67 for attorneys’ fees and \$12,089.63¹ (up to \$18,000.00 preliminarily
7 approved) for reimbursement of costs. Further, Plaintiff respectfully requests that this Court
8 approve the Class Representative Enhancement Payment in the amount of \$10,000.00, for the
9 considerable time, effort, and risk Plaintiff undertook in obtaining this excellent result for the
10 Class and in consideration for the broad release he is required to enter.

11 The requested fee falls well within the benchmark of 25% to 40% of a common fund and
12 is fair compensation for undertaking such complex, risky, and time-consuming litigation on a
13 contingent basis. In a similar wage and hour class action, *Laffitte v. Robert Half International,*
14 *Inc.*, 1 Cal. 5th 480 (August 11, 2016), the California Supreme Court affirmed an award of
15 attorneys’ fees equal to 1/3 of the common fund, which correlated to the lodestar with a 2.13
16 multiplier. Here, Class Counsel’s lodestar is approximately \$176,175.00. The requested fee award
17 is very reasonable considering that it is lower than the Class Counsel’s lodestar and thus no
18 multiplier is required. This is extremely reasonable in light of the range of multipliers approved
19 by California courts. See e.g., *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001)
20 (“Multipliers can range from 2 to 4 or even higher.”)

21 Since the attorneys’ fees requested are well within the range of reasonableness and the
22 results achieved for the Class Members are excellent, Plaintiff, by and through Class Counsel,
23 respectfully requests that the Court award the requested fees equal to one-third (1/3) of the
24 \$425,000.00 common fund and approve payment of Class Counsel’s litigation expenses in the
25 amount of \$12,089.63 in accordance with the preliminarily approved Settlement Agreement. In
26

27
28 ¹ This sum includes \$450.00 of anticipated costs that will be incurred by Class Counsel in association with this Final Approval motion.

1 addition, Plaintiff respectfully request the Court approve the requested Class Representative
2 Enhancement Payment of \$10,000.00 to Plaintiff Scott Cahn.

3 **II. THE ATTORNEYS' FEES REQUESTED ARE FAIR AND REASONABLE**
4 **AND SHOULD BE APPROVED**

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

20 At the time this case was brought, the result was far from certain. Defendant's numerous
21 defenses to the case created difficulties with proof and complex legal issues for Class Counsel to
22 overcome. While Class Counsel believes Plaintiff's claims are meritorious, Defendant has denied
23 liability, disputed damages, and raised factual and legal arguments which could render the Class
24 Members' claims worthless at either class certification or trial. (Declaration of James R. Hawkins
25 In Support of Final Approval ("Hawkins Final Decl.") ¶¶ 26-29; see also Ex. 2, Declaration of
26 James R. Hawkins in Support of Preliminary Approval ("Hawkins Prelim. Decl."), ¶¶ 38-47.)

27 The Settlement was possible only because Class Counsel was able to convince Defendant
28 that Plaintiff could prevail on the legal issues regarding liability, obtain and maintain class

1 certification for the Class through trial, and overcome difficulties in proof as to monetary relief.
2 In successfully navigating these hurdles so as to convince Defendant to settle, Class Counsel
3 displayed skills consistent with those that might be expected of attorneys of comparable
4 experience. (Hawkins Final Decl. ¶¶ 43-53).

5 To represent the Class on a contingent fee basis, Class Counsel had to devote the
6 necessary time and resources to this contingent case. (Id.). In so doing, Class Counsel gave up the
7 hourly work that a firm can rely on for the risky contingent fee work in this case which could
8 have paid Class Counsel nothing. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

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

11 The United States Supreme Court has ruled that the parties to a class action may properly
12 negotiate not only the settlement of the action itself, but also the payment of attorneys' fees. See
13 *Evans v. Jeff D.*, 475 U.S. 717, 734-35, 738, n.30 (1980). In *Hensley v. Eckerhart*, 461 U.S. 424,
14 437 (1983), the Supreme Court held that negotiated, agreed-upon attorneys' fee provisions are the
15 ideal towards which the parties should strive: "A request for attorney's fees should not result in a
16 second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Id.*

17 The United States Supreme Court has reemphasized this policy and further stressed that
18 the trial court "has a responsibility to encourage agreement" on fees. *Blum v. Stenson*, 465 U.S.
19 886, 902 n.19 (1984). Here, as part of the Settlement, Defendant agreed not to oppose an award of
20 one-third (1/3) of the Gross Settlement Amount for attorneys' fees. Such a fee is commensurate
21 with what the market would provide for similar services and the Court therefore can most
22 certainly enforce the agreement. As the United States Supreme Court has instructed:

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

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

1 Here, the Settlement is the result of non-collusive, informed, and arm's-length
2 negotiations between experienced counsel for the Class and Defendant with the assistance of
3 Judge Carl J. West (ret.), an experienced wage and hour mediator, over a full day of mediation,
4 and extensive post-mediation discussions which ultimately culminated in the acceptance of a
5 mediator's proposal. (Hawkins Final Decl. ¶ 23). Such bargaining is obviously the best measure
6 of the market for fees. The requested fee and cost award was negotiated during adversarial
7 bargaining by counsel for each of the parties, after the substantive terms of the Settlement had
8 been negotiated. The requested fee and cost award was a product of arms-length negotiations and
9 fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a
10 result, the fee agreed to by the parties should be approved.

11 **IV. CLASS COUNSEL'S FEE AWARD IS PROPERLY CALCULATED AS A**
12 **PERCENTAGE OF THE TOTAL VALUE CREATED FOR THE BENEFIT OF**
13 **THE CLASS**

14 Class Counsel seeks an attorney fee award for their successful prosecution and resolution
15 of this action, calculated as one-third (1/3) of the cash value of the common fund created by the
16 Settlement. In cases such as this one, the Courts have long recognized that an appropriate method
17 for determining the award of attorneys' fees is based on a percentage of the total value of benefits
18 afforded to class members by the settlement. *Laffitte*, 1 Cal. 5th at 494 ("the percentage method
19 has been generally approved in common fund cases"); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
20 478 (1980); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Vincent*
21 *v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The awarding of a fee based on a
22 percentage of the common fund recovered is to "spread litigation costs proportionately among all
23 the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*,
24 *supra*, 557 F.2d at 769. The Gross Settlement Amount is \$425,000.00. Accordingly, Class
25 Counsel requests \$141,666.67 in attorneys' fees as it is properly calculated as a percentage (33-
26 1/3%) of the common fund created for the benefit of the Class.

27 **A. In a Common Fund Case, the Supreme Court Approves an Award Based Upon**
28 **the Percentage of the Fund**

1 California courts have been expressly authorized to award attorneys' fees so as "to ensure
2 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in
3 comparable litigation." *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at 50. As *Lealao*
4 explained, in a representative action, courts must consider the amount of attorney fees typically
5 negotiated in comparable litigation:

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 roughly
9 comparable to those negotiated in the private bargaining that takes place in the legal
10 marketplace, as it will otherwise be economic for Defendant to increase injurious
behavior. It has therefore been urged (most persistently by Judge Richard Posner)
that in defining a "reasonable fee" in such representative actions the law should
"mimic the market."

11 *Id.* at 47.

12 In this case, the fees are being paid from the common fund. Accordingly, the fee should be
13 awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund
14 cases under *Lealao*. As *Lealao* acknowledged, in cases like this one, the percentage-of-the-benefit
15 approach should be considered because "it better approximates the workings of the marketplace
16 than the lodestar approach." *Id.*, 82 Cal.App.4th at 49; see also *Apple Computer, Inc. v. Superior*
17 *Court*, 126 Cal.App.4th 1253, 1270 (2005) (observing that "attorney fees awarded under the
18 common fund doctrine are based on a 'percentage-of-the-benefit' analysis").

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

21 We join the overwhelming majority of federal and state courts in holding that
22 when class action litigation establishes a monetary fund for the benefit of the class
23 members, and the trial court in its equitable powers awards class counsel a fee out
24 of that fund, the court may determine the amount of a reasonable fee by choosing
25 an appropriate percentage of the fund created. The recognized advantages of the
26 percentage method – including relative ease of calculation, alignment of incentives
27 between counsel and the class, a better approximation of market conditions in a
contingency case, and the encouragement it provides counsel to seek an early
settlement and avoid unnecessarily prolonging the litigation (*Lealao*, *supra*, 82
Cal.App.4th at pp. 48–49; *Rawlings v. Prudential-Bache Properties, Inc.*, *supra*, 9
F.3d at p. 516)—convince us the percentage method is a valuable tool that should
28 not be denied our trial courts.

1 *Laffitte*, 1 Cal. 5th at 503. The Supreme Court in *Laffitte* went on to approve the trial court's
2 reliance on a percentage method for the calculation of the fee award, and ultimately affirmed the
3 fee award that was one-third (1/3) of the common fund. *Id.*, at 504.

