

1 ROBERT J. WASSERMANN (SBN: 258538)

2 rwasserman@mayallaw.com

3 JENNY D. BAYSINGER (SBN: 251014)

4 jbaysinger@mayallaw.com

5 2453 Grand Canal Boulevard

6 Stockton, California 95207-8253

7 Telephone: (209) 477-3833

8 Facsimile: (209) 473-4818

9 Attorneys for Plaintiff Samantha Owens and the Class

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12
13 COUNTY OF CONTRA COSTA

14 SAMANTHA OWENS,

15 Plaintiff,

16 vs.

17 FIDELITY NATIONAL HOME WARRANTY
18 COMPANY; and DOES 1-100, inclusive,

19 Defendants.

Case No.: MSC21-00731

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES, COSTS, AND CLASS
REPRESENTATIVE ENHANCMENT PAYMENT

Date: April 25, 2024

Time: 9:00 a.m.

Dept.: 12

Judge: Hon. Charles S. Treat

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1 **I. INTRODUCTION.**

2 Plaintiff Samantha Owens (“Owens” or “Plaintiff”) hereby moves the Court for an award of
3 attorneys’ fees of 1/3 of the \$285,000 Gross Settlement Amount (“GSA”), or \$95,000, \$15,000 in
4 litigation costs, and a Class Representative Enhancement Payment of \$10,000, or 3.5% of the GSA.¹
5 As set forth below, the amounts sought are consistent with California Supreme Court precedent and
6 recent awards in similar wage and hour class action settlements, and fall well within the range of
7 reasonableness. Further, *not one of the 121 Class Members has objected to the requested awards*
8 *since receiving the court-approved Class Notice.*²

9 The attorneys’ fee award should be approved under the common fund methodology because it
10 serves to spread the costs associated with litigation equally among all beneficiaries of the fund, mimics
11 the legal marketplace, and encourages competent counsel to take on complex contingency cases such as
12 this, and to seek early settlement and avoid unnecessarily prolonging litigation just to increase the
13 justification for fees. Further, the sought fee is appropriate because Class Counsel has (1) obtained a
14 significant monetary benefit for the Class (i.e., the \$285,000 GSA); (2) worked diligently and
15 efficiently despite considerable risks faced in prosecuting this litigation; and (3) carried the financial
16 burden of representing Plaintiff and the Settlement Class on a contingency basis. The \$15,000
17 requested for litigation costs is also reasonable, appropriate, and actually less than the costs counsel
18 incurred. Finally, the \$10,000 enhancement payment is appropriate because Plaintiff helped procure
19 substantial monetary relief for the Class, assumed considerable financial and reputational risk serving
20 as the class representative, and spent significant time and had an impactful effect assisting with the
21 prosecution of this case. Further, the enhancement payment is within the range of those granted by
22 courts in similar settlements and, again, ***not a single Class Member has objected to it being awarded.***

23 ///

24 ///

25 ///

26 _____
27 ¹ Capitalized terms herein shall have the same meaning as in the Class Action Settlement Agreement (“Settlement
28 Agreement”, “Settlement”, or “SA”), a copy of which is attached as **Exhibit 1** to the Declaration of Jenny D. Baysinger
 (“JDB Dec.”) filed with the Plaintiff’s Motion for Final Approval of Class Action Settlement filed this same date.

² Defendant also does not oppose the fees, costs, or service payments sought.

1 **II. SUMMARY OF THE CASE.**

2 **A. Factual and Procedural Summary.**

3 On April 12, 2021, Plaintiff filed the instant action asserting claims on a class-wide basis. JDB
4 Dec. ¶ 6. After initial formal written discovery, the Parties began discussing the prospect of mediation.
5 Through independent inquiry, research, and informal discovery, Class Counsel thoroughly and diligently
6 investigated and pursued the claims. This process has included, but not been limited to, (1) obtaining and
7 reviewing Plaintiff's personnel file, payroll records, and time records through both formal and informal
8 discovery; (2) identifying, researching, and pleading the appropriate claims, including amending the
9 Lawsuit to assert additional claims as they ripened and/or were discovered; (3) exhausting administrative
10 remedies; (4) identifying, requesting, and securing the payroll and time records for 139 individual
11 putative class members (nearly the entirety of each Class); (5) propounding formal and informal
12 discovery to secure relevant policy documents and numerical information regarding the size of the class
13 and the scope of the claims, (6) retaining an expert to analyze the payroll and time data provided by
14 Defendant and personally conducting spot checks to ensure the accuracy of the damages calculations; (7)
15 researching and evaluating the scope of additional and/or previous actions and their potential impact on
16 the Class Claims; (8) creating a reliable damages model; and (9) developing and implementing a strategy
17 for mediation and settlement. *Id.* ¶ 7.

