

James R. Hawkins (SBN 192925)
James@jameshawkinsaplc.com
Christina Lucio (SBN 253677)
Christina@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiffs JULIO C. ROVIRA, LORENA RENTERIA, and VIRGILIO SANTOS,
On behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JULIO C. ROVIRA, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

SILVERADO SENIOR LIVING
MANAGEMENTS, INC., a Delaware
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No. 30-2020-01136565-CU-OE-CXC

Assigned for All Purposes To:
Hon. Lon F. Hurwitz
Dept.: CX-103

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

Date: February 24, 2023
Time: 1:30 p.m.
Dept: Dept. CX-103

Date Action Filed: March 5, 2020
Trial Date: N/A

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1 **I. INTRODUCTION**

2 In connection with the \$750,000 common fund settlement secured by Plaintiffs Julio
3 Rovira, Lorena Renteria, and Virgilio Santos (collectively, “Plaintiffs”) and Class Counsel, on
4 behalf of the Class, Plaintiffs respectfully request the Court grant Plaintiffs’ Motion for Award of
5 Attorneys’ Fees and Costs and Class Representative Service Award by approving this application
6 for an award of \$250,000.00 for attorneys’ fees and \$14,813.91 for reimbursement of costs.
7 Further, Plaintiffs respectfully request that this Court award Class Representative Service Awards
8 in the amounts of \$7,500.00 to Plaintiff Rovira, and \$2,500.00 each to Plaintiffs Renteria and
9 Santos, for the considerable time, effort, and risk they undertook in obtaining this excellent result
10 for the Class and in consideration for the broad releases they are required to enter.

11 The requested fee falls well within the benchmark of 25% to 40% of a common fund and
12 is fair compensation for undertaking such complex, risky, and time-consuming litigation on a
13 contingent basis. In a similar wage and hour class action, *Laffitte v. Robert Half International,*
14 *Inc.*, 1 Cal. 5th 480 (August 11, 2016), the California Supreme Court affirmed an award of
15 attorneys’ fees equal to 1/3 of the common fund, which correlated to the lodestar with a 2.13
16 multiplier. Here, Class Counsel’s lodestar is currently \$283,726.50. The requested fee award here
17 is less than Class Counsel’s lodestar. The requested fee award is very reasonable considering the
18 much higher range of multipliers approved by California courts. See e.g., *Wershba v. Apple*
19 *Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or even
20 higher.”)

21 Since the attorneys’ fees requested are well within the range of reasonableness and the results
22 achieved for the Class Members are excellent, Plaintiffs, by and through Class Counsel,
23 respectfully request that the Court award the requested fees equal to one-third (1/3) of the
24 \$750,000.00 common fund and approve payment of Class Counsel’s litigation expenses in the
25 amount of \$14,813.91 in accordance with the preliminarily approved Settlement Agreement. In
26 addition, Plaintiffs respectfully request the Court award the requested Class Representative
27 Service Awards of \$7,500.00 to Plaintiff Rovira, and \$2,500.00 each to Plaintiffs Renteria and
28 Santos.

1 **II. THE ATTORNEYS' FEES REQUESTED ARE FAIR AND REASONABLE**
2 **AND SHOULD BE APPROVED**

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

18 At the time this case was brought, the result was far from certain. Defendant's numerous
19 defenses to the case created difficulties with proof and complex legal issues for Class Counsel to
20 overcome. While Class Counsel believes Plaintiffs' claims are meritorious, Defendant has denied
21 liability, disputed damages, and raised factual and legal arguments which could render the Class
22 Members' claims worthless at either class certification or trial. (Hawkins Decl. ¶¶ 52, 59, 63, 64).

23 The Settlement was possible only because Class Counsel was able to convince Defendant
24 that Plaintiffs could potentially prevail on the legal issues regarding liability and obtain and
25 maintain class certification for the Class through trial and overcome difficulties in proof as to
26 monetary relief. In successfully navigating these hurdles so as to convince Defendant to settle,
27 Class Counsel displayed skills consistent with those that might be expected of attorneys of
28 comparable experience. (Id. ¶ 76).

1 To represent the Class on a contingent fee basis, Class Counsel had to devote the
2 necessary time and resources to this contingent case. (Id. ¶¶ 76-83). In so doing, Class Counsel
3 gave up the hourly work that a firm can bank on for the risky contingent fee work in this case
4 which could have paid Class Counsel nothing. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir.
5 2000).

