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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

CARLOS HUMBERTO CARRILLO DIAZ, an
individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

[Case Assigned for All Purposes to Hon. Sunil
R. Kulkarni in Dept. 1]

**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, Carlos Humberto Carrillo
Diaz, and Nathalie Hernandez, Proposed
Order, and Proposed Judgment]*

Date: June 9, 2022

Time: 1:30 p.m.

Dept.: 1

Complaint Filed: September 22, 2020

FAC Filed: November 30, 2020

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on June 9, 2022 at 1:30 p.m. in Department 1 of the above-
3 entitled court, Plaintiff CARLOS HUMBERTO CARRILLO DIAZ (“Plaintiff”) will, and hereby
4 does, move the Court for an Order granting final approval of Class Counsel’s Attorneys’ Fees and
5 Costs pursuant to the Parties’ Joint Stipulation of Class Action Settlement and Release of Claims.
6 Plaintiff also respectfully requests that the Court award an enhancement of \$5,000.00.

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 Carlos Humberto Carrillo
12 Diaz; and Nathalie Hernandez; all other papers and records on file in this action; and on such oral
13 and documentary evidence as may be presented at the hearing on this Motion.

14
15 DATED: May 17, 2022

KINGSLEY & KINGSLEY, APC

16
17 By: _____

18 Kelsey M. Szamet
19 Shannen Garrett
20 Attorneys for Plaintiff Carlos Humberto Carrillo
21 Diaz and the Proposed Class
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATUS OF THE SETTLEMENT	1
III.	THE COURT SHOULD GRANT PLAINTIFF’S APPLICATION FOR AN AWARD OF ATTORNEYS’ FEES	1
A.	Class Counsel are Entitled to a Fee From the Common Fund	1
B.	The Attorneys’ Fees Requested By Class Counsel Are Well Within the Range of Fees in Comparable Cases	3
C.	The Contingency Fee of 1/3 Requested By Class Counsel Is Reasonable Based on the Risks of Litigation and the Diligent Efforts of Counsel that Led to an Outstanding Settlement for the Class	4
IV.	CLASS COUNSEL’S FEE REQUEST IS REASONABLE UNDER A LODESTAR CROSSCHECK	4
A.	Requested Multiplier	5
B.	The Number of Hours Claimed is Reasonable	6
C.	The Hourly Rates Requested Are Reasonable	6
D.	The Fees Requested Are Reasonable	8
i.	Novelty and Difficulty of Questions Presented	8
ii.	Skill Displayed in Presenting Questions Presented	9
iii.	Preclusion of Other Employment By Attorneys	9
iv.	Contingent Nature of the Fee Award	9
v.	Success Achieved	9
vi.	Rate of Acceptance of Benefits Offered to Class Members	9
V.	THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS	9
VI.	THE NAMED PLAINTIFF’S ENHANCEMENT SHOULD BE APPROVED	10
VII.	PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY	11