18 On May 5, 2023, the Parties participated in an all-day mediation with David Phillips, but were
19 unable to reach and agreed upon resolution. *Id.* ¶ 22. After an additional two (2) months of negotiation
20 and discussion, the mediator issued a proposal that was mutually accepted on July 20, 2023. *Id.* ¶ 19.
21 Following additional negotiation, a long-form settlement agreement was executed in September 2023.
22 *Id.* ¶ 20, Exh. 1.

23 **B. Distribution of the Notice.**

24 On February 9, 2024, the Class Notice was mailed via First Class mail to 120 Class Members.
25 Declaration of Taylor Mitzner With Respect to Notice and Settlement Administration ("Admin. Dec.")
26 ¶ 5. Prior to mailing the Administrator performed its due diligence including processing every person
27 on the Class List against the National Change of Address database maintained by the United States
28 Postal Service. *Id.* ¶ 4. In accordance with the Court's instructions, the Class Notice informed Class

Members about the terms of the Settlement, including the fact Plaintiff would request: (1) an award of attorney's fees of 1/3 of the GSA (\$95,000), (2) reimbursement of up to \$15,000 in litigation costs, and (3) and Enhancement Payment of \$10,000 to Plaintiff. See Class Notice, Exhibit A to the Admin. Dec. Through the notice process, an additional Class Member was identified, bringing the total number of Settlement Class Members to 121. To date, no Class Member has expressed any concern regarding the requested fees, costs or enhancement payment. Admin. Dec. ¶¶ 8-9; JDB Dec. ¶¶ 121. ***In fact, not one of the 121 Class Members has objected in any way, to any degree, to the terms of the Settlement including Class Counsel's requested award of fees and costs or Plaintiff's requested enhancement payment or elected to opt-out of the Settlement.*** Admin. Dec. ¶¶ 8-9. The overwhelmingly positive reaction of the Class is a clear indication of its approval of the Settlement and the sought fees, costs and enhancement payment.

III. LAW AND ARGUMENT

A. The Court Should Apply the Common Fund Methodology to Award Plaintiffs' Attorneys' Fees Under the Settlement.

"[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorneys' fees from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. Recently, the California Supreme Court clarified its stance on determining fees in common fund cases, ruling –

"We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class 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."

Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 503. Explaining its ruling, the Court held "[t]he recognized advantages of the percentage method – including relative ease of calculation, alignment of incentives 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 litigation – convince us the percentage method is a valuable tool that should not be denied by our trial courts." *Id.*; see also *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047.

1 Based on this rationale, the California Supreme Court in *Laffitte* affirmed a fee award
2 representing one-third of the fund and rejected objections of putative class members to this award.
3 *Laffitte*, 1 Cal.5th 506. Further, the amount awarded was based on a lodestar that required a multiplier
4 of 2.13. *Id.* 487. As the Court held, only when the multiplier is “extraordinarily high or low [should]
5 the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed
6 multiplier within a justifiable range.” *Id.* 505. Moreover, in the *Laffitte* intermediate court decision,
7 the court observed “33 1/3 percent of the common fund is consistent with, and in the range of, awards
8 in other class action lawsuits.” *Laffitte v. Robert Half Int’l, Inc.* (2014) 231 Cal.App.4th 860, 871.

9 Class Counsel here has created an ascertainable fund, the GSA, which will substantially benefit
10 the Class and from which reasonable attorneys’ fees can be easily calculated and awarded.

11 **B. An Award of Attorneys’ Fees to Class Counsel of 1/3 of the GSA is Reasonable and**
12 **Should Be Approved.**

13 Plaintiff seeks an attorneys’ fee award of 1/3 of the GSA, or \$95,000. The requested fee award
14 should be approved because: (1) it is consistent with recent Federal and California court awards in
15 similar wage and hour class settlements; (2) the Class has uniformly responded positively to the
16 requested award; (3) it is reasonable in light of the substantial monetary benefit conferred on the Class;
17 (4) it achieves the dual purposes of a common fund award by spreading the litigation costs among those
18 who benefited from the settlement while rewarding and encouraging competent counsel to handle
19 complex, contingency, class action cases like this; and (5) the lodestar cross-check, while not required,
20 nevertheless confirms the reasonableness of the requested fee.

