

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the proposed class

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

ROBERT DELL, an individual, on behalf of
himself and others similarly situated

PLAINTIFF,

v.

NRC ENVIRONMENTAL SERVICES, INC.;
and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. RG21114398

[Case Assigned for All Purposes to Hon.
Evelio Grillo in Dept. 21]

**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, Robert Dell and Yami
Burns, Proposed Order and Judgment]*

Date: October 6, 2023

Time: 9:00 AM

Dept.: 21

Reservation Number: 634546545128

Complaint Filed: September 30, 2021

Trial Date: None Set

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

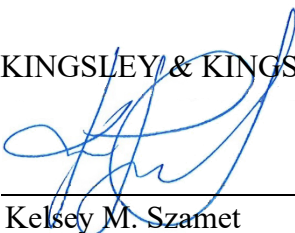
2 PLEASE TAKE NOTICE that on October 6, 2023 at 9:00 AM in Department 21 of the
3 above-entitled court, Plaintiff Robert Dell ("Plaintiff") will, and hereby does, move the Court for
4 an Order granting final approval of Class Counsel's Attorneys' Fees and Costs pursuant to the
5 Parties' Class Action and PAGA Settlement Agreement. Plaintiff also respectfully requests that
6 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 Robert Dell; and Yami
12 Burns of Phoenix Settlement Administrators; all other papers and records on file in this action; and
13 on such oral and documentary evidence as may be presented at the hearing on this Motion.
14

15 DATED: September 13, 2023

KINGSLEY & KINGSLEY, APC

16
17 By: 

18 Kelsey M. Szamet
19 Attorneys for Plaintiff ROBERT DELL and the
20 proposed class
21
22
23
24
25
26
27
28

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	10
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

TABLE OF AUTHORITIES

Federal Cases

<i>City of Detroit v. Grinnell Corporation</i> , (2d Cir. 1974) 495 F.2d 448.....	4
<i>Hensley v. Eckerhart</i> , (1983) 461 U.S. 424.....	6
<i>Mangold v. Cal. Pub. Utils. Comm’n</i> , 67 F.3d 1470 (9th Cir. 1995)	8
<i>Missouri v. Jenkins by Agvei</i> , (1989) 491 U.S. 274.....	6
<i>Van Vracken v. Atlantic Richfield Co.</i> , (N.D.Cal.1995) 901 F.Supp. 294	8

State Cases

<i>Beasley v. Wells Fargo Bank</i> , (1991) 235 Cal.App.3d 1407	6
<i>Bihun v. AT&T Info. Sys., Inc.</i> , (1993) 13 Cal.App.4th 976	7
<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal.App.4th 43, fn 11	3
<i>Ciani v. San Diego Trust & Sav. Bank</i> , (1994) 25 Cal.App.4th 563	2
<i>City of Oakland v. Oakland Raiders</i> , (1988) 203 Cal.App.3d 78 (2.34).....	8
<i>Coal. for L.A. County Planning v. Bd. of Supervisors</i> , (1977) 76 Cal.App.3d 241	6, 8
<i>Consumer Privacy Cases</i> , (2009) 175 Cal.App.4th 545	4
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal.App.4th 1794	2
<i>Ketchum v. Moses</i> , (2001) 24 Cal.4th 1122	5, 8
<i>Laffitte v. Robert Half Intern. Inc.</i> , (Cal. 2016) 205 Cal.Rptr.3d 555.....	1, 2

1	<u><i>Lakin v. Watkins Associated Industries</i>,</u>	
2	(1993) 6 Cal.4th 644	7
3	<u><i>Lealao v. Beneficial Calif., Inc.</i>,</u>	
4	(2000) 82 Cal. App. 4th 19	2, 8
5	<u><i>Meister v. Regents of Univ. of Cal.</i>,</u>	
6	(1998) 67 Cal.App.4th 437	6
7	<u><i>PLCM Group, Inc. v. Drexler</i>,</u>	
8	(2000) 22 Cal.4th 1084	6
9	<u><i>Radar v. Thrasher</i>,</u>	
10	(1962) 57 Cal.2d 244	6
11	<u><i>Rebney v. Wells Fargo Bank</i>,</u>	
12	(1991) 232 Cal.App.3d 1344	5
13	<u><i>San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino</i>,</u>	
14	(1984) 155 Cal.App.3d 738	5, 6
15	<u><i>Save El Toro Ass’n v. Days</i>,</u>	
16	(1979) 98 Cal.App.3d 544	2, 3
17	<u><i>Serrano v. Priest III</i>,</u>	
18	(1977) 20 Cal.3d 25	2, 5, 8
19	<u><i>Serrano v. Unruh</i>,</u>	
20	(1982) 32 Cal.3d 621 [“Serrano IV”]	6
21	<u><i>Wershba v. Apple Computer, Inc.</i>,</u>	
22	(2001) 91 Cal.App.4th 224	2, 5, 8
23	<u><i>Woodland Hills Residents Assn., Inc. v. City Council</i>,</u>	
24	(1979) 23 Cal.3d 917	2
25	<u>State Statutes</u>	
26	California Code of Civil Procedure section 382	1
27	<u>State Rules</u>	
28	California Rules of Court, rule 3.769 (b)	1