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

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

14 The United States Supreme Court has reemphasized this policy and further stressed that
15 the trial court "has a responsibility to encourage agreement" on fees. *Blum v. Stenson*, 465 U.S.
16 886, 902 n.19 (1984). Here, as part of the Settlement, Defendant agreed not to oppose an award of
17 one-third (1/3) of the Gross Settlement Amount for attorneys' fees. Such a fee is commensurate
18 with what the market would provide for similar services and the Court therefore can most
19 certainly enforce the agreement. As the United States Supreme Court has instructed:

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

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

25 Here, the Settlement is the result of non-collusive, informed, and arm's-length
26 negotiations between experienced counsel for the Class and Defendant with the assistance of
27 Steve Serratore, an experienced wage and hour mediator, over a full day of mediation. Such
28 bargaining is obviously the best measure of the market for fees. The requested fee and cost award

1 was negotiated during adversarial bargaining by counsel for each of the parties, after the
2 substantive terms of the Settlement had been negotiated. The requested fee and cost award was a
3 product of arms-length negotiations and fairly reflects the marketplace value of the services
4 rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be
5 approved.

6 **IV. CLASS COUNSEL'S FEE AWARD IS PROPERLY CALCULATED AS A**
7 **PERCENTAGE OF THE TOTAL VALUE CREATED FOR THE BENEFIT OF**
8 **THE CLASS**

9 Class Counsel seeks an attorney fee award for their successful prosecution and resolution
10 of this action, calculated as one-third (1/3) of the cash value of the common fund created by the
11 Settlement. In cases such as this one, the Courts have long recognized that an appropriate method
12 for determining the award of attorneys' fees is based on a percentage of the total value of benefits
13 afforded to class members by the settlement. *Laffitte*, 1 Cal. 5th at 494 ("the percentage method
14 has been generally approved in common fund cases"); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
15 478 (1980); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Vincent*
16 *v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The awarding of a fee based on a
17 percentage of the common fund recovered is to "spread litigation costs proportionately among all
18 the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*,
19 *supra*, 557 F.2d at 769. The Gross Settlement Amount is \$750,000.00. Accordingly, Class
20 Counsel requests \$250,000.00 in attorneys' fees as it is properly calculated as a percentage (33-
21 1/3%) of the common fund created for the benefit of the Class.

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

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

1 Given the unique reliance of our legal system on private litigants to enforce
2 substantive provisions of law through class and derivative actions, attorneys
3 providing the essential enforcement services must be provided incentives roughly
4 comparable to those negotiated in the private bargaining that takes place in the legal
5 marketplace, as it will otherwise be economic for Defendant to increase injurious
6 behavior. It has therefore been urged (most persistently by Judge Richard Posner)
7 that in defining a “reasonable fee” in such representative actions the law should
8 “mimic the market.”

9 *Id.* at 47.

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

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

19 We join the overwhelming majority of federal and state courts in holding that
20 when class action litigation establishes a monetary fund for the benefit of the class
21 members, and the trial court in its equitable powers awards class counsel a fee out
22 of that fund, the court may determine the amount of a reasonable fee by choosing
23 an appropriate percentage of the fund created.

24 *Laffitte*, 1 Cal. 5th at 503.

25 The recognized advantages of the percentage method – including relative ease of
26 calculation, alignment of incentives between counsel and the class, a better
27 approximation of market conditions in a contingency case, and the encouragement
28 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation (*Lealao, supra*, 82 Cal.App.4th at pp. 48–49; *Rawlings v. Prudential-*
Bache Properties, Inc., supra, 9 F.3d at p. 516)—convince us the percentage
method is a valuable tool that should not be denied our trial courts.

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

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

9 [W]e emphasize the lodestar calculation, when used in this manner, does not
10 override the trial court's primary determination of the fee as a percentage of the
11 common fund and thus does not impose an absolute maximum or minimum on the
12 potential fee award.

13 A lodestar cross-check is simply a quantitative method for bringing a measure of
14 the time spent by counsel into the trial court's reasonableness determination; as
15 such, it is not likely to radically alter the incentives created by a court's use of the
16 percentage method.

17 *Id.* at 505.

18 Because the Gross Settlement Amount is a pure common fund, and the percentage
19 of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte*
20 and *Lealao* support an award based upon the percentage of the common fund. Here, as
21 noted above, one-third is within the reasonable range of comparable awards for common
22 fund cases, which establishes the requested award as reasonable. Moreover, as discussed
23 below, the use of the lodestar cross-check in this case further supports the reasonableness
24 of the percentage fee award as it falls well below the range approved in *Laffitte*. See also
25 *Taylor v. Fedex Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following
26 *Laffitte* to approve 30% fee award with cross-check lodestar multiplier of 2.26).