21 **1. The Requested Fee is Supported by Awards in Similar Cases.**

22 It is well recognized that awarding one-third of the common fund to class counsel is
23 appropriate in wage and hour class action settlements. *Laffitte*, 1 Cal.5th 506. Indeed, 30-50% is
24 commonly awarded in modest common fund cases. See Rubenstein, Conte and Newberg, *Newberg on*
25 *Class Actions* at § 14:6. Review of California cases “reveals that courts usually award attorneys’ fees
26 in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10
27 million.” *Cicero v. DirecTV, Inc.* (C.D. Cal. 2010) 2010 WL 2991486 *6. Fee awards in the range of
28 one-third are appropriate in such cases because they do not implicate megafunds where a smaller

percentage recovery may be more suitable. See also *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1209-10.³

In smaller wage-hour class actions like this one, both state and federal courts routinely award attorneys' fees of percentages equal to or greater than that sought by Plaintiff in this action.⁴ When viewed in the light of the foregoing authorities, the reasonableness of Plaintiff's requested fee award is undeniable.

2. The Overwhelmingly Positive Reaction of the Class Supports Approval.

It is well settled that positive reactions by class members support settlement approval. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53. The absence of disapproval constitutes strong evidence of the reasonableness of the requested fee award here. See *In re Heritage Bond Litig.* (C.D. Cal. 2005) 2005 WL 1594403* 21 ("The absence of objections or disapproval by class members to Class Counsel's fee request further support finding the fee request reasonable."). Here, the fact that ***not one of the 121 Class Members has objected*** to the fee award or elected to opt out of the Settlement underscores its reasonableness.

3. An Award of 1/3 of the GSA Is Fair and Reasonable in Light of the Substantial Monetary Benefit Obtained and the Risks Faced by Class Counsel.

In addition to equity and market considerations, courts look to: (1) the results achieved; (2) the riskiness of prosecuting the litigation; (3) the skill and high quality of work by counsel; and (4) the financial burden carried by Class Counsel in prosecuting the case on a contingency basis in evaluating a common fund fee award. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 49; *Lealao v. Beneficial Cal., Inc.*

³“Empirical studies show that, whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (quoting *Shaw v. Toshiba Am. Info. Sys., Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; see also *Knight v. Red Door Salons, Inc.* (N.D. Cal. 2009) 2009 WL 248367, at *6 (“fee awards in class actions average around one-third of the recovery”) (quoting Newberg on Class Actions § 14.6 (4th ed. 2007))).

⁴ See, e.g., *Barrett v. The St. John Cos.* (L.A. Cnty. Super. Ct. July 9, 2009) No. BC354278 (one-third award of \$1.1 million settlement in wage and hour class action); *Tokar v. GEICO* (San Diego Cnty. Super. Ct. July 9, 2004) No. GIC 810166 (award of one-third of recovery); *Davis v. The Money Store, Inc.* (Sacramento Cnty. Super. Ct. Dec. 26, 2000) No. 99AS01716 (one-third of \$6,000,000 settlement); *Big Lots Overtime Cases*, (San Bernardino Cnty. Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (one-third fee recovery). See, e.g., *Wren v. RGIS Inventory Specialists* (N.D. Cal. 2011) 2011 WL 1230826 *29 (approving fee award of 42% in wage and hour class and collective action); *Quezada v. Con-Way Freight, Inc.* (N.D. Cal. 2017) 2017 WL 6949286 *1 (awarding one-third of \$2 million settlement in wage and hour class action); *Singer v. Becton Dickinson and Co.* (S.D. Cal. 2010) 2010 WL 2196104 *8 (approving fee award of one-third as similar to awards in other cited wage and hour class action cases where fees ranged from 30% to 40%); *Cicero*, 2010 WL 2991486, at *6 (noting that fees of one-third are common in wage and hour settlements below \$10 million).

(2000) 82 Cal. App. 4th 19, 26; see also *Vizcaino*, 290 F.3d 1048-50 (internal quotation and citation omitted). Each of these factors supports the fee request.

a. The fee request is justified by the positive results achieved.

The ultimate reasonableness of the fee “is determined primarily by reference to the level of success achieved by the plaintiff.” *McCown v. City of Fontana* (9th Cir. 2009) 565 F.3d 1097, 1102. Here, Class Counsel achieved an excellent result and obtained significant monetary relief for the Class. Qualified Class Members (all 121 Class Members that did not opt-out) will receive a share of the GSA (\$147,750 even after subtracting the fees and costs of class counsel, the enhancement payment, and the administrative costs associated with a settlement of this size). Admin Dec. ¶¶ 12, 18-19. The *average* payment to each Qualified Class Member is a substantial \$1,221.07, with the greatest Individual Settlement Share exceeding \$2,000 (\$2,057.05). *Id.* ¶ 19. The average distribution for the members of each subclass are 659.60 for Meal Period Subclass members, \$223.86 for Overtime subclass members, and \$263.84 for Wage Statement subclass members. JDB Dec. ¶¶ 28-29, 65. This represents substantial monetary relief for the Class given the complexity of the issues, the risk and uncertainty inherent in class action litigation, and the myriad defenses advanced by Defendant.

b. The risks associated with this litigation justify the fee request.

