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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10
11 COUNTY OF ALAMEDA
12

13 JUAN HERRADA, on behalf of himself
14 and others similarly situated and the
15 general public,

16 Plaintiff,

17 vs.

18 McWANE, INC. dba AB&I FOUNDRY
19 and DOES 1 through 500; inclusive,

20 Defendants.
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Case No. RG21103064

CLASS ACTION - COMPLEX

[Assigned for All Purposes to the Hon. Evelio
Grillo-Dept. 21]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT
OF COSTS, AND PLAINTIFF'S
ENHANCEMENT**

Hearing Date: October 12, 2022
Hearing Time: 10:00 A.M.
Reservation ID: 637500992179
Dept.: 21
Action Filed: June 23, 2021

1 **NOTICE OF MOTION**

2 TO EACH PARTY AND TO COUNSEL OF RECORD FOR EACH PARTY: NOTICE
3 IS HEREBY GIVEN that on October 12, 2022, at 10:00 AM, or as soon thereafter as counsel
4 may be heard, Plaintiff Juan Herrada will move for an order granting the following: (1)
5 \$600,000 in attorneys' fees for Class Counsel (30% of the gross settlement amount); (2)
6 \$11,903.48 in accrued litigation costs for Class Counsel; (3) \$4,000-\$7,500 in settlement
7 administration fees for the Settlement Administrator; (4) a representative enhancement award to
8 Plaintiff equaling \$5,000; and (5) a \$25,000 PAGA allocation.

9 This motion will be made and based upon: (1) this notice of motion; (2) the
10 memorandum of points and authorities in support thereof; (3) the declaration of Arlo Garcia
11 Uriarte and the exhibits attached thereto, all of which are filed and served concurrently
12 herewith; as well as (4) the records, pleadings, and papers on file in this action, and upon such
13 other matters as may be presented at the time of hearing on this motion.

14
15
16 Dated: September 19, 2022



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18 _____
19 Arlo Garcia Uriarte
20 Liberation Law Group, P.C.
21 Attorneys for Plaintiff
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I. INTRODUCTION

Plaintiff Juan Herrada (hereinafter “Plaintiff”) and Class Counsel¹ have secured \$2,000,000 in non-reversionary settlement funds on behalf of the Settlement Class². The settlement received preliminary approval on July 20, 2022. On August 10, 2022, Simpluris, Inc. (hereinafter “Settlement Administrator”) mailed the Court-approved notice forms to putative Settlement Class members (hereinafter “SCM”). Polites Dec.³ ¶ 6. The response deadline⁴ is September 24, 2022. *Id.* The notice process has progressed very smoothly thus far. Not only has nearly every single notice packet been delivered (285 out of 286), but pivotally, no one has objected, and no one has requested exclusion. *Id.* at ¶ 5, 9, and 11.

Now, Plaintiff requests the following deductions from the gross settlement fund through the instant motion; all are permitted under the Agreement⁵: (1) \$600,000 in attorneys’ fees for Class Counsel (30% of the gross settlement amount); (2) \$11,903.48 in accrued litigation costs for Class Counsel; (3) \$4,000-\$7,500⁶ in settlement administration fees for the Settlement

¹ “Class Counsel” refers to Arlo Garcia Uriarte of Liberation Law Group, P.C., as appointed by the Court in its order granting preliminary approval.

² The Court conditionally certified the following “Settlement Class” as part of its preliminary approval order: “all current and former California non-exempt hourly employees of Defendant who worked at any time from June 23, 2017, through July 20, 2022 (“the Class Period”). Excluded from the Settlement Class are employees who submit a timely and valid Request for Exclusion (as defined by the Agreement, § 12(e)).”

³ “Polites Dec.” means the declaration of Cassandra Polites. Ms. Polites is employed by Simpluris, Inc. as the Project Manager for this settlement administration. Polites Dec. ¶ 1. Her declaration is attached as Exhibit “B” to the Declaration of Arlo Uriarte (hereinafter “Uriarte Dec.”) in support of this motion and Plaintiff’s motion for Final Approval, which is filed concurrently herewith.

⁴ The Notice Period expires in just one week on September 24, 2022. Plaintiff will submit a supplemental declaration with the Settlement Administrator’s final report on September 25, 2022.

⁵ The Joint Stipulation of Class Action Settlement (hereinafter “Agreement” and abbreviated “AGMT”) executed by the Parties is attached to Uriarte Dec. as Exhibit “A”

⁶ Plaintiff provides a range here because the Settlement Administrator provided two different capped-fee bids for two different possible scenarios. As further explained below, a second distribution of checks may be required if ten percent or more of the Net Settlement Amount remains unnegotiated by SCM. Simpluris, Inc. will charge \$4,000 if only one distribution is required, and it will charge \$7,500 if two distributions are required. Polites Dec. ¶ 16.

1 Administrator; (4) a representative enhancement award to Plaintiff equaling \$5,000; and (5) a
2 \$25,000 PAGA allocation (\$18,750 of this allocation must go to the LWDA, per Cal. Lab. Code
3 § 2699(i), while the remainder is for SCM who worked during the PAGA Period). AGMT ¶
4 12(d). All remaining funds (*i.e.*, the “Net Settlement Fund,” sometimes abbreviated “NSF”) are
5 to be automatically distributed *pro rata* to SCM because claims are not required. AGMT ¶
6 12(e).

7 Plaintiff’s attorney’s fees and costs request is well supported by relevant case law as
8 detailed herein. Plaintiff requests 30% of the gross settlement amount on behalf of Class
9 Counsel for two main reasons: (1) the positive results achieved through a high level of legal
10 skill and experience; and, (2) in recognition of the risks undertaken due to the contingent nature
11 of the representation.