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 Robert Dell (“Plaintiff”) moves this Court for approval of an
5 award of attorneys’ fees and reimbursement of expenses to Class Counsel, pursuant to the terms
6 of the preliminary-approved Class Action and PAGA Settlement Agreement (“Agreement” or
7 “Settlement”) between named Plaintiff and Defendant US Ecology Illinois, Inc.; US Ecology
8 Vernon, Inc.; US Ecology, Inc. (“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 Agreement has been preliminarily-approved by the Court and the Notice of Class
15 Action Settlement disseminated pursuant to the terms of the Agreement. (Declaration of Kelsey
16 M. Szamet ¶17 (“Szamet Decl.”); Declaration of Yami Burns ¶5 (“Burns 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 Agreement and set forth above, the Agreement provides for
3 Defendant to create a Gross Settlement Amount of \$750,000.00. From that fund, Plaintiff requests
4 an award of attorneys' fees in the amount of \$250,000.00, or 1/3 of the Gross Settlement Amount
5 created on behalf of members of the Class. (Szamet Decl. ¶117.) 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 \$750,000.00. 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.¹

26 ///

27 ¹ Class Counsel has read the Court's ruling at the time of preliminary approval and
28 understands that this Court's benchmark is 30%. Nonetheless, Class Counsel requests approval
of 33.33% as discussed herein.

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

4 In the present case, Class Counsel asks the Court to award a fee of 1/3 of the common fund,
5 or \$250,000.00, as provided in the Settlement Agreement. This amount is reasonable because
6 Class Counsel's diligent litigation efforts and experience led to an outstanding settlement, with an
7 average net recovery of over \$1,784.69 per Settlement Class Member (*See Burns Decl. ¶13*), based
8 on cognizable risks which are discussed in detail in Plaintiff's Motion for Final Approval of Class
9 Action Settlement.

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

13 No one expects a lawyer whose compensation is contingent upon his success to
14 charge, when successful, as little as he would charge a client who had agreed to pay
15 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.

16 Class Counsel extensively addressed the perceived risks in this case in the concurrently
17 filed Motion for Final Approval of Class Action Settlement and will not repeat that analysis here.
18 In addition to the complexity of this case, Class Counsel has borne the entire risk and costs of this
19 litigation during the entire time that it has been pending, all on a pure contingency basis. (Szamet
20 Decl. ¶118.) Through the investment of substantial effort and resources, Class Counsel has secured
21 an outstanding Settlement of behalf of the Settlement Class Members. (*Id.*) Defendant vigorously
22 contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.*) It
23 is this kind of situation, involving complex issues, that has been recognized as justifying a
24 substantial attorney fee award. (*Id.*)

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

27 Courts may "cross-check" the results of the common fund method against the lodestar
28 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 \$127,919.00 (without future hours)², which represents
20 173.1 hours of attorney work³ on this litigation incurred from its inception through the filing of
21 Plaintiff’s Motion for Final Approval. (Szamet Decl. ¶126.) As such, Class Counsel is asking for
22 a multiplier of 1.95. (Szamet Decl. ¶127.) 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 _____
26 ² Though Class Counsel will certainly continue to spend time working on this matter for tasks
27 such as preparing for and attending the final approval hearing, overseeing the administration
28 process, and communicating with Settlement Class Members, Plaintiff’s Counsel are not
requesting approval of future hours. Class Counsel anticipate spending another 5-10 hours
working on this matter to see it through to conclusion.

1 the issues involved. (*See Radar v. Thrasher* (1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo*
2 *Bank* (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning v. Bd. of Supervisors*
3 (1977) 76 Cal.App.3d 241, 251.)

4 B. The Number of Hours Claimed is Reasonable

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

11 The amount of time spent on this case (over 173.1 hours), which culminated in a very
12 favorable proposed Settlement for the Settlement Class Members, is reasonable given the
13 complexity and novelty of the issues involved, the vigorous defense, the length and intensity of
14 the litigation, and the exceptional results obtained. (Szamet Decl. ¶128.) Class Counsel litigated
15 this action with great efficiency in light of the amount of work required to achieve the Settlement.
16 (Szamet Decl. ¶129.) Class Counsel has submitted a declaration evidencing the reasonable hourly
17 rate for their services and establishing the number of hours spent working on the case. (Szamet
18 Decl. ¶¶130-139.) Accordingly, Plaintiff is entitled to full compensation for the hours claimed by
19 Class Counsel.