VIII.	CONCLUSION.....	11
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TABLE OF AUTHORITIES

Federal Cases

City of Detroit v. Grinnell Corporation,

(2d Cir. 1974) 495 F.2d 448..... 4

Hensley v. Eckerhart,

(1983) 461 U.S. 424..... 6

Mangold v. Cal. Pub. Utils. Comm’n,

67 F.3d 1470 (9th Cir. 1995) 8

Missouri v. Jenkins by Agyei,

(1989) 491 U.S. 274..... 7

Van Vracken v. Atlantic Richfield Co.,

(N.D.Cal.1995) 901 F.Supp. 294 8

State Cases

Beasley v. Wells Fargo Bank,

(1991) 235 Cal.App.3d 14 6

Bihun v. AT&T Info. Sys., Inc.,

(1993) 13 Cal.App.4th 976 7

Chavez v. Netflix, Inc.,

(2008) 162 Cal.App.4th 43, fn 11 3

Ciani v. San Diego Trust & Sav. Bank,

(1994) 25 Cal.App.4th 563 2

City of Oakland v. Oakland Raiders,

(1988) 203 Cal.App.3d 78 (2.34)..... 8

Coal. for L.A. County Planning v. Bd. of Supervisors,

(1977) 76 Cal.App.3d 2 6, 8

Consumer Privacy Cases,

(2009) 175 Cal.App.4th 545 5

Dunk v. Ford Motor Co.,

1	(1996) 48 Cal.App.4th 1794	2
2	<u>Ketchum v. Moses,</u>	
3	(2001) 24 Cal.4th 1122	5, 8
4	<u>Laffitte v. Robert Half Intern. Inc.,</u>	
5	(Cal. 2016) 205 Cal.Rptr.3d 555.....	2
6	<u>Lealao v. Beneficial Calif., Inc.,</u>	
7	(2000) 82 Cal. App. 4th 19	3, 8
8	<u>Meister v. Regents of Univ. of Cal.,</u>	
9	(1998) 67 Cal.App.4th 437	6
10	<u>PLCM Group, Inc. v. Drexler,</u>	
11	(2000) 22 Cal.4th 1084	6
12	<u>Radar v. Thrasher,</u>	
13	(1962) 57 Cal.2d 2	6
14	<u>Rebney v. Wells Fargo Bank,</u>	
15	(1991) 232 Cal.App.3d 1344	5
16	<u>San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino,</u>	
17	(1984) 155 Cal.App.3d 738	5, 7
18	<u>Save El Toro Ass’n v. Days,</u>	
19	(1979) 98 Cal.App.3d 544	2, 3
20	<u>Serrano v. Priest,</u>	
21	(1977) 20 Cal.3d 25 (Serrano III)	2, 5, 8
22	<u>Serrano v. Unruh,</u>	
23	(1982) 32 Cal.3d 621 [“Serrano IV”]	6
24	<u>Wershba v. Apple Computer, Inc.,</u>	
25	(2001) 91 Cal.App.4th 224	2, 5, 8
26	<u>Woodland Hills Residents Assn., Inc. v. City Council,</u>	
27	(1979) 23 Cal.3d 917	2
28	<u>State Statutes</u>	

Code of Civil Procedure § 382.....	1
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State Rules

Rules of Court, Rule 3.769 (b).....	1
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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 CARLOS HUMBERTO CARRILLO DIAZ (“Plaintiff”) moves
5 this Court for approval of an award of attorneys’ fees and reimbursement of expenses to Class
6 Counsel, pursuant to the terms of the preliminary-approved Joint Stipulation of Class Action
7 Settlement and Release of Claims (“Settlement” or “Settlement”) between named Plaintiff and
8 Defendant RECON360, LLC (“Defendant”). Class Counsel also respectfully requests that the
9 Court award an enhancement for the named Plaintiff of \$5,000.00.

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 has been preliminarily approved by the Court and the Notice of Class
15 Action Settlement disseminated pursuant to the terms of the Settlement. (Declaration of Kelsey M.
16 Szamet ¶18 (“Szamet Decl.”); Declaration of Nathalie Hernandez ¶3 (“Hernandez Decl.”).)

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

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

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

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

28 We join the overwhelming majority of federal and state courts in holding that when

1 class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards Class Counsel a fee out
3 of that fund, the court may determine the amount of a reasonable fee by choosing
4 an appropriate percentage of the fund created.

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

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

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

14 An award of 1/3 of the common fund is appropriate here under the “substantial benefit”
15 theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer,*
16 *Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a
17 representative capacity to recover fees when the litigant’s efforts have created a substantial, actual,
18 and concrete benefit for members of an ascertainable class and the court’s jurisdiction over the
19 subject matter makes possible an award which spreads the cost proportionately among the
20 members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th
21 563, 578.)

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

1 Cal. App. 4th 19, 31, 48.)

2 As detailed fully in the Settlement and set forth above, the Settlement provides for
3 Defendant to create a Gross Settlement Amount of \$700,000.00. From that fund, Plaintiff requests
4 an award of attorneys' fees in the amount of \$233,333.33, or 1/3 of the Gross Settlement Amount
5 created on behalf of members of the Class. (Szamet Decl. ¶106.) This litigation resulted in "a
6 substantial, actual and concrete . . . benefit on the members of an ascertainable class," *Save El*
7 *Toro Assn., supra*, 98 Cal.App.3d at p. 548, namely a non-reversionary settlement fund of
8 \$700,000.00. Because none of the Settlement Class Members have paid fees to Class Counsel for
9 their efforts during the litigation, equity requires that they pay a fair and reasonable fee based on
10 what the market would traditionally require, no less than if they had hired private counsel to litigate
11 their cases individually. Class Counsel is therefore entitled to a reasonable contingency fee of 1/3
12 from the Settlement fund as a whole.

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

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

17 No general rule can be articulated on what is a reasonable percentage of a common
18 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
19 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.

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

26 ///

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

In the present case, Class Counsel asks the Court to award a fee of 1/3 of the common fund, or \$233,333.33, as provided in the Settlement. This amount is reasonable because Class Counsel's diligent litigation efforts and experience led to an outstanding settlement, with an average net recovery of \$1,519.20 per Settlement Class Member (See Hernandez Decl. ¶14.), based on cognizable risks which are discussed in detail in Plaintiff's Motion for Final Approval of Class Action Settlement.