12 Plaintiff and Class Counsel are confident that the settlement represents a very positive
13 result for SCM due to the ensuing factors. SCM are set to recover significant cash payments,
14 approximately \$4,744.22⁷ each on average. Polites Dec. ¶ 14. This monetary recovery when
15 coupled with a favorable release (SCM are only releasing the claims or causes of action that
16 were raised in Plaintiff’s complaint or those sufficiently related thereto) suggests that SCM
17 have been very well represented. (*See*, AGMT ¶ 12(k)(ii) for full release language).
18 Additionally, further supporting the requested fee, Class Counsel accepted Plaintiff’s case and
19 strived to help SCM on a contingent basis, with no guarantee of fee recovery or cost
20 reimbursement, no matter how time-consuming or resource-draining the litigation might
21 ultimately be. Courts have recognized the importance of common fund fee awards under these
22 circumstances because they encourage attorneys to fight for wronged plaintiffs who cannot
23 afford hourly charges.

24 Lastly, Plaintiff requests enhancement to be compensated for his hard work advocating
25 on behalf of the Settlement Class and for executing a general release, which includes a
26 California Code of Civil Procedure § 1542 waiver (the Settlement Class release does not). (*See*,

27 ⁷ This is calculated by assuming a Net Settlement Fund of \$1,356,846.52 (gross settlement amount
28 minus Plaintiff’s requested deductions) and dividing it by two hundred eighty-six (286) possible SCM.

1 AGMT ¶ 12(k)(i) for Plaintiff’s release language). For all the reasons discussed herein, Plaintiff
2 respectfully urges the Court to approve the requested awards and cost reimbursements.

3 II. CASE BACKGROUND

4 Plaintiff was employed by Defendant first from 2006 to 2009 and later from 2014 until
5 April 2021. Plaintiff held different positions for Defendant throughout his employment tenures;
6 his last job was as an apprentice in the mechanical department where he repaired and
7 maintained various machinery found in Defendant’s foundry.

8 Plaintiff initiated this lawsuit on June 23, 2021. The Complaint contains the following
9 causes of action: (1) unpaid wages; (2) unpaid overtime compensation; (3) meal period
10 violations; (4) rest break violations; (5) wage statement violations; (6) waiting time penalties;
11 (7) civil penalties under the Private Attorney General Act (“PAGA”), Cal. Lab. Code §§ 2698,
12 et seq.; and (8) unfair competition (Cal. Bus. & Prof. Code § 17200). Causes of action five
13 through eight are ancillary to causes of action one through four (causes of action one through
14 four are referred to herein as “Plaintiff’s Core Claims”).

15 The Parties agreed to this proposed settlement after extensive arms-length negotiations
16 during an in-person mediation session with Jeffrey A. Ross, which occurred on March 9, 2022.
17 Uriarte Dec. ¶ 3. Mr. Ross is a very well-regarded mediator with significant employment law
18 class and representative action experience. *Id.* The Parties agreed to mediate before exchanging
19 and responding to formal discovery requests. Uriarte Dec. ¶ 4. The impetus behind this
20 approach was to conserve time (an efficient settlement gets putative settlement class members
21 recompensed as quickly as possible) and resources (less money spent on litigation likely means
22 more money available to fund a settlement). *Id.* Plaintiff would only agree to mediate prior to
23 formal discovery if Defendant would provide enough information in advance of the session so
24 that Plaintiff’s negotiations could be well informed. *Id.*

25 In or around November 2021, the Parties met and conferred on an informal information
26 exchange so that Plaintiff and his counsel could thoroughly investigate the factual and legal
27 basis of Plaintiff’s putative class claims. *Id.* Defendant provided: (1) anonymized putative class
28 member timesheets; (2) a corresponding summary of payroll records; (3) a putative class list

1 with names and contact information pursuant to the Protective Order entered in this case and
2 pursuant to the Court’s Order of February 8, 2022; (4) an employment handbook and the two
3 CBA agreements applicable to the period of June 23, 2017, through the date of the mediation;
4 and (5) numerical data regarding the size of the class and the number of workweeks worked by
5 the putative class members from June 23, 2017, forward. Uriarte Dec. ¶ 5; AGMT ¶ 4.

6 On July 20, 2022, the Court granted preliminary approval of the proposed settlement.
7 Plaintiff now moves for final approval and an award of attorney’s fees, costs, and plaintiff’s
8 enhancement.

9 III. PLAINTIFF’S REQUESTED DEDUCTIONS SHOULD BE GRANTED

10 A. Class Counsel Appropriately Seeks to Recover Fees from the Common Fund

11 1. Legal Standard for Attorneys’ Fee Awards

12 The U.S. Supreme Court has recognized that “a lawyer who recovers a common fund for
13 the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee
14 from the fund as a whole.” *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord*,
15 *Serrano v. Priest* [Serrano III] (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to
16 award attorneys’ fees and costs when a litigation proceeding in a representative capacity secures
17 a substantial benefit). The purpose of the “common fund doctrine” is not only to reward
18 effective legal advocacy but to “spread litigation costs proportionally among all of the
19 beneficiaries” preventing unjust enrichment. *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769
20 (9th Cir. 1977).

21 In *Laffitte v. Robert Half Internat., Inc.*, the California Supreme Court “join[ed] the
22 overwhelming majority of federal and state courts in holding that when class action litigation
23 establishes a monetary fund for the benefit of the class members, and the trial court in its
24 equitable powers awards class counsel a fee out of that fund, the court may determine the
25 amount of a reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte*
26 *v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 503.