20 C. The Hourly Rates Requested Are Reasonable

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

1 (1989) 491 U.S. 274, 283-84.)

2 The requested hourly rates in this case range from \$440.00 per hour to \$990.00. (Szamet
3 Decl. ¶130.) Class Counsel’s hourly rates are fully supported by their experience and reputation
4 in handling complex employment litigation, including wage and hour class actions. (Szamet Decl.
5 ¶131; ¶¶112-113.)

6 In practice since 1996, Mr. Kingsley is a 25+ year attorney with expertise in wage and hour
7 class action lawsuits. (Szamet Decl. ¶132.) He has litigated several hundred such cases, including
8 at the appellate level at the U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and
9 the California Court of Appeal. (Szamet Decl. ¶133.) He is also a prolific speaker at various
10 seminars on employment law and has contributed to legal publications on employment topics.
11 (Szamet Decl. ¶134.) Biographical information for the other handling attorneys is included in the
12 concurrently filed Declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶136-138.)

13 Class Counsel’s charged rates are commensurate with the prevailing market rates in Los
14 Angeles County for attorneys of comparable experience and skill handling complex litigation.
15 (Szamet Decl. ¶140.) Furthermore, Class Counsel’s rates in calculating the lodestar are the same
16 rates charged to non-contingent hourly clients and thus necessarily reflect the current market value
17 of counsel’s legal services.⁴ (Szamet Decl. ¶141.) Class Counsel has made all reasonable attempts
18 to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing
19 rates. (Szamet Decl. ¶142.)

20 Finally, Class Counsel’s rates are in line with, if not noticeably under, the 2023-2024
21 Laffey Matrix, which is a fee scale that courts often consult in determining the reasonableness of
22 hourly rates. Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years
23 of experience, such as Mr. Kingsley, is \$1057, a reasonable rate for an attorney with 15 years of
24 experience, such as Ms. Szamet, is \$878, a reasonable rate for an attorney with 5-6 years of
25 experience, such as Ms. Adlouni is \$538. (Szamet Decl. ¶143; Ex. “4” [2023-2024 Adjusted Laffey

26
27 ⁴ 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].)

Matrix].)

D. The Fees Requested Are Reasonable

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

In California, courts regularly use a multiplier of 2.0 or greater in statutory fee cases to approximate market fees.⁵ In fact, “[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.” (*Van Vracken v. Atlantic Richfield Co.* (N.D.Cal.1995) 901 F.Supp. 294, 298; *see also, Wershba, supra*, 91 Cal.App.4th at p. 255 [“Multipliers can range from 2 to 4 or even higher.”].) Here, Class Counsel is requesting a multiplier of 1.95. (Szamet Decl. ¶146.)

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

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

i. Novelty and Difficulty of Questions Presented

This case dealt with difficult legal and factual questions. Significantly, as discussed, the risk attendant to the underlying claims in this matter was great considering Defendant’s defenses.

⁵ See, for example, *Mangold v. Cal. Pub. Utils. Comm’n*, 67 F.3d 1470, 1478-79 (9th Cir. 1995) (2.0); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 82-85 (2.34); *Coal. for 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).

As discussed in detail in the extensive risk analysis section in Plaintiff's Motion for Preliminary Approval of Settlement, were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. (Szamet Decl. ¶148.) There are genuine issues in dispute and the potential recovery was speculative. (*Id.*)

ii. Skill Displayed in Presenting Questions Presented

Class Counsel are very skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter as discussed. (Szamet Decl. ¶149; *Id.* at ¶¶132-139.)

iii. Preclusion of Other Employment By Attorneys

To achieve the ultimate result in this case, Co-lead Class Counsel had to incur substantial risk and expense and were precluded from taking other fee generating employment for over 173.1 hours of attorney time. (Szamet Decl. ¶150.)

iv. Contingent Nature of the Fee Award

This matter had been handled purely on a contingency fee basis and Class Counsel have advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee that any of the fees incurred or costs advanced would ever be recovered and diverting significant firm resources to prosecution of this matter. (Szamet Decl. ¶151.)

v. Success Achieved

Class Counsel believe this is an exceptional result that has been well received by Settlement Class Members. (Szamet Decl. ¶152.)

vi. Rate of Acceptance of Benefits Offered to Class Members

Class Counsel believe the Settlement has been very well received as there have been zero opt-outs or objections to date. (Burns Decl. ¶¶8-9.)