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

28 The reasonableness of the requested attorneys’ fee of \$250,000 is also established
by reference to Class Counsel’s lodestar cross-check in this matter. The lodestar for all
Plaintiffs’ counsel in this case is as follows:

Attorney	Hours	Rate	Total
James Hawkins	128.4	\$900.00	\$115,560.00
Christina Lucio	127	\$775.00	\$98,425.00
Malte Farnaes	25.2	\$700.00	\$17,640.00
Mitchell Murray	7.7	\$595.00	\$4,581.50
Associates	73.9	\$400.00	\$26,720.00
Paralegals	89.8	\$200.00	\$17,960.00
TOTAL	196.6		\$283,726.50

The lodestar is \$283,726.50, and therefore the requested fee would represent a multiplier of approximately 0.88 on that billed time.¹ (Hawkins Decl. ¶ 88). This is well below the lodestar multipliers awarded in other cases. Lodestar cross-checks with multipliers far in excess of 2 are commonly approved. See e.g., *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher."); *Pellegrino v. Robert Half Internat., Inc.* (2010) 182 Cal.App.4th 278, at 293; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 and fn. 6 (approving 3.65 multiplier and collecting cases "finding a range of 0.6-19.6, with most (20 of 24, or 83%) from 1.0-4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0 range"); *Rievman v. Burlington Northern Railroad Co.*, 118 F.R.D. 29, 35 (S.D.N.Y. 1987) ("In recent years, multipliers between 3 and 4.5 have been common"); *Amaral v. Cintas Corporation No. 2*, 163 Cal. App.4th 1157, 1174 (2008) (approving lodestar with a 1.65 multiplier in a fee-shifting case); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549 (S.D.Fla. 1988) (court applied multiplier of 3, noting that this was "average" for a large complicated class action where multipliers ranged from 2.26 to 4.5).

Here, the fee request cross-checks with a lodestar multiplier of 0.88. As a result, this Court should have no trouble concluding that the award is justified and cross-checks under California law. Indeed, the requested award is significantly less than the lodestar for the fees incurred.

¹ The reasonableness of Class Counsel's rates is confirmed by comparing such rates with the rates of comparable counsel practicing complex and class litigation. See *LG Corp. v. Huang Xiaowen*, 2017 U.S. Dist. LEXIS 143409 (S.D. Cal. 2017) (finding a rate of \$850 to \$890 an hour for lead counsel reasonable); see also *San Diego Comic Convention v. Dan Farr Prods.*, 2018 U.S. Dist. LEXIS 110391 (S.D. Cal. 2018) (finding rates of \$795 and \$785 an hour reasonable).

1 In a common fund settlement “[t]he lodestar method is merely a cross-check on the
2 reasonableness of a percentage figure”. *Vizcaino, supra*, 290 F.3d at 1050, n.5. In this case,
3 consideration of Class Counsel’s overall lodestar as a cross-check to the percentage figure
4 strongly supports the reasonableness of the requested fee award. Using Class Counsel’s lodestar
5 as a cross-check clearly establishes the reasonableness of the requested fee award.

6 **C. The Percentage Award is Supported by 1) the Results Achieved, the Risks of**
7 **Litigation, the Skill Required and the Quality of Work, The Contingent Nature of**
8 **the Fee and the Financial Burden, and Awards in Similar Cases**

9 What has now emerged in most fee award decisions is a recognition that fee
10 determinations in both common fund and statutory fee situations are incapable of mathematical
11 precision because of the intangible factors that must be resolved in the court’s discretion based on
12 the circumstances of each particular case. See, A. Conte, *Attorney Fee Awards*, 2nd Ed., 207, at
13 44. In determining an appropriate fee in a common fund case, a court must decide, based on the
14 unique posture of each case, what percentage of the common fund would most reasonably
15 compensate Class Counsel given the nature of the litigation and the performance of counsel. *Paul,*
16 *Johnson, Alston & Hunt, supra*, 886 F.2d at 272 (the benchmark percentage fee may be adjusted
17 to account for the circumstances involved in this case.) Courts apply a five-part test in reviewing
18 a reasonable percentage fee in common fund cases:

19 (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
20 quality of work; (4) the contingent nature of the fee and the financial burden
carried by the Plaintiffs; and (5) awards made in similar cases.