27 Our state’s Supreme Court highlighted some of the many advantages of the percentage
28 method: “relative ease of calculation, alignment of incentives between counsel and the class, a

1 better approximation of market conditions in a contingency case, and the encouragement it
2 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.”
3 *Id.* In addition to its apparent endorsement of the percentage fee method, the *Laffitte* Court
4 clarified that it does not “perceive an abuse of discretion in [a] court’s decision to double check
5 the reasonableness of the percentage fee through a lodestar calculation.” *Id.* at 504. The *Laffitte*
6 Court regards the lodestar cross-check as “a mechanism for bringing an objective measure of the
7 work performed into the calculation of a reasonable attorney fee.” *Id.*

8 In Plaintiff’s view, *Lafitte* stands for the proposition that a trial judge may rely on his or
9 her discretion and utilize either the percentage method, the lodestar method, or both to calculate
10 a reasonable attorneys’ fee. Furthermore, should a lodestar crosscheck be elected, the trial court
11 does not abuse its discretion whether it chooses to “perform[] the cross-check using counsel
12 declarations summarizing overall time spent” or opts to do a more detailed analysis of daily
13 time sheets. *Id.* at 505. Indeed, “[t]he choice of a fee calculation method is generally one within
14 the discretion of the trial court, the goal...being the award of a reasonable fee to compensate
15 counsel for their efforts.” *Id.* at 504.

16 *Laffitte* affirmed a fee award representing 33 and 1/3 percent of the common fund. *Id.* at
17 506. And, this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As
18 the Court held, only when the multiplier is “extraordinarily high or low [should] the trial court []
19 consider whether the percentage method should be adjusted so as to bring the imputed multiplier
20 within a justifiable range.” *Id.* at 505.

21 2. Common Fund Method Should Be Applied Here

22 The common fund doctrine should be applied to this settlement because the following
23 conditions call for its application: (1) the class of beneficiaries is sufficiently identifiable; (2)
24 the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to
25 those benefiting. *Paul, Johnson, Alston & Hunt v. Grawly* (9th Cir. 1989) 886 F.2d 268, 271.
26 *Accord, Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 30-31. Courts find these
27 conditions “easily met” when “each member of a certified class has an undisputed and
28

1 mathematically ascertainable claim to part of a lump-sum recovered on his [or her] behalf.”
2 *Paul, Johnson, Alston & Hunt, supra.*

3 Here, there is a certified settlement class that has a mathematically ascertainable claim to
4 part of a lump-sum recovery. The class of beneficiaries is readily identifiable (SCM have been
5 identified through an examination Defendant’s business records provided to the Settlement
6 Administrator (Polites Dec. ¶ 5.)), the benefits are easily traceable (monetary payments to SCM
7 are calculated based upon the specific formula identified in the Agreement, AGMT ¶ 12(e)(ii)),
8 and lastly, the fee can be shifted with exactitude because Class Counsel is requesting a specific
9 percentage of a gross amount that will be fully distributed to the Class after court-approved
10 deductions.

11 Furthermore, the common fund method is especially appropriate because Class Counsel
12 should be rewarded for attaining a favorable settlement quickly and efficiently. The prompt
13 payment of wages is of paramount importance for hard working, hourly-paid employees. It is
14 likely that SCM depend on each and every paycheck to support themselves and possibly their
15 families. “Delay of payment or loss of wages results in deprivation of the necessities of life,
16 [and it may lead workers to suffer the] inability to meet just obligations to others, and, in many
17 cases may make the wage-earner a charge upon the public.” *Kerr's Catering Service v.*
18 *Department of Industrial Relations* (Cal. 1962) 57 Cal. 2d 319, 326 (internal quotations
19 omitted) quoting, *Moore v. Indian Spring Channel Gold Mining Co.* (Cal. App. 1918) 37 Cal.
20 App. 370, 379.

21 Class Counsel is sensitive to the aforementioned concerns and worked carefully to
22 ensure that SCM could receive their share of a reasonable settlement sooner rather than later.
23 SCM are well served by the instant settlement not only because of the monetary recovery and
24 the favorable release but because of its relative quickness. The matter was filed just over a year
25 ago in June 2021. Complex cases can easily go on for several years. Final Approval here will
26 lead SCM to receive their individual settlement shares about a year and a half after Plaintiff
27 filed his Complaint.

28 **B. 30% of the Common Fund is a Reasonable Fee Award**

1 Once a court determines that the common fund doctrine is applicable, then that court
2 must assign a reasonable percentage amount for the fee award. Class Counsel seeks 30% of the
3 common fund because of the positive results achieved, in recognition of the risks associated
4 with contingency fee representation, and because it is similar to Class Counsel's own
5 contingency fee retainers and similar percentage fee awards awarded in this locality. Uriarte
6 Dec. ¶ 2.

7 1. Excellent Results Were Achieved

8 Plaintiff and Class Counsel worked diligently to secure an all-cash, non-reversionary
9 gross settlement fund totaling \$2,000,000. It will provide a significant individual recovery for
10 SCM. Each will receive approximately \$4,744.22 on average. Polites Dec. ¶ 14. Class Counsel
11 submits that this recovery is a favorable result when you consider the strengths and weaknesses
12 of the claims at hand, Defendant's potential defenses, the challenges of getting a class certified,
13 the risk of keeping it certified after post-certification discovery, the difficulty of formulating a
14 manageable trial plan that the Court deems acceptable, prevailing at trial, and defending any
15 potential appeals. Uriarte Dec. ¶ 6.

16 Additionally, Class Member reaction has been very positive. To date, the Settlement
17 Administrator has received zero objections and zero requests for exclusions. Polites Dec. ¶¶ 9,
18 11. This suggests that putative SCM not only have no issue with the settlement but are likely
19 very supportive of it and are eager to collect their individual settlement payments. The fact that
20 there are no objections or opt-outs is a testament to the fairness and reasonableness of the
21 proposed settlement.