Class counsel has taken considerable risk in litigating this case—not just because it was done on a wholly contingency basis, but also because complex, representative wage-and-hour litigation is an ever-emerging area under the law. As set forth in greater detail in Plaintiff’s Motion for Final Approval of Class Action Settlement, although Class Counsel believes evidence exists from which the trier of fact could conclude Defendant engaged in a pattern and practice of violating the law, continued litigation is guaranteed to be costly, time consuming and uncertain. Defendant asserted, and would have continued to assert, legal and factual grounds to defend itself including, but not limited to, substantive challenges to both certification and ultimate liability related to the Class Claims. Appellate proceedings would only further delay and jeopardize recovery by the Class. By contrast, the proposed Settlement ensures timely and substantial recovery for the Class. JDB Dec. ¶¶ 59-78.

///

1 **c. Class Counsel’s skill and the quality of their work justifies the fee request.**

2 Class counsel has demonstrated substantial skill, diligence, and high quality of work in
3 orchestrating the Settlement and creating a GSA of \$285,000 to be shared amongst 121 Class Members.
4 The Settlement, and the substantial monetary benefit it confers, was obtained efficiently and effectively
5 without wasted effort or years of needless, costly litigation. As a result of the skill and effort of Class
6 Counsel, Plaintiff was well-positioned to reach a favorable settlement for the Class, which itself
7 required significant expertise, a full-day mediation, and protracted negotiations to achieve.

8 **d. The contingent nature of the fee and financial burden carried by class**
9 **counsel justifies the fee request.**

10 A law firm that prosecutes class action cases does not get paid in every case. Sometimes, it gets
11 nothing or is awarded fees equal to only a small percentage of the amount actually incurred. Where
12 plaintiff’s counsel does succeed, therefore, it is appropriate to compensate the firm for the risks the firm
13 regularly undertakes. As the California Supreme Court has explained:

14 “[A] contingent fee must be higher than a fee for the same legal services paid as they are
15 performed. The contingent fee compensates the lawyer not only for the legal services he
16 renders but for the loan of those services. The implicit interest rate on such a loan is higher
17 because the risk of default (the loss of the case, which cancels the debt of the client to the
18 lawyer) is much higher than that of conventional loans. A lawyer who both bears the risk of not
19 being paid and provides legal services is not receiving the fair market value of his work if he is
20 paid only for the second of these functions. If he is paid no more, competent counsel will be
21 reluctant to accept fee award cases.”

22 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33 (internal citation and quotation omitted).

23 Accordingly, courts have recognized that “[i]t is an established practice in the private legal market to
24 reward attorneys for taking the risk of non-payment by paying them a premium over their normal
25 hourly rates for winning contingency cases.” *Fischel v. Equitable Life Assurance Soc’y of U.S.* (9th
26 Cir. 2002) 307 F.3d 997, 1008.

27 In this case, Class Counsel worked diligently on this case since early 2021, and in effect loaned
28 their legal services to the Class since that time. Class Counsel prosecuted this case wholly on a
contingency basis, at great risk of never receiving any compensation due to the uncertain nature of class
action litigation in general, and also due to the numerous factual and legal defenses of Defendant.

1 Class Counsel took a tremendous risk by taking on this case, and persevered to attain the Settlement on
2 behalf of the Class. To date Class Counsel has spent over \$15,000 in litigation costs and expended
3 more than 220 hours of time, with additional work remaining to be done, without receiving any
4 compensation at all. JDB Dec. ¶¶ 107-117, Exh. 4. Meanwhile, all of this entailed passing on other
5 lucrative cases. *Id.* ¶ 111. This factor further supports the requested fee award.