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

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who had agreed to pay 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.

Class Counsel extensively addressed the perceived risks in this case in the concurrently filed Motion for Final Approval of Class Action Settlement and will not repeat that analysis here. In addition to the complexity of this case, Class Counsel has borne the entire risk and costs of this litigation during the entire time that it has been pending, all on a pure contingency basis. (Szamet Decl. ¶107.) Through the investment of substantial effort and resources, Class Counsel has secured an outstanding Settlement of behalf of the Settlement Class Members. (*Ibid.*) Defendant vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Ibid.*) It is this kind of situation, involving complex issues, that has been recognized as justifying a substantial attorney fee award. (*Ibid.*)

IV. CLASS COUNSEL'S FEE REQUEST IS REASONABLE UNDER A LODESTAR CROSSCHECK

Courts may "cross-check" the results of the common fund method against the lodestar method. (See, e.g., *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar

1 is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano*
2 *v. Priest* (1977) 20 Cal.3d 25, 48-49 (“*Serrano III*”).) Those rates reflect “the general local hourly
3 rate for a fee-bearing case” and do “not include any compensation for contingent risk,
4 extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The
5 court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at p. 254;
6 *Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347; *Serrano III, supra*, 20 Cal.3d at
7 p. 49.)

8 A. Requested Multiplier

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

18 Here, a lodestar cross-check confirms that the percentage requested is reasonable. Class
19 Counsel’s aggregate lodestar amounts to \$114,702.50 (without future hours)¹, which represents
20 168.70 hours of attorney work on this litigation incurred from its inception through the filing of
21 Plaintiff’s Motion for Final Approval. (Szamet Decl. ¶115.) As such, Class Counsel is asking for
22 a multiplier of 2.03. (Szamet Decl. ¶116.) Typically, the lodestar is merely the starting point of
23 the calculation of a reasonable fee, and courts often multiply the lodestar by a factor to account for
24 the risk of non-payment, delay in payment, the quality of work, and the novelty and difficulty of
25 the issues involved. (*See Radar v. Thrasher* (1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo*

26 _____
27 ¹ 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.

1 *Bank* (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning v. Bd. of Supervisors*
2 (1977) 76 Cal.App.3d 241, 251.)

3 B. The Number of Hours Claimed is Reasonable

4 Plaintiff's counsel are entitled to be compensated "for all time reasonably expended in
5 pursuit of the ultimate result achieved in the same manner that an attorney traditionally is
6 compensated by a fee-paying client for all time reasonably expended on a matter." (*Hensley v.*
7 *Eckerhart* (1983) 461 U.S. 424, 431 [internal quotations omitted]; *accord Serrano v. Unruh* (1982)
8 32 Cal.3d 621, 633 ["Serrano IV"] [parties should recover for all hours reasonably spent]; *Meister*
9 *v. Regents of Univ. of Cal.* (1998) 67 Cal.App.4th 437, 447-48 [same].)

10 The amount of time spent on this case (over 168.70 hours), which culminated in a very
11 favorable proposed Settlement for the Settlement Class Members, is reasonable given the
12 complexity and novelty of the issues involved, the vigorous defense, the length and intensity of
13 the litigation, and the exceptional results obtained. (Szamet Decl. ¶117.) Class Counsel litigated
14 this action with great efficiency in light of the amount of work required to achieve the Settlement.
15 (Szamet Decl. ¶118.) Class Counsel has submitted a declaration evidencing the reasonable hourly
16 rate for their services and establishing the number of hours spent working on the case. (Szamet
17 Decl. ¶¶115-137.) Accordingly, Plaintiff is entitled to full compensation for the hours claimed by
18 Class Counsel.

19 C. The Hourly Rates Requested Are Reasonable

20 Class Counsel is entitled to be compensated at hourly rates that reflect the reasonable
21 market value of their legal services, based on their experience and expertise. (*See Serrano IV,*
22 *supra*, 32 Cal.3d at pp. 640-43, n.31.) "The reasonable hourly rate is that prevailing in the
23 community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)
24 Payment at full market rates is essential to entice well-qualified counsel to undertake difficult
25 cases, such as this one. (*San Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984)
26 155 Cal. App. 3d 738, 755.) Additionally, calculation of a lodestar based on current hourly rates
27 is appropriate as a means of compensating for delay in payment. (*Missouri v. Jenkins by Agyei*
28 (1989) 491 U.S. 274, 283-84.)