22 Risk mitigation is another reason why the result achieved is very positive. Plaintiff
23 would face serious challenges ahead should litigation continue. Namely, regarding his unpaid
24 work claim, Plaintiff must show that Defendant's failure to accurately track time worked
25 commonly led putative class members to work without pay. Defendant maintains that it credits
26 employees with their assigned shift hours (whether they arrive late, leave early, or take extra
27 meal/rest period time); the Foundry sees this as a floor for the payment of wages. Defendant
28 further maintains that supervisors, who are present on the production floor, record any overtime

1 for their department as it occurs. Defendant further argues that supervisors are trained to round-
2 up only, not down, and to credit employees with any overtime they report and not to dispute
3 employees' assertions of time worked.

4 Defendant's predictable denial of liability notwithstanding, this situation presents an
5 unenviable class certification challenge due to manageability requirements. Specifically,
6 Plaintiff would have the onerous task of convincing the Court that he has a manageable trial
7 plan as to unpaid, off-the-clock work violations when dealing with nearly three-hundred
8 employees (likely more if the litigation drags on) who worked in different departments with
9 different supervisors. It would be extremely difficult to establish liability without attaining the
10 right representative testimony from groups of employees in these distinct departments. The
11 Court may liken this to several mini-trials and decline to engage in such a complicated liability
12 determination for all of Defendant's hourly workers. *See, Duran v. U.S. Bank Nat'l Ass'n* (2014)
13 59 Cal. 4th 1, 33 ("In general, when a trial plan incorporates representative testimony and
14 random sampling, a preliminary assessment should be done to determine the level of variability
15 in the class...If the variability is too great, individual issues are more likely to swamp common
16 ones and render the class action unmanageable").

17 Lastly, regarding risk mitigation, Plaintiff realizes that meal and rest period claims are
18 notoriously difficult to certify and defend from later decertification attempts. California courts
19 have been reluctant to certify class actions unless an employer's uniform written policy or
20 consistent practice (the latter of course being much more difficult to prove) violates wage and
21 hour laws.⁸ Should this case proceed, Defendant would likely argue that Plaintiff's meal and
22 rest period liability theories are not susceptible to common proof because any issues suffered by
23 its employees require individualized inquires, making Plaintiff's claims inappropriate for class
24

25
26 ⁸ *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1033; *Arenas v. El Torito Restaurants,*
27 *Inc.* (2010) 183 Cal.App.4th 723, 734; *Dunbar v. Albertson's, Inc.* (2006) 141 Cal.App.4th 1422, 1431.
28 *See also, Soderstedt v. CBIZ Southern California (2011) LLC* 197 Cal.App.4th 133, 153-154
(certification denied due to variations in how the employer's policies were implemented with different
employees).

1 treatment. Numerous courts have been receptive to this argument⁹ because the reasons why a
2 break was not provided may differ from employee to employee. Notably, Defendant secured
3 declarations from fifty-one (51) SCM who disagree with Plaintiff's allegations and instead
4 believe they were allotted adequate break times away from work. Uriarte Dec. ¶ 3. Plaintiff and
5 Class Counsel have achieved an important success on behalf of the Settlement Class in the face
6 of the aforementioned potential challenges and others.

7 2. The Case Was Accepted on Pure Contingency

8 Another element that supports the requested fee award is the contingent nature of the
9 representation. Uriarte Dec. ¶ 2. Class Counsel undertook this matter on pure contingency. He
10 nor his firm will be rewarded or reimbursed unless a success is achieved, and fees/costs are
11 awarded. *Id.* "A contingent fee must be higher than a fee for the same legal services paid as they
12 are performed. The contingent fee compensates the lawyer not only for the legal services he
13 renders but for the loan of those services. A lawyer who both bears the risk of not being paid
14 and provides legal services is not receiving the fair market value of his work if he is paid only
15 for the second of these functions. If he is paid no more, competent counsel will be reluctant to
16 accept fee award cases." *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 823 (internal quotations
17 omitted).

18 Consistent with the above, Class Counsel should be rewarded for his willingness to
19 accept contingency fee cases, especially those that require many hours of work over a span of
20 multiple years like the instant action. This is especially true because contingency fee
21 arrangements allow lawyers to provide legal aid to clients who cannot afford hourly fees. Few,
22 if any, employees pay hourly fees for extensive class action litigations. Class Counsel's class
23

24 ⁹ *Koval v. Pacific Bell Telephone Co.* (2014) 232 Cal.App.4th 1050, 1062-1063 (when an employer has
25 established written policies but plaintiffs allege that company policy is actually something else based on
26 unwritten rules, class treatment is likely inappropriate because of manageability issues); *Mendez v. R &
27 L Carriers, Inc.* (N.D. Cal. Nov. 19, 2011) 2012 U.S. Dist. LEXIS 165221, 44-46 (when claims are
28 based on allegations of an unwritten policy, individual issues will likely predominate unless evidence
can be provided to show that wrongs are susceptible to common proof; the court only certified a segment
of the class); *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 640 (finding individual
issues predominated when plaintiff contended that defendant followed a common unwritten policy of
denying meal and rest breaks).

1 action representatives have never paid hourly fees. Uriarte Dec. ¶ 2. Attorneys should be
2 incentivized to undertake these matters, especially in the employment context, to help empower
3 ill-treated employees with little leverage against powerful employers to ensure that the latter act
4 fairly and appropriately under the law. Therefore, the economic realities of the work at hand
5 should be closely considered.