4 The Court in *Laffitte* indicated that the trial courts may utilize a "lodestar cross-check" to
5 double check the reasonableness of the percentage fee award. *Id.* In *Laffitte*, the Supreme Court
6 affirmed the propriety of a lodestar cross-check where the multiplier exceeded 2. Indeed, the
7 Court explicitly held that the lodestar is a cross check that should not override the primary use of
8 the percentage method:

9 [W]e emphasize the lodestar calculation, when used in this manner, does not override the
10 trial court's primary determination of the fee as a percentage of the common fund and thus
11 does not impose an absolute maximum or minimum on the potential fee award. A lodestar
12 cross-check is simply a quantitative method for bringing a measure of the time spent by
counsel into the trial court's reasonableness determination; as such, it is not likely to
radically alter the incentives created by a court's use of the percentage method.

13 *Id.* at 505.

14 Because the Gross Settlement Amount is a pure common fund, and the percentage of the
15 fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao*
16 support an award based upon the percentage of the common fund. Here, as noted above, one-third
17 is within the reasonable range of comparable awards for common fund cases, which establishes
18 the requested award as reasonable. Moreover, as discussed below, the use of the lodestar cross-
19 check in this case further supports the reasonableness of the percentage fee award as it falls well
20 below the range approved in *Laffitte*.

21 **B. The Percentage Fee Award is Supported by a Lodestar Cross-Check**

22 The following is a summary of the rates and hours of Plaintiff's counsel and staff:

	Hours	Rate	Total
James Hawkins	85.6	\$1050.00	\$89,880.00
Christina Lucio	77.8	\$775.00	\$60,295.00
Mitchell Murray	1.9	\$750.00	\$1,425.00
Associates	35.1	\$450.00	\$15,795.00
Paralegals	44.1	\$200.00	\$8,780.00
LODESTAR			\$176,175.00

1 The reasonableness of the requested attorneys' fee of \$141,666.67 is established by
2 reference to Class Counsel's lodestar cross-check in this matter. The lodestar is \$176,175.00,
3 which is higher than the requested fee. Thus no multiplier is necessary.² (Hawkins Final Decl. ¶¶
4 50-52). This is an extremely reasonable fee request considering the lodestar multipliers approved
5 in other cases. See e.g., *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001)
6 ("Multipliers can range from 2 to 4 or even higher."); *Pellegrino v. Robert Half Internat., Inc.*
7 (2010) 182 Cal.App.4th 278, at 293; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
8 1051 and fn. 6 (approving 3.65 multiplier and collecting cases "finding a range of 0.6-19.6, with
9 most (20 of 24, or 83%) from 1.0-4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0
10 range"); *Amaral v. Cintas Corporation No. 2*, 163 Cal. App.4th 1157, 1174 (2008) (approving
11 lodestar with a 1.65 multiplier in a fee-shifting case).

12 In a common fund settlement "[t]he lodestar method is merely a cross-check on the
13 reasonableness of a percentage figure". *Vizcaino, supra*, 290 F.3d at 1050, n.5. Because Class
14 Counsel's lodestar is higher than the requested fee award, no multiplier is necessary. This
15 strongly supports the reasonableness of the requested fee award.

16 **C. The Percentage Award is Supported by the Results Achieved, the Risks of**
17 **Litigation, the Skill Required and the Quality of Work, The Contingent Nature of**
18 **the Fee and the Financial Burden, and Awards in Similar Cases**

19 What has now emerged in most fee award decisions is a recognition that fee
20 determinations in both common fund and statutory fee situations are incapable of mathematical
21 precision because of the intangible factors that must be resolved in the court's discretion based on
22 the circumstances of each particular case. See, A. Conte, *Attorney Fee Awards*, 2nd Ed., 207, at
23 44. In determining an appropriate fee in a common fund case, a court must decide, based on the
24 unique posture of each case, what percentage of the common fund would most reasonably

25 _____
26 ² The reasonableness of Class Counsel's rates is confirmed by comparing such rates with the rates of comparable
27 counsel practicing complex and class litigation. See *LG Corp. v. Huang Xiaowen*, 2017 U.S. Dist. LEXIS 143409
28 (S.D. Cal. 2017) (finding a rate of \$850 to \$890 an hour for lead counsel reasonable); see also *San Diego Comic*
Convention v. Dan Farr Prods., 2018 U.S. Dist. LEXIS 110391 (S.D. Cal. 2018) (finding rates of \$795 and \$785 an
hour reasonable).

1 compensate Class Counsel given the nature of the litigation and the performance of counsel. *Paul,*
2 *Johnson, Alston & Hunt, supra*, 886 F.2d at 272 (the benchmark percentage fee may be adjusted
3 to account for the circumstances involved in this case.) Courts apply a five-part test in reviewing
4 a reasonable percentage fee in common fund cases:

5 (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
6 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.