1 The requested hourly rates in this case range from \$400.00 per hour to \$900.00. (Szamet
2 Decl. ¶119.) Class Counsel’s hourly rates are fully supported by their experience and reputation
3 in handling complex employment litigation, including wage and hour class actions. (Szamet Decl.
4 ¶120; ¶¶101-102.)

5 Mr. Kingsley is a 24-year attorney with expertise in wage and hour class action lawsuits.
6 (Szamet Decl. ¶121.) He has litigated several hundred such cases, including at the appellate level
7 at the U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court
8 of Appeal. (Szamet Decl. ¶122.) He is also a prolific speaker at various seminars on employment
9 law and has contributed to legal publications on employment topics. (Szamet Decl. ¶123.)
10 Biographical information for the other handling attorneys is included in the concurrently filed
11 Declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶126-128.)

12 Class Counsel’s charged rates are commensurate with the prevailing market rates in Santa
13 Clara County for attorneys of comparable experience and skill handling complex litigation.
14 (Szamet Decl. ¶130.) Furthermore, Class Counsel’s rates in calculating the lodestar are the same
15 rates charged to non-contingent hourly clients and thus necessarily reflect the current market value
16 of counsel’s legal services.² (Szamet Decl. ¶131.) Class Counsel has made all reasonable attempts
17 to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing
18 rates. (Szamet Decl. ¶132.)

19 Finally, Class Counsel’s rates are in line with the 2021-2022 Laffey Matrix, which is a fee
20 scale that courts often consult in determining the reasonableness of hourly rates. Under the
21 adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr.
22 Kingsley, is \$919, a reasonable rate for an attorney with 14 years of experience, such as Ms.
23 Szamet, is \$764, a reasonable rate for an attorney with 5 years of experience, such as Ms. Garrett,
24 is \$468, and a reasonable rate for an attorney with 3 or less years of experience, such as Mr. Penner,
25 is \$381. (Szamet Decl. ¶133; Ex. 4 [2021-2022 Adjusted Laffey Matrix].)

26
27 ² 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 D. The Fees Requested Are Reasonable

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

8 In California, courts regularly use a multiplier of 2.0 or greater in statutory fee cases to
9 approximate market fees.³ In fact, “[m]ultipliers in the 3-4 range are common in lodestar awards
10 for lengthy and complex class action litigation.” (*Van Vracken v. Atlantic Richfield Co.*
11 (N.D.Cal.1995) 901 F.Supp. 294, 298; *see also, Wershba, supra*, 91 Cal.App.4th at p. 255
12 [“Multipliers can range from 2 to 4 or even higher.”].) Here, Class Counsel is requesting a
13 multiplier of 2.03. (Szamet Decl. ¶136.)

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

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

22 i. Novelty and Difficulty of Questions Presented

23 This case dealt with difficult legal and factual questions. Significantly, the risk attendant
24 to the underlying claims in this matter was great considering Defendant’s defenses. As discussed
25 in detail in the extensive risk analysis section in Plaintiff’s Motion for Preliminary Approval of

26 ³ 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 Settlement, were this case to proceed, Defendant would have a strong incentive to litigate
2 tenaciously. (Szamet Decl. ¶138.) There are genuine issues in dispute. (*Id.*)

3 ii. Skill Displayed in Presenting Questions Presented

4 Class Counsel are skilled wage and hour practitioners with decades of experience who
5 diligently prepared and litigated this matter as discussed. (Szamet Decl. ¶139; *Id.* at ¶¶117-135.)

6 iii. Preclusion of Other Employment By Attorneys

7 To achieve the ultimate result in this case, Co-lead Class Counsel had to incur substantial
8 risk and expense and were precluded from taking other fee generating employment for over 168.70
9 hours of attorney time. (Szamet Decl. ¶140.)

10 iv. Contingent Nature of the Fee Award

11 This matter had been handled purely on a contingency fee basis and Class Counsel have
12 advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee
13 that any of the fees incurred or costs advanced would ever be recovered, and diverting significant
14 firm resources to prosecution of this matter. (Szamet Decl. ¶141.)

15 v. Success Achieved

16 Class Counsel believe this is an exceptional result that has been well received by Settlement
17 Class Members. (Szamet Decl. ¶142.)

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

19 There has been one opt-out and zero objections to date. (Hernandez Decl. ¶¶11-12.)

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

23 **V. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
24 **COSTS**

25 In addition to their request for fees, Class Counsel further request reimbursement of the
26 reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
27 litigation, in the amount of \$8,617.27. (Szamet Decl. ¶143.) To date, Kingsley and Kingsley has
28 incurred \$8,017.27 in costs. (Szamet Decl. ¶144.) Class Counsel anticipates incurring an

1 additional \$600.00 in costs to file, serve, and copy this motion; to prepare for and attend the
2 hearing; and for future copy charges. (Szamet Decl. ¶145.) As such, Class Counsel is requesting
3 a cost reimbursement of \$8,617.27. (Szamet Decl. ¶146.)