6 Class Counsel has litigated many contingency fee cases with varying levels of success.
7 While windfalls sometimes occur, they are far from the norm. For example, Class Counsel has
8 received attorneys' fees awards based on a percentage of the settlement fund that were lower
9 than the lodestar amassed by his firm; sometimes, even when litigation is more successful from
10 this perspective, defendants claim financial insolvency and are either unable to or refuse to pay.
11 See, Exhibit "D" to Uriarte Dec. for a table illustrating these occurrences. Percentage fee awards
12 with lodestar multipliers, as requested here, help ameliorate these hardships and encourage
13 lawyers to continue fighting cases that are important but risky because there is no guarantee of
14 payment for services rendered or costs expended.

15 3. The Fee Request is Slightly Less Than Class Counsel's Actual Rate
16 and is Consistent with Previous Local Awards

17 In awarding fees, courts should approximate what counsel could get on the free market
18 for the same services. *Lealao, supra* at 47-48, citing *Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d
19 361, 363 ("When a fee is set by a court rather than by contract, the object is to set it at a level
20 that will approximate what the market would set...The judge, in other words, is trying to mimic
21 the market in legal services."). The requested fee award is justified under this perspective
22 because 33.33% is the contingency fee rate Class Counsel and his firm use in their standard
23 retainer agreements. Uriarte Dec. ¶ 2. The instant fee request is slightly less than that at 30%.

24 Furthermore, the requested fee falls within the range commonly awarded in class action
25 litigation. The upper limit on a reasonable fee award from a common fund is normally 50%,
26 depending on the circumstances of the case. Newberg, Newberg on Class Actions, 4th Ed.,
27 2002, vol. 4, p. 550. Overall, the goal should be to attempt to "award the fee that informed
28 private bargaining, if it were truly possible, might have reached." The following are recent,

1 instructive wage and hour class action or representative action cases (PAGA) where 30% or
2 greater of the common fund was awarded:

3 *Zelko v. Maplebear Inc.*, 2021 Cal. Super. LEXIS 35522 (Alameda County, Superior
4 Court Case No. RG20062046, August 21, 2021) (PAGA settlement where the Court awarded
5 plaintiffs' counsel \$1,791,900 in fees, which amounted to 33% of the gross settlement amount,
6 without a lodestar crosscheck.)

7 *Roberson v. Ctr. for Elders' Independence*, 2021 Cal. Super. LEXIS 32856 (Alameda
8 County, Superior Court Case No. RG18897211, August 5, 2021) (class action seeking relief for
9 unpaid wages, failure to provide meal and rest breaks, and related claims where the Court
10 awarded a 30% contingency fee equaling \$345,000 even though counsel's lodestar was
11 \$270,000, calling 30% of the common fund its "historical benchmark.")

12 *Lacy v. Agro Merchs. Oakland*, 2021 Cal. Super. LEXIS 150810 (Alameda County,
13 Superior Court Case No. RG18909127, April 27, 2021) (wage and hour class action where the
14 Court awarded \$594,000 in attorney's fees, 33.33% of the common fund, without performing a
15 lodestar crosscheck.)

16 *Garza v. Cen-Cal Fire Sys.*, 2021 Cal. Super. LEXIS 16539 (Alameda County, Superior
17 Court Case No. RG20070111, April 27, 2021) (wage and hour class action with a PAGA cause
18 of action as well where the Court awarded 1/3 of the common fund in attorney's fees to class
19 counsel equaling \$116,666.66 despite a lodestar of \$99,692.50.)

20 *Br Ant v. Slidin Door Coman*, 2021 Cal. Super. LEXIS 126185 (Alameda County,
21 Superior Court Case No. RG19022217, March 4, 2021 ("[r]outine wage and hour class action
22 litigation" where class counsel asked for a 35% contingency fee, but the Court found the request
23 excessive and awarded a fee that equaled 1/3 of the common fund or \$116,666.67.)

24 *Thompson v. Ontario 947, Inc.* (San Bernardino County, Superior Court Case No.
25 CIVDS 1604818, Jan. 08, 2019) (PAGA representative action that led to a class settlement;
26 counsel was awarded 35% of the common fund "in light of the substantial risks and significant
27 work undertaken...and the positive results obtained for the class."

1 *Cubillas v. Dav-El Los Angeles* (Los Angeles County, Superior Court Case No.
2 BC427918, June 14, 2018) (wage and hour class action with causes of action nearly identical to
3 the instant action; the court awarded \$1,120,000 in attorneys' fees equaling 40% of the common
4 fund).

5 *Robato v. Dry Bar Holdings, LLC* (San Francisco County Superior Court Case No.
6 CGC-14-540275, April 13, 2016) (class counsel was awarded one-third of the gross settlement
7 amount (\$433,333.33) even though a relatively small lodestar (\$300,965) was submitted; a
8 significant positive multiplier was awarded because of the contingent nature of the
9 representation, the quality of the representation, the benefits obtained for the class, the risk of
10 nonpayment, and other related reasons).

11 **C. Lodestar Crosscheck**

12 While the "percentage of the benefit" method is often endorsed as the best measure for
13 determining a fair fee, courts tend to compare the requested percentage amount to counsel's
14 "lodestar" to cross-check the reasonableness of the award applied for. *E.g., Vizcaino v.*
15 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050. The "lodestar" is calculated by
16 multiplying the number of hours expended on litigation by a reasonable hourly rate. *Ketchum v.*
17 *Moses* (2001) 24 Cal.4th 1122, 1134 .