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

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

10 **i. The Results Achieved**

11 “The overall result and benefit to the class from the litigation is the most critical factor in
12 granting a fee award.” *Omnivision*, 2007 WL 4293467 at *9; See also *In re Heritage Bond Litig.*,
13 2005 U.S. Dist. LEXIS 13627, at *27-28 (C.D. Cal. June 10, 2005). Class Counsel obtained a very
14 favorable result in this case for the Class Members. The Settlement provides monetary benefits to
15 the Class Members that are comparable to or even exceed those recovered in similar wage and hour
16 class actions because the claimants will all receive a meaningful payment of their damages. The
17 Settlement is particularly advantageous to the Class Member because the proceeds will be
18 distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable
19 result.

20 There is little question that the result achieved in this litigation is favorable. Plaintiff and
21 Class Counsel secured a common fund of \$425,000.00 on behalf of the Class. As a result, 339
22 Participating Class Members will receive a pro-rata share of the Net Settlement Fund of
23 approximately \$230,583.33. The average estimated payment amongst all Class Members is \$697.62
24 and the highest is \$1,631.77. (Salinas Decl. ¶¶ 11-13).

25 **ii. The Risks of Litigation**

26 “The risk that further litigation might result in Plaintiff not recovering at all, particularly a
27 case involving complicated legal issues, is a significant factor in the award of fees” *Omnivision*,
28 2007 WL 4293467 at *9.

1 As detailed above, at the time this case was brought, the result was far from certain.
2 Defendant' numerous defenses to the case created difficulties with proof and complex legal issues
3 for Class Counsel to overcome. Here, many of the defenses asserted by Defendant present serious
4 threats to the claims of Plaintiff and the other Class Members. (Hawkins Final Decl. ¶¶ 26-27;
5 Hawkins Prelim. Decl. ¶¶ 38-47).

6 As discussed above, there was also a significant risk that, if the litigation were not settled,
7 Plaintiff would be unable to overcome Defendant's challenges to obtaining and maintaining class
8 certification through trial and thereby not recover on behalf of any employees other than
9 themselves.

10 **iii. The Skill Required and the Quality of Work**

11 Practice in the narrow areas of wage and hour and class action litigation requires skill,
12 knowledge, and experience in two distinct subsets of the law. Expertise in one does not necessarily
13 translate into expertise in the other. Class Counsel must have expertise in both. The issues presented
14 in this case required more than just a general appreciation of wage and hour law and class action
15 procedure as this area of practice is still developing as evidenced by the California Supreme Court's
16 ruling in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004 and the Court of
17 Appeal's rulings in *Gonzales v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 and *Vaquero*
18 *v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98.

19 The Settlement was possible only because Class Counsel was able to convince Defendant
20 that Plaintiff could potentially prevail on the difficult legal issues regarding liability, maintain class
21 certification, overcome difficulties in proof as to monetary relief and take the case to trial. (Hawkins
22 Final Decl. ¶ 43).

23 In successfully navigating these hurdles Class Counsel displayed the necessary dual skill
24 set. The high quality of the work in this case was mandated by the very vigorous and contentious
25 defense presented by counsel for Defendant. Class Counsel was required to invest substantial time
26 and resources in investigation, extensive motion practice, and preliminary and final approval.
27 (Hawkins Final Decl. ¶¶ 43-55).

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

5 **iv. The Contingent Nature of the Fee and the Financial Burden**

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

12 In this case, Class Counsel subjected themselves to this contingent fee market risk in this
13 all or nothing contingent fee case wherein the necessity and financial burden of private enforcement
14 makes the requested award appropriate. Counsel retained on a contingency fee basis, whether in
15 private matters or in class action litigation, is entitled to a premium in order to compensate for both
16 the risks and the delay in payment. See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734 (9th
17 Cir. 2016) (courts “must” apply a risk service); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir.
18 2016) (abuse of discretion not to apply risk multiplier). The simple fact is that despite the most
19 vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner*, 378 F.2d
20 872, 875 (4th Cir. 1967). Indeed, if counsel is not adequately compensated for the risks inherent in
21 difficult class actions, competent attorneys will be discouraged from prosecuting similar cases.
22 *Steiner v. BOC Financial Corp.*, 1980 U.S. Dist. LEXIS 14561 at *6- *7 (S.D.N.Y. 1980). Class
23 Counsel has invested time and money into contingency cases which ultimately generated no fee,
24 which further emphasizes the need for contingent cases to provide premium compensation when
25 successful.