6 **4. The Requested Fee Award Fairly Spreads the Litigation Costs Among the**
7 **Settlement Beneficiaries.**

8 The percentage-of-the-fund approach is an appropriate method for reviewing attorneys' fees
9 here because it allows Plaintiffs and Class Counsel to create "a fund from which others will benefit
10 [and] to require those other beneficiaries to bear their fair share of the litigation costs." *Nw. Energetic*
11 *Servs., LLC v. Cal. Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 878 (citing *Serrano*, 20 Cal. 3d
12 35). This approach ensures that the class members, who have accepted the benefits from a common
13 fund recovery, also accept their fair *pro rata* responsibility to contribute towards the attorneys' fees and
14 costs that created the fund in the first place. *Earley v. Sup. Ct.* (2000) 79 Cal.App.4th 1420, 1436. In
15 other words, "[t]hose who benefit from the creation of the fund should share the wealth with the
16 lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (9th
17 Cir. 1994) 19 F.3d 1291, 1300. Based on the above principles, the attorneys' fees to be awarded are to
18 be calculated based on a percentage of the entire settlement fund. *Boeing Co.*, 444 U.S. 478; *Six (6)*
19 *Mexican Workers v. Az. Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311. Accordingly, the
20 percentage-of-the-fund approach is appropriate here and supports Class Counsel's request for an award
21 of a percentage of the common fund (i.e., 1/3 of the \$285,000 GSA).

22 In addition to spreading the litigation costs among all the beneficiaries, common fund fee
23 awards are essential to furthering the important societal goal of attracting competent counsel to handle
24 these often-complex contingency cases "who will be more willing to undertake and diligently prosecute
25 proper litigation for the protection or recovery of the fund if [attorneys are] assured that [they] will be
26 promptly and directly compensated should [their] efforts be successful." *Melendres v. City of L.A.*
27 (1975) 45 Cal.App.3d 267, 273. "Given the unique reliance of our legal system on private litigants to
28 enforce substantive provisions of law through class and derivative actions, attorneys providing the

1 essential enforcement services must be provided incentives roughly comparable to those negotiated in
2 the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for
3 defendants to increase injurious behavior.” *Lealao*, 82 Cal.App.4th 47. Without such incentives,
4 meritorious class actions such as this would not be brought and thus the private enforcement of
5 important statutory rights would be undermined.

6 California courts further recognize “the amount of attorney fees typically negotiated in
7 comparable litigation should be considered in the assessment of a reasonable fee in representative
8 actions in which a fee agreement is impossible.” *Ibid*. By doing so, courts can ensure that the awarded
9 fee approximates the legal marketplace by being comparable to what clients and counsel would have
10 likely negotiated at the outset of the matter. Notably, the typical contingency fee contract ranges from
11 20 to 40 percent of the total recovery—leaving Plaintiffs’ requested attorneys’ fee in the middle bottom
12 of the spectrum. *Chavez*, 162 Cal.App.4th 64-65.

13 Here, Plaintiff’s requested fee award constitutes a fair charge in light of the substantial
14 monetary relief obtained for the Class. Because each Class Member who did not opt-out (which is *all*
15 121) will receive compensation, equity requires each also contribute to the attorneys’ fees that netted
16 them this positive result. Moreover, the requested fee is equal to or less than 1) typical fees awarded in
17 small wage and hour class actions like this one, 2) most contingency fee retainer agreements, and 3) the
18 fee that Class Counsel would have expected if they had negotiated individual retainer agreements with
19 each Class Member. *Ibid.*; see also JDB Dec. ¶ 110. The requested award ensures that Class Counsel
20 receives an appropriate fee for the actual benefit conferred on the Class, particularly where it would be
21 impossible *ex ante* to enter a fair fee arrangement with each Class Member.

22 **5. The Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.**

23 The California Supreme Court confers upon trial courts discretion to award fees as a percentage
24 of the common fund, with or without conducting a lodestar cross-check. *Laffitte*, 1 Cal.5th 506 (“We
25 further hold that trial courts have discretion to forgo a lodestar cross-check and use other means to
26 evaluate the reasonableness of a requested percentage fee.”). Although not required, courts may
27 perform a “lodestar cross-check” as a means of determining whether the requested percentage is
28 reasonable in relation to the amount and value of the time expended by counsel. See *Lealao*, 82

1 Cal.App.4th 47-50. The goal under either the percentage or lodestar approach is to award a reasonable
2 fee to compensate counsel for their efforts.⁵ *Laffitte*, 1 Cal.5th 504.

3 This cross-check starts with the basic lodestar calculation but may then “evaluate the lodestar as
4 a percentage of the recovery and adjust it accordingly if it can be determined that the lodestar is
5 significantly different from the range of percentage fees freely negotiated in comparable litigation.”
6 *Lealao*, 82 Cal.App.4th 821. Under the first step of the cross-check, the “lodestar” figure is calculated
7 by multiplying “the number of hours [the prevailing party] reasonably expended on the litigation [] by
8 a reasonable hourly rate.” See *Hensley v. Eckerhart* (1983) 461 U.S. 424, 433; *Press v. Lucky Stores,*
9 *Inc.* (1983) 34 Cal.3d 311, 322.