18 "The reasonable hourly rate is that prevailing in the community for similar work."
19 *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095. Courts in the Bay Area have
20 determined that rates up \$800 are reasonable depending on an attorney's level of experience.
21 *Miguel-Sanchez v. Mesa Packing, LLC*, No. 20-cv-00823-VKD, 2021 U.S. Dist. LEXIS
22 202330, at *29 (N.D. Cal. Oct. 20, 2021); *De Leon v. Ricoh USA, Inc.*, No. 18-cv-03725-JSC,
23 2020 U.S. Dist. LEXIS 56285, at *48 (N.D. Cal. Mar. 31, 2020) *citing, In re Magsafe Apple*
24 *Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 U.S. Dist. LEXIS 11353, at *12 (N.D.
25 Cal. Jan. 30, 2015) ("In the Bay Area, reasonable hourly rates for partners range from \$560 to
26 \$800, for associates from \$285 to \$510, and for paralegals and litigation support staff from \$150
27
28

1 to \$240.") (collecting cases).¹⁰

2 Class Counsel's hourly rate is \$800 per hour. Uriarte Dec. ¶ 9. Hours worked by his
3 team are also part of the lodestar calculation, and they are billed as follows: Class Counsel's
4 staff attorney, Nick Aguilar, is billed at \$500 per hour; his legal assistant, Luiseth Contreras, is
5 billed at \$280 per hour, and his Data Analyst Kristoffer Solomon is billed at \$240 per hour. *Id.*
6 Plaintiff submits these rates are appropriate considering the above individuals' credentials and
7 experience. Uriarte Dec. ¶¶ 9(a)-(c). Plaintiff further submits that these rates are more than
8 reasonable considering the locality and the complex nature of the class action work performed
9 by Class Counsel and under his supervision.

10 Upon accepting a lodestar amount, courts have routinely applied positive or negative
11 multipliers; a positive multiplier is often applied in contingency fee cases, paying attorneys a
12 "premium over their normal hourly rates... to mitigate the risk of nonpayment." *Vizcaino, supra*
13 at 1051. *See also, Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1029 (district courts
14 may upwardly adjust the lodestar amount depending on the "quality of the representation, the
15 benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of
16 nonpayment.")

17 1. Summary of the Work Performed by Class Counsel and his Team

18 Since January 2021, Class Counsel and his team have accrued a lodestar amount of
19 \$227,824. "Table of Hours Worked," attached as Exhibit "C" to Uriarte Dec. Class Counsel
20 submits these litigation hours were necessary to attain the instantly proposed settlement. Uriarte
21 Dec. ¶ 10.

22 To start, Class Counsel and his team conducted a thorough pre-litigation investigation;
23

24 ¹⁰ California courts commonly look to Federal Rule of Civil Procedure ("FRCP") 23 jurisprudence for
25 guidance when adjudicating class action litigation under California Code of Civil Procedure § 382 and
26 California Rule of Court 3.769. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Dunk v. Ford*
27 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01. *See also, Bell v. Farmers Ins. Exchange* (2004) 115
28 Cal.App.4th 715, 740, *citing City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 453 ("the
California Supreme Court has urged trial courts to be procedurally innovative in determining whether to
allow class suits, encouraging them to incorporate procedures from outside sources in particular Rule 23
of the Federal Rules of Civil Procedure") (internal quotations omitted).

1 this included an initial intake and a detailed follow-up intake of Plaintiff plus interviews of
2 several putative class members (contacts provided by Plaintiff) who supported Plaintiff's
3 allegations. Uriarte Dec. ¶ 11. Plaintiff comprehensively explained his potential claims to Class
4 Counsel and presented documents to help corroborate his allegations. *Id.* Relevant documents
5 and intake notes were all reviewed by Class Counsel's team to firm their grasp on all aspects of
6 the case. *Id.* A key pre-litigation goal was to determine whether Plaintiff's potential lawsuit was
7 appropriate for class action or representative action treatment. Class Counsel decided that both
8 were fitting, and he recommended this approach to Plaintiff. *Id.* Plaintiff agreed because he
9 wanted to help as many of his co-workers as possible. *Id.*

10 After engaging in several interviews, gathering documents, researching, and discussing
11 the issues relevant to Defendant's wage and hour policies/practices with Plaintiff, a putative
12 class action complaint with a PAGA cause of action was drafted and eventually filed in June
13 2021. Uriarte Dec. ¶ 12. Defendant answered the Complaint end of August 2021, the substance
14 of which was reviewed by Class Counsel. *Id.*

15 Counsel for the Parties met and conferred in November 2021 in order to prepare a joint
16 case management statement. Uriarte Dec. ¶ 13. This initial meeting led counsel to discuss the
17 possibility of early mediation. *Id.* Class Counsel saw the value in early mediation, assuming
18 Defendant would provide enough information to facilitate well-informed negotiations, and
19 recommended this approach to Plaintiff. *Id.* Class Counsel and his team crafted a pre-mediation
20 informal discovery letter requesting key items from Defendant. *Id.* Class Counsel's efforts led
21 Defendant to produce the following end of January 2022, several weeks prior to the scheduled
22 March 9, 2022, mediation: (1) anonymized putative class member timesheets; (2) a
23 corresponding summary of payroll records; (3) a putative class list with names and contact
24 information pursuant to the Protective Order entered in this case and pursuant to the Court's
25 Order of February 8, 2022; (4) an employment handbook and the two CBA agreements
26 applicable to the period of June 23, 2017, through the date of the mediation; and (5) numerical
27 data regarding the size of the class and the number of workweeks worked by the putative class
28 members from June 23, 2017, forward. *Id.*; AGMT ¶ 4.