4 All of the requested costs are reasonable in amount and were necessarily incurred by Class
5 Counsel in prosecuting this litigation. (Szamet Decl. ¶147; Ex. 5 [Cost Report].)

6 Expenses in this matter to date include costs for filing fees, research, mediation,
7 employment of a database expert to synthesize the tens of thousands of lines of payroll and
8 timekeeping data produced by Defendant to assist with preparation of Plaintiff's damage model,
9 and additional costs for the prosecution of this case evidenced in the costs spreadsheet attached to
10 the Declaration of Kelsey M. Szamet. All of these costs have been incurred in the course of this
11 litigation, and all costs advanced have already been paid by Class Counsel. (Szamet Decl. ¶148.)

12 Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses
13 advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court
14 should approve the request for reimbursement in the amount of \$8,617.27.

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

16 Finally, Plaintiff's Counsel request an enhancement of \$5,000.00 to the named Plaintiff
17 CARLOS HUMBERTO CARRILLO DIAZ for his work on behalf of the Class. (Szamet Decl.
18 ¶149.) As set forth in detail in Plaintiff's Motion for Final Approval of Class Settlement and
19 CARLOS HUMBERTO CARRILLO DIAZ's declaration, Plaintiff Diaz invested significant time
20 and effort in this case. (Szamet Decl. ¶150; Diaz Decl. ¶¶4-10.)

21 Plaintiff Diaz was also at risk of for paying Defendant's legal fees and costs in the event
22 that Defendant prevailed at trial. (Szamet Decl. ¶155.)

23 The Class has benefited from Mr. Diaz's action in stepping forward on their behalf to bring
24 this lawsuit. (Szamet Decl. ¶156.) The average settlement payment is \$1,519.20 for a Settlement
25 Class Member with a high of \$7,396.66. (Hernandez Decl. ¶14.)

26 Further, the Class Notice disclosed the enhancement award. (See Settlement Ex. 1 [class
27 notice], p. 3.) (Szamet Decl. ¶157.) As of today, no Settlement Class Member has objected to the
28 proposed enhancement. (Szamet Decl. ¶158.)

Under the circumstances, a representative payment of \$5,000.00 is justified and the Court should award this payment to CARLOS HUMBERTO CARRILLO DIAZ from the Gross Settlement Amount as provided in the Settlement. (Szamet Decl. ¶159.)

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

As indicated on the Proof of Service, Plaintiff's Motion for Approval of Attorneys' Fees and Costs ("Motion") was uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion was filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6". (Szamet Decl. ¶160.)

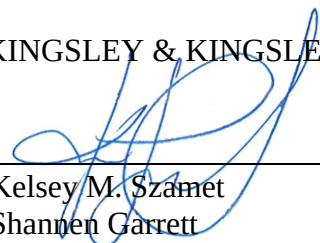
VIII. CONCLUSION

Class Counsel respectfully requests that the Court award a fee equal to 1/3 of the gross settlement amount, or \$233,333.33 and reimbursement of costs of \$8,617.27. Class Counsel also respectfully requests that the Court award an enhancement for the named Plaintiff of \$5,000.00. For the above reasons, all of these requests are appropriate and justified as part of the overall Settlement, and the Court should approve them as reasonable and fair.

DATED: May 17, 2022

KINGSLEY & KINGSLEY, APC

By:


Kelsey M. Szamet
Shannen Garrett
Attorneys for Plaintiff Carlos Humberto Carrillo
Diaz and the 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 May 17, 2022, 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:

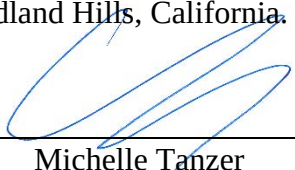
Sarju A. Naran Maysa Saeed Jackie Rivera sarju.naran@hogefenton.com maysa.saeed@hogefenton.com jackie.rivera@hogefenton.com Hoge, Fenton, Jones & Appel, Inc. 55 South Market Street, Suite 900 San Jose, CA 95113-2324	Emil Davtyan emil@davtyanlaw.com Davtyan Law Firm, Inc. 880 E. Broadway Glendale, CA 91205
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[XX] (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.

[XX] (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 above email address(es).

[XX] (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 17, 2022, at Woodland Hills, California.



Michelle Tanzer