10 Class Counsel, to date, have expended more than 220 hours to bring this settlement to the brink
11 of finalization (224.4). These hours reflect time reasonably spent litigating this case, which Class
12 Counsel sought to efficiently manage, staff, assign, and avoid duplication of effort. JDB Dec. ¶¶ 111-
13 112, Exh. 4. Class Counsel will spend further time preparing for and attending the Final Approval
14 Hearing, overseeing the administration of the Settlement, and reporting to the Court. *Id.* ¶ 117. Class
15 Counsel’s customary hourly rate in plaintiff’s employment class action cases ranges from 878/hr
16 (shareholder with 11 years’ experience litigating plaintiff’s employment cases) to \$1057/hr (senior
17 partner with nearly 40 years of experience) and have been approved by numerous courts across the
18 state. *Id.* ¶¶ 113, 123.^{6,7} Applying the appropriate hourly rates to the number of hours worked yields a
19

20
21 ⁵ The common fund method is a better fit for this situation due to the creation of the GSA to benefit the Class and its
22 encouragement of better incentives regarding attorney billing practices that actually serve a plaintiff class. Courts have also
23 acknowledged the merits of awarding attorneys’ fees under the common fund approach “[b]ecause the benefit to the class is
24 easily quantified in common-fund settlements” and it avoids the “often more time-consuming task of calculating the
25 lodestar.” *In re Bluetooth v. Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942; *Staton v. Boeing Co.* (9th Cir.
26 2003) 327 F.3d 938, 967; see also *Elliot v. Rolling Frito-Lay Sales, LP* (C.D. Cal. 2014) 2014 WL 2761316 at *9 (“There
27 are significant benefits to the percentage approach, including consistency with contingency fee calculations in the private
28 market, aligning the lawyers’ interests with achieving the highest award for the class members, and reducing the burden on
the courts that a complex lodestar calculation requires”).

25 ⁶These rates are based upon the Adjusted Laffey Matrix for the District of Colombia, a matrix that has been used by
26 California district courts in determining reasonable hourly rates. *Chanel, Inc. v. Doan* (N.D. Cal. 2007) 2007 WL 781976
27 *6-7; *Garnes v. Barnhardt* (N.D. Cal. 2006) 2006 WL 249522 *7; *Viveros v. Donahoe* (C.D. Cal. 2013) 2013 WL 1224848,
28 *5-6. Moreover, the prevailing rate is to be determined with respect to the forum in which the court sits, which in this case
is the Northern California/Sacramento area. *Sirrod v. Dir., OWCP* (9th Cir. 2015) 809 F.3d 1082, 1086. Similar and higher
rates are commonly approved in the Northern California/Sacramento region. See e.g., *In re Magsafe Apple Power Adapter*
Litig. (N.D. Cal. 2015) 2015 WL 428105 * 12.

⁷ Calculating the lodestar using Class’s Counsel’s current rates is appropriate given the deferred nature of counsel’s
compensation. See *LeBlanc-Sternberg v. Fletcher* (2d Cir. 1998) 143 F.3d 748, 764 (“[C]urrent rates, rather than historical

1 lodestar of \$197,023.20—more than double the amount Class Counsel seeks to recoup. This
2 reasonable lodestar is supported by detailed and contemporaneous billing records maintained by Class
3 Counsel. Summaries of these billing records are attached to and described in Class Counsel’s
4 declaration for the Court’s review. JDB Dec. ¶¶ 114-116, Ex. 4.

5 Under the second step of the analysis, the reasonableness of the requested fee award is
6 confirmed by the application of a modest multiplier. In wage and hour actions, California and Ninth
7 Circuit courts both approve reasonable multipliers on the class counsel’s lodestar, which range from 2
8 to 4 times, to reward counsel for accepting the contingent risk of the litigation or obtaining excellent
9 results. See, e.g., *Laffitte*, 1 Cal.5th 506 (approving one-third fee award with multiplier between 2.03
10 and 2.13); see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (noting that
11 multipliers can range from 2 to 4 or higher); *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155
12 Cal.App.3d 465, 479-481 (affirming multiplier of 12).