1 Class Counsel and his team endeavored to properly analyze Defendant’s informal
2 discovery production. Uriarte Dec. ¶ 14. The employment handbooks and the putative class
3 numerical data provided were carefully reviewed. *Id.* The handbooks were studied to determine
4 if any of Plaintiff’s alleged violations were tied to improper written policy. *Id.* The numerical
5 data was used to better understand the size of the class, the total workweeks at hand, and
6 eventually to create a damages model. *Id.*

7 Class Counsel instructed his data analyst, Kristoffer Solomon, to input all payroll and
8 timekeeping information into a spreadsheet that could be later be used to assess violation rates
9 regarding unpaid work and break compliance. Uriarte Dec. ¶ 15. Mr. Solomon used this
10 spreadsheet to recommend a damages model to Class Counsel; he did this under Class
11 Counsel’s guidance and eventually Class Counsel reviewed and finalized the model prior to
12 mediation. *Id.*

13 Furthermore, prior to mediation, the putative class list with names and contact
14 information was used to attain more information regarding Plaintiff’s allegations and the
15 likelihood of their classwide applicability. Uriarte Dec. ¶ 16. Class Counsel and his team
16 endeavored to call every single person on the list and to interview as many as possible. *Id.* Class
17 Counsel and his team interviewed dozens of SCM but only about one-fourth provided
18 declarations (eight people in total). Uriarte Dec. ¶ 8. Certain interviewees declined to sign
19 declarations because of their status as current employees. *Id.* Interviews and declaration
20 gathering was a time consuming but pivotal process that helped Plaintiff present his claims to
21 the mediator in the most convincing way possible. Uriarte Dec. ¶ 16. Class Counsel routinely
22 conferred with Plaintiff during this time about the information he was receiving from
23 interviewees. *Id.* Plaintiff helped Class Counsel ask the right questions during the interview
24 process. *Id.*

25 Next, Class Counsel worked with his team to draft and finalize Plaintiff’s mediation
26 statement. Uriarte Dec. ¶ 17. The damages model created by Class Counsel and his Data
27 Analyst plus the declarations gathered after interviewing putative class members were the key
28 parts of the statement. *Id.* Strategy sessions with his team and Plaintiff took place prior to

1 mediation where key documents were re-examined, Defendant's mediation statement was
2 discussed at length, and negotiation approaches were discussed in an effort to be as prepared as
3 possible to achieve a success at mediation. *Id.*

4 The mediation between the Parties took place on March 9, 2022, with Jeff Ross. Plaintiff
5 attended the entire mediation with Class Counsel and one of his supporting attorneys. Uriarte
6 Dec. ¶ 3. Mr. Ross managed to settle the matter in principle that day, and the Parties drafted and
7 executed a memorandum of understanding. *Id.* Next, the Parties worked on creating and
8 finalizing the Agreement, a laborious task because the Parties debated its finer points for
9 multiple weeks. Uriarte Dec. ¶ 18. Lastly, Class Counsel moved to working with the settlement
10 administrator and drafting/finalizing all approval papers once the Agreement was completed and
11 signed. *Id.*

12 2. The Positive Multiplier Required is Within an Acceptable Range

13 "Once the court has fixed the lodestar, it may increase or decrease that amount by
14 applying a positive or negative 'multiplier' to take into account a variety of other factors,
15 including the quality of the representation, the novelty and complexity of the issues, the results
16 obtained, and the contingent risk presented." *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App.
17 4th 819, 833, *citing Lealao, supra*, 82 Cal. App. 4th 19, 26. "The purpose of such adjustment is
18 to fix a fee at the fair market value for the particular action. In effect, the court determines,
19 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
20 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market
21 rate for such services." *Id.*

22 Plaintiff requests \$600,000 in attorney's fees, 30% of the gross settlement amount, and
23 Class Counsel's lodestar is \$227,824; the request therefore necessitates a 2.63 multiplier.
24 Plaintiff maintains that the multiplier is appropriate because of the results achieved and the risks
25 undertaken by Class Counsel. As discussed above, counsel should be rewarded for undertaking
26 complex matters like the instant one on pure contingency; aggrieved employees need
27 experienced counsel to help fight for their rights on scales small and large.

1 The requested multiplier or more is commonly awarded in similar cases. *See, e.g.,*
2 *Vizcaino v. Microsoft Corp., supra*, at 1051–1052 and n. 6 (finding that, in approximately 83
3 percent of the cases surveyed by the court, the multiplier was between 1.0 and 4.0 with a “bare
4 majority ... 54% ... in the 1.5—3.0 range; a multiplier of 3.65 was granted here); *Bellinghausen*
5 *v. Tractor Supply Co.* 306 F.R.D. 245, 265 (N.D. Cal. Mar. 19, 2015) (“Multipliers of 1 to 4 are
6 commonly found to be appropriate in complex class action cases.”); *Dyer v. Wells Fargo Bank,*
7 *N.A.* 303 F.R.D. 326, 334 (N.D.Cal. 2014) (2.83 multiplier).

8 **D. The Litigation and Administration Costs Reimbursement Request is**
9 **Fair, Adequate, and Reasonable**

10 An attorney who creates or preserves a common fund is entitled to reimbursement of
11 litigation costs. *Mills v. Elec. Auto-Lite Co.* (1970) 396 U.S. 375, 391-393. This reimbursement
12 is done proportionately by the fund’s beneficiaries. *Id. See also*, Herbert B. Newberg, Attorney
13 Fee Award (1986) § 2.19: “Costs Reimbursement in Common Fund Fee Determinations” at 69.