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

///

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

3 In addition to their request for fees, Class Counsel further request reimbursement of the
4 reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
5 litigation, in the amount of \$15,000.00. (Szamet Decl. ¶153.) To date, Kingsley and Kingsley has
6 incurred \$14,409.98 in costs. (Szamet Decl. ¶54.) Class Counsel anticipates incurring an
7 additional \$600.00 in costs to file, serve, and copy this motion; to prepare for and attend the
8 hearing; and for future copy charges. (Szamet Decl. ¶155; Agreement ¶3.2.2.) However, Class
9 Counsel seeks reimbursement of costs to date of \$14,409.98. (Szamet Decl. ¶156; Agreement *Id.*)

10 All of the requested costs are reasonable in amount and were necessarily incurred by Class
11 Counsel in prosecuting this litigation. (Szamet Decl. ¶157; Ex. 5 [Cost Report].)

12 Expenses in this matter to date include costs for filing fees, research, mediation,
13 employment of a database expert to synthesize the tens of thousands of lines of payroll and
14 timekeeping data produced by Defendant to assist with preparation of Plaintiff's damage model,
15 and additional costs for the prosecution of this case evidenced in the costs spreadsheet attached to
16 the Declaration of Kelsey M. Szamet. All of these costs have been incurred in the course of this
17 litigation, and all costs advanced have already been paid by Class Counsel. (Szamet Decl. ¶158.)

18 Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses
19 advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court
20 should approve the request for reimbursement in the amount of \$15,000.00.

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

22 Finally, Plaintiff's Counsel request an enhancement of \$5,000.00 to the named Plaintiff
23 Robert Dell for his work on behalf of the Class. (Szamet Decl. ¶159.) As set forth in detail in
24 Plaintiff's Motion for Final Approval of Class Settlement and Robert Dell's declaration, Plaintiff
25 Dell invested significant time and effort in this case. (Szamet Decl. ¶160; Dell Decl. ¶¶3-11.)

26 Plaintiff Dell was also at risk of for paying Defendant's legal fees and costs in the event
27 that Defendant prevailed at trial. (Szamet Decl. ¶164.)

28 The Class has benefited from Mr. Dell's action in stepping forward on their behalf to bring

1 this lawsuit. (Szamet Decl. ¶165.) The average settlement payment is \$1,784.69 for a Settlement
2 Class Member with a high of \$4,564.72. (Burns Decl. ¶13.)

3 Further, The Class Notice disclosed the enhancement award. (*See* Agreement Ex. A [class
4 notice], p. 3.) (Szamet Decl. ¶166.) As of today, no Settlement Class Member has objected to the
5 proposed enhancement. (Szamet Decl. ¶167.)

6 Under the circumstances, a representative payment of \$5,000.00 is justified and the Court
7 should award this payment to Robert Dell from the Gross Settlement Amount as provided in the
8 Agreement. (Szamet Decl. ¶168.)

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

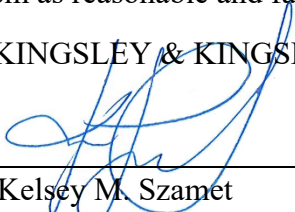
11 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Attorneys' Fees
12 and Costs ("Motion") was uploaded to the Labor and Workforce Development Agency's
13 ("LWDA") website on the date this Motion was filed as required by statute. Proof of submission
14 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
15 receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6". (Szamet Decl. ¶169.)

16 **VIII. CONCLUSION**

17 Class Counsel respectfully requests that the Court award a fee equal to 1/3 of the gross
18 settlement amount, or \$250,000.00 and reimbursement of costs of \$15,000.00. Class Counsel also
19 respectfully requests that the Court award an enhancement for the named Plaintiff of \$5,000.00.
20 For the above reasons, all of these requests are appropriate and justified as part of the overall
21 Settlement, and the Court should approve them as reasonable and fair.

22 DATED: September 13, 2023

KINGSLEY & KINGSLEY, APC

23
24 By: 

25 Kelsey M. Szamet
26 Attorneys for Plaintiff Robert Dell and the proposed
27 class
28

(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 September 13, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jason Geller, Esq.
Nathan Low, Esq.
Abby Harrington, Esq.
jgeller@fisherphillips.com
nlow@fisherphillips.com
aharrington@fisherphillips.com
lhamann@fisherphillips.com
nlarios@fisherphillips.com
FISHER & PHILLIPS LLP
1 Montgomery Street, Suite 3400
San Francisco, CA 94104

[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 below 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 September 13, 2023, at Woodland Hills, California.



Michelle Tanzer