13 Where Class Counsel are able to obtain a settlement prior to overcoming certain hurdles, such
14 as class and collective certification motions, courts recognize they should not be penalized by use of a
15 straight lodestar in determining the reasonableness of requested fees. See *Vizcaino*, 290 F.3d 1050 n.5
16 (“We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a case
17 quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for
18 class members in need of immediate relief.”); *In Re Activision Secs. Litig.* (N.D. Cal. 1989) 723
19 F.Supp. 1373, 1378 (noting “Where attorneys must depend on a lodestar approach there is little
20 incentive to arrive at an early settlement.”). Here, a multiplier of *less than one* (0.49) is required to get
21 to the \$95,000 in fees requested. This is well below the “3-4 range [that] are common in lodestar
22 awards for lengthy and complex class action litigation” (*Van Vranken v. Atlantic Richfield Co.* (C.D.
23 Cal. 1995) 901 F.Supp. 294, 298) and well below within the 1.9 to 5.1 typically approved (4 NEWBERG
24 ON CLASS ACTIONS § 14.7). The fees requested are entirely reasonable. See *Carlin v. DairyAmerica,*
25 *Inc.* (E.D. Cal. 2019) 380 F.Supp.3d 998, 1023 (recognizing that a negative multiplier “strongly”
26
27

28 rates, should be applied in order to compensate for the delay in payment”) (citing *Missouri v. Jenkins* (1989) 491 U.S.
274, 283-84); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1305.

1 supports the reasonableness of a fee request). Because the lodestar cross-check confirms the common
2 fund fee request is reasonable and appropriate, it should be approved.

3 **C. Class Counsel's Out-of-Pocket Expenses Are Reasonable.**

4 The Settlement allows Class Counsel to request reimbursement of up to \$15,000 for out-of-
5 pocket expenses incurred during this litigation. Reimbursement of these expenses is appropriate for the
6 same reason attorneys' fees should be paid out of the fund: all beneficiaries should bear their fair share
7 of the costs of the litigation that counsel traditionally bill to paying clients. See *Serrano*, 20 Cal.3d 35
8 (common fund doctrine permits class counsel to recover attorneys' fees and costs); *Rider v. Cty. of San*
9 *Diego* (1992) 11 Cal.App.4th 1410, 1423 n.6; *Earley*, 79 Cal.App.4th 1436; see also *Harris v.*
10 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.

11 To date, Class Counsel has incurred *more* than \$15,000 in actual out-of-pocket expenses which
12 consist of routine litigation costs typically charged to fee-paying clients, including filing fees, copying,
13 postage, the cost of the mediator, expert expenses, etc. JDB Dec. ¶¶ 119-121, Exhibit 4. These costs
14 were necessarily incurred, are reasonable in relation to the size and scope of the case, and should be
15 reimbursed.

16 **D. The Enhancement Payment to Owens Is Reasonable.**

17 The Court should also approve the \$10,000 enhancement payment to Plaintiff because it is just,
18 fair, and reasonable. Courts regularly approve incentive awards so that class representatives can "be
19 compensated for the expense or risk they have incurred in conferring a benefit on other members of the
20 class." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394 (quoting *Clark v.*
21 *Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 806; see also *Bell v. Farmers Ins. Exch.*
22 (2004) 115 Cal.App.4th 715, 725-26 (upholding service payments to class representatives); *Munoz v.*
23 *BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App.4th 399, 412 (upholding incentive awards to
24 plaintiffs that, when added to their individual recoveries, amounted to more than twice as much as the
25 average payment to class members).

26 In deciding whether to approve an incentive award, a court should consider: "(1) the risk to the
27 class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal
28 difficulty encountered by the class representative; (3) the amount of time and effort spent by the class

1 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed
2 by the class representative as a result of the litigation.” *In re Cellphone Fee Termination Cases*, 186
3 Cal.App.4th 1394-95 (internal quotation marks omitted); see also *Van Vranken*, 901 F.Supp. 299
4 (applying similar factors to determine reasonableness of service payments). All of the aforementioned
5 factors support the Enhancement Payment requested here. The \$10,000 payment sought by Plaintiff is
6 (a) in line with those commonly awarded by courts in similar wage and hour class actions, (b) just 3.5%
7 of the GSA, and (c) fair, reasonable and appropriate under the circumstances. See *Bates v. Michigan*
8 *Logistics, Inc.* (C.D. Cal. 2023) 2023 WL 2440244 * 9 (awarding \$10,000 service payment in
9 connection with \$1.7 million settlement with no objectors); *Deluca v. Farmers Ins. Exchange* (N.D.
10 Cal. 2020) 2020 WL 5071700 * 8 (approving \$10,000 service payments and collecting cases);
11 *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 267-268 (awarding Plaintiff
12 \$15,000 service payment in connection with \$1 million settlement).