26 Here, the contingent nature of the fee award, both from the point of view of eventual
27 settlement and the point of view of establishing eligibility for an award, also warrant the requested
28 fee award. A number of difficult issues, the adverse resolution of any one of which could have

1 doomed the successful prosecution of the action, were present here. As discussed above, attorneys'
2 fees in this case were not only contingent but extremely risky, with a very real chance that Class
3 Counsel would receive nothing at all for their efforts, having devoted time and advanced costs.

4 Class Counsel were required to advance all costs in this litigation. Especially in this type of
5 litigation where the corporate Defendant and their attorneys are well funded, this can prove to be
6 very expensive and risky. Accordingly, because the risk of advancing costs in this type of litigation
7 can be significant, it is therefore cost prohibitive to many attorneys. The financial burdens
8 undertaken by Plaintiff and Class Counsel in prosecuting this action on behalf of the Class were
9 substantial. Class Counsel has advanced approximately \$12,089.63 in costs which could not have
10 been recovered if this case had been lost. (Hawkins Final Decl. ¶¶, 31, 41, 54).

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

13 **v. Awards in Similar Cases**

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

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

25 No general rule can be articulated on what is a reasonable percentage of a common
26 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
27 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.

28 Newberg, *Newberg on Class Actions*, 3rd Ed., 14.03.

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

3 **D. Class Counsel's Costs Were Reasonably Incurred**

4 Class Counsel requests reimbursement for expenses and costs in the amount of \$12,089.63.
5 This amount is less than the \$18,000.00 figure preliminarily approved by this Court. (Hawkins Final
6 Decl. ¶ 31, 41, 54, Ex. 8). These expenses primarily involve the costs incurred for filing fees,
7 mediation fees, and court call fees, all of which are costs normally billed to and paid by the client.
8 These costs were reasonably incurred in the prosecution of this matter. (Id.).

9 **E. The Class Representative Should Receive the Requested Service Payment**

10 Plaintiff respectfully submits that for his service as the Class Representative, he should be
11 awarded \$10,000.00 as a Class Representative Enhancement Payment. Defendant does not oppose
12 the payment of this amount to Plaintiff.

13 As the Class Representative, Plaintiff has performed his duties to the Class admirably and
14 without exception. Plaintiff provided valuable information and documents from his employment,
15 which was instrumental in Class Counsel's understanding of the case. Plaintiff also provided Class
16 Counsel with evidence for use at mediation and in litigation. Plaintiff was also involved in the
17 settlement negotiations and provided invaluable assistance and information which ultimately
18 resulted in the settlement benefiting the Class. (Hawkins Final Decl. ¶ 32-40; Declaration of Scott
19 Cahn, generally).

20 Plaintiff also assumed the risk, among other things, that he might possibly be liable for costs
21 incurred in connection with this case. Plaintiff also risked being "blacklisted" by other future
22 employers for having sued Defendant in a class action. See *Guippone v. BH S&B Holdings LLC*,
23 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) ("[T]he fact that a Plaintiff has
24 filed a federal lawsuit is searchable on the internet and may become known to prospective
25 employers when evaluating the person . . . Even where there is not a record of actual retaliation,
26 notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of
27 such for the sake of absent class members.").

1 Without Plaintiff's support, cooperation and information, no other fellow employees would
2 be receiving any benefit. The payment of the service award to a successful class representative is
3 appropriate and the amount of \$10,000 to Plaintiff Scott Cahn is only 2.4% of the total Settlement
4 secured on behalf of the Class.

5 This payment is to compensate Plaintiff for his time, effort, and risk in bringing this case to
6 benefit the 339 participating Class Members and secure a total settlement of \$425,000.00. Plaintiff's
7 effort in the lawsuit has conferred a very substantial benefit on the Class Members. Accordingly,
8 Class Counsel respectfully requests that the Court approve the requested Class Representative
9 Enhancement Payment.

10 **V. CONCLUSION**

11 The representation of the Class provided by Class Counsel has been wholly contingent.
12 Class Counsel's fee request is well within the realm of reasonableness for fee requests approved by
13 courts given the efforts expended in this case and the stage of proceedings at the time of the
14 Settlement. Moreover, Class Counsel undertook great risks on a contingent fee basis and achieved
15 a favorable result for the benefit of Class Members. Based on the foregoing, Class Counsel
16 respectfully requests approval of the application for award of attorneys' fees of \$141,666.67,
17 reimbursement of litigations costs of \$12,089.63, and a Class Representative Enhancement
18 Payment of \$10,000 to Plaintiff Scott Cahn.

19
20 Dated: January 03, 2024

Respectfully Submitted:

21 **JAMES HAWKINS, APLC**

22
23 By: _____

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25 Attorneys for Plaintiff
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