14 Class Counsel seeks reimbursement for \$11,903.48 in accrued expenses on his own
15 behalf and \$4,000 to \$7,500 on the Settlement Administrator’s behalf (depending on whether
16 one or two distributions are required). *See*, Class Counsel’s Summary of Litigation Expenses
17 attached as Exhibit “E” to Uriarte Dec; Polites Dec. ¶ 16. Class Counsel submits that these
18 expenses were necessary to fund this litigation effort and achieve the proposed settlement.
19 Uriarte Dec. ¶ 10

20 The types of expenses at issue here are of the kind that courts have routinely approved as
21 compensable. Class Counsel has attached an itemized list of expenses; they fall into the
22 following categories: mediation fees, filing fees, copies, postage, research fees, and other
23 miscellaneous expenses. *See*, Exhibit “E” to Uriarte Dec.

24 The amount requested on behalf of the Settlement Administrator is also typical and fair.
25 Simpluris, Inc. has processed the class list from Defendant, made final edits to the submitted
26 forms, mailed out notice forms, setup a telephone customer service line, addressed
27 undeliverable mailings, and used skip-tracing to locate updated addresses. *See generally*, Polites
28 Dec. It has also calculated each Settlement Class members’ estimated share of the settlement

1 and communicated effectively with counsel. Polites Dec. ¶ 4. Assuming the settlement receives
2 final approval, the Settlement Administrator will eventually distribute funds to Settlement Class
3 Members.

4 **E. Plaintiff's Enhancement Request is Fair, Adequate, and Reasonable**

5 Class representative enhancement awards are important because they are multi-
6 purposed: they serve to (1) reward the named plaintiffs for work done on behalf of the class, (2)
7 make up for any potential financial or reputational risks undertaken by plaintiffs in bringing the
8 action, and (3) compensate the named plaintiffs for signing broader releases than the class they
9 represent. "Incentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g*
10 *Corp.* (9th Cir. 2009) 563 F.3d 948, 958. *See also, Radcliffe v. Experian Info. Solutions* (9th Cir.
11 2013) 715 F.3d 1157, 1163 (an incentive award should not be so large when compared to class
12 member payments so that representatives are more interested in their enhancement than in
13 advancing the interests of the class).

14 As permitted by the Agreement, Plaintiff seeks an enhancement award in the amount of
15 \$5,000. AGMT ¶ 12(d). In general, Plaintiff expended considerable time and effort advocating
16 on behalf of SCM. Uriarte Dec. ¶ 29. Upon retaining counsel, Plaintiff attested that he
17 understood his responsibilities as class representative; he also agreed to put the interests of the
18 putative class ahead of his own if necessary. *Id.* Plaintiff submits that he has indeed closely
19 guarded SCM interests and fought to secure a substantial amount of money on their behalf.

20 As described herein, Plaintiff worked closely with Class Counsel pre-litigation in
21 sharing his experiences, finding former co-workers who were willing to speak with Class
22 Counsel about his allegations, providing documents, completing the intake process, and being
23 available to answer questions while counsel drafted his Complaint. Uriarte Dec. ¶ 30. He then
24 helped his attorneys draft a pre-mediation informal discovery letter, so that they could request
25 the right items to prepare for mediation. Uriarte Dec. ¶ 31. Plaintiff participated in pre-
26 mediation strategy sessions. *Id.* He answered important questions when Class Counsel
27 interviewed many putative class members after receiving the class list and contact information
28 from Defendant. *Id.* Plaintiff attended the mediation with Class Counsel and helped answer key

1 questions from the mediator. *Id.* He was involved in the negotiation process and approved the
2 deal in principle. *Id.* Plaintiff has been instrumental to the settlement process from beginning to
3 end, and he should be awarded appropriately. *Id.*

4 Plaintiff has been very active as a liaison with SCM. Uriarte Dec. ¶ 32. Plaintiff has
5 communicated with Class Counsel with regard to questions and concerns he has as well as those
6 of the SCM. *Id.* Plaintiff's involvement did not stop upon achieving a mediated settlement.
7 Since mediation, he has called and texted almost every week with status questions and concerns
8 he received from SCM. *Id.*

9 Moreover, Plaintiff signed a broader release than is required for SCM, and he risked
10 reputational harm by pursuing this class action case. AGMT ¶ 12(k). The SCM release is
11 limited to what is contained in the complaint or what is sufficiently related thereto, whereas
12 Plaintiff's release is a general release including a California Code of Civil Procedure § 1542
13 waiver. *Id.* Regarding the reputational harm element, Plaintiff risked being black balled by
14 future similar employers for confronting Defendant via a class action lawsuit. He bravely
15 undertook this risk to fight for what he believes is just.

16 Lastly, with regard to the exact amount requested, Courts in Northern California have
17 approved greater enhancement awards to representative plaintiffs. *E.g., Bellinghausen v.*
18 *Tractor Supply Co.* (N.D. Cal. Mar. 19, 2015) 306 F.R.D. 245 (plaintiff awarded \$15,000 “in
19 light of the time and effort Plaintiff expended for the benefit of the class—at times, to his own
20 personal detriment—and the risks associated with initiating the litigation and representing the
21 class.); *Covillo v. Specialty's Café*, 2014 U.S. Dist. LEXIS 29837, *28 (N.D. Cal. Mar. 6, 2014)
22 *28-29 (two representative plaintiffs were awarded \$8,000 each “in light of the time and effort
23 Plaintiffs expended for the benefit of the class and the risks associated with initiating the
24 litigation and representing the class. Plaintiffs also undertook a “reputational risk” in bringing
25 the action); *Cordy v. USS-Posco Indus.* (N.D. Cal. Jan. 8, 2014) 2014 U.S. Dist. LEXIS 2217,
26 *3-4, 14-15 (a total of \$9,500 in enhancement payments was approved to two separate
27 plaintiffs, \$1,500 to the representative for the wage statement subclass and \$8,000 to the other
28 representative).

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