13 Here, Plaintiff took on substantial risk in bringing this class action and exposed herself to
14 notoriety and personal difficulties from serving as the named Plaintiff in this lawsuit. First, as a current
15 employee of Fidelity during much of this litigation (including presently), Plaintiff exposed herself to a
16 heightened risk of possible retaliation by serving as the named plaintiff. See *Staton*, 327 F.3d 977;
17 *Bato v. Laboratory Corp. of Am. Holdings* (C.D. Cal. 2011) 2011 WL 13412376 * 3, 18 (recognizing
18 that fear of workplace retaliation is a factor that justifies an incentive award). Additionally, Plaintiff
19 bore the significant financial risk of Defendant’s costs in the event she lost at trial. This financial risk,
20 in a complex employment class action involving 121 current and former employees, could easily total
21 tens of thousands of dollars. Plaintiff also risked damage to her professional reputation since it is well
22 established that plaintiffs in the employment context “face[] the risk that new employers would learn
23 that they were class representatives in a lawsuit against their former employer and take adverse action
24 against them. Moreover, each time they change jobs, they will risk retaliation in the hiring process.”
25 *Asare v. Change Grp. of N.Y., Inc.* (S.D.N.Y. 2013) 2013 WL 6144764 *15; see also *Bellinghausen*,
26 306 F.R.D. 267.

27 Plaintiff, who worked diligently with Class Counsel throughout this entire litigation, including
28 participating in formal discovery and the Parties’ informal information exchange, taking numerous calls

1 with Class Counsel, and participating telephonically in the mediation, should be rewarded for taking the
2 initiative to pursue these claims on behalf of her coworkers, and for her role in reaching a substantial
3 settlement providing for valuable relief to the Class. Plaintiff's commitment is further underscored by
4 the fact that, had the Settlement not been reached, her participation may well have been required for
5 several more years. JDB Dec. ¶¶ 102-106; Declaration of Samantha Owens in Support of Motion for
6 Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Enhancement
7 Award ("Owens Dec.") ¶¶ 12-16. Additionally, Plaintiff receives no special treatment under the terms
8 of the Settlement with respect to the calculation of her individual award, but is the *only* individual
9 executing a full and complete waiver (including Cal. Civ. Code § 1542) and releasing *any and all*
10 potential claims against Defendant. SA ¶ 45. Moreover, by actively pursuing this action, Plaintiff
11 furthered the twin California public policy goals of enforcing the Labor Code and making appropriate
12 use of the class action device. See *Sav-on Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 340.

13 The reasonableness of the requested enhancement payment is further underscored as it
14 represents just 3.5% of the GSA and ***not one Class Member objected to it.*** Admin. Dec. ¶¶ 8-9. The
15 requested enhancement payment is also consistent with awards approved by courts in other similar
16 wage and hour cases.⁸ Accordingly, all of the aforementioned factors support approval of the \$10,000
17 enhancement payment.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court should grant final approval of the Parties' proposed class
20 action Settlement, award Class Counsel attorneys' fees in the amount of \$95,000, costs of \$15,000, and
21 an award of \$10,000 to Plaintiff for her service as Class Representative.

22 **DATED:** April 2, 2024

MAYALL HURLEY P.C.

By Jenny D. Baysinger
JENNY D. BAYSINGER

25 ⁸ See e.g. *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award each to
26 representatives in meal break class action); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493
27 (approving service awards of \$10,000 each from a \$300,000 settlement in wage and hour class action); *Castellanos v. Pepsi*
28 *Bottling Group, Inc.* (Alameda Cnty. Sup. Ct., March 11, 2010) No. RG07332684 (approving incentive award of \$12,500 in
wage and hour class action); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. 2008) 2008 WL 4473183 *2 (approving
"\$25,000 incentive award for each Class Representative" in wage and hour case); *Garner v. State Farm Mut. Auto. Ins. Co.*
(N.D. Cal. 2010) 2010 WL 1687832 *17 n.8 ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive
awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class").

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 112 S. Church Street, Lodi, CA 95240, that is located in the county where the mailing and/or delivery below took place.

On April 2, 2024, I served the following document:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE ENHANCMENT PAYMENT

addressed to:

Curtis A. Graham
LITTLER MENDELSON P.C.
633 West 5th Street, 63rd Floor
Los Angeles, California 90071
Email: cagraham@littler.com
Sarah Fleming
safleming@littler.com
Gina Camacho
gcamacho@littler.com

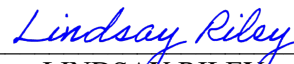
Angela J. Rafter, Esq.
LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, California 94104
Email: arafter@littler.com

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 2, 2024, at Lodi, California.


LINDSAY RILEY