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

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

24 **i. The Results Achieved**

25 “The overall result and benefit to the class from the litigation is the most critical factor in
26 granting a fee award.” *Omnivision*, 2007 WL 4293467 at *9; See also *In re Heritage Bond Litig.*,
27 2005 U.S. Dist. LEXIS 13627, at *27-28 (C.D. Cal. June 10, 2005). Class Counsel obtained a very
28 favorable result in this case for the Class Members. The Settlement provides monetary benefits to

1 the Class Members that are comparable to or even exceed those recovered in similar wage and hour
2 class actions because the claimants will all receive a meaningful payment of their damages. The
3 Settlement is particularly advantageous to the Class Member because the proceeds will be
4 distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable
5 result.

6 There is little question that the result achieved in this litigation is favorable. Plaintiffs and Class
7 Counsel secured a common fund of \$750,000.000 on behalf of the Class. As a result, 662
8 Participating Class Members will receive a pro-rata share of the Net Settlement Fund of
9 approximately \$408,600.000. The average estimated payment amongst all Class Members is
10 \$599.11 and the highest is \$1,067.13. (Polites Decl. ¶ 13).

11 **ii. The Risks of Litigation**

12 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly a
13 case involving complicated legal issues, is a significant factor in the award of fees” *Omnivision*,
14 2007 WL 4293467 at *9.

15 As detailed above, at the time this case was brought, the result was far from certain.
16 Defendant’ numerous defenses to the case created difficulties with proof and complex legal issues
17 for Class Counsel to overcome. Here, many of the defenses asserted by Defendant present serious
18 threats to the claims of Plaintiffs and the other Class Members. (Hawkins Decl. ¶¶ 52, 59, 63, 64).

19 As discussed above, there was also a significant risk that, if the litigation was not settled,
20 Plaintiffs would be unable to overcome Defendant’s challenges to obtaining and maintaining class
21 certification through trial and thereby not recover on behalf of any employees other than
22 themselves.

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

24 Practice in the narrow areas of wage and hour and class action litigation requires skill,
25 knowledge, and experience in two distinct subsets of the law. Expertise in one does not necessarily
26 translate into expertise in the other. Class Counsel must have expertise in both. The issues presented
27 in this case required more than just a general appreciation of wage and hour law and class action
28 procedure as this area of practice is still developing as evidenced by the California Supreme Court’s

1 ruling in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004 and the Court of
2 Appeal's rulings in *Gonzales v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 and *Vaquero*
3 *v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98.

4 The Settlement was possible only because Class Counsel was able to convince Defendant
5 that Plaintiffs could potentially prevail on the difficult legal issues regarding liability, maintain class
6 certification, overcome difficulties in proof as to monetary relief and take the case to trial. (Hawkins
7 Decl. ¶ 76).

8 In successfully navigating these hurdles Class Counsel displayed the necessary dual skill
9 set. The high quality of the work in this case was mandated by the very vigorous and contentious
10 defense presented by counsel for Defendant. Class Counsel was required to invest substantial time
11 and resources in investigation, extensive motion practice, and preliminary and final approval.
12 (Hawkins Decl. ¶¶ 77-86).

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

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

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

24 In this case, Class Counsel subjected themselves to this contingent fee market risk in this
25 all or nothing contingent fee case wherein the necessity and financial burden of private enforcement
26 makes the requested award appropriate. Counsel retained on a contingency fee basis, whether in
27 private matters or in class action litigation, is entitled to a premium in order to compensate for both
28 the risks and the delay in payment. See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734 (9th

1 Cir. 2016) (courts “must” apply a risk service); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir.
2 2016) (abuse of discretion not to apply risk multiplier). The simple fact is that despite the most
3 vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner*, 378 F.2d
4 872, 875 (4th Cir. 1967). Indeed, if counsel is not adequately compensated for the risks inherent in
5 difficult class actions, competent attorneys will be discouraged from prosecuting similar cases.
6 *Steiner v. BOC Financial Corp.*, 1980 U.S. Dist. LEXIS 14561 at *6- *7 (S.D.N.Y. 1980). Class
7 Counsel has invested time and money into contingency cases which ultimately generated no fee,
8 which further emphasizes the need for contingent cases to provide premium compensation when
9 successful.

10 Here, the contingent nature of the fee award, both from the point of view of eventual
11 settlement and the point of view of establishing eligibility for an award, also warrant the requested
12 fee award. A number of difficult issues, the adverse resolution of any one of which could have
13 doomed the successful prosecution of the action, were present here. As discussed above, attorneys’
14 fees in this case were not only contingent but extremely risky, with a very real chance that Class
15 Counsel would receive nothing at all for their efforts, having devoted time and advanced costs.

16 Class Counsel were required to advance all costs in this litigation. Especially in this type of
17 litigation where the corporate Defendant and their attorneys are well funded, this can prove to be
18 very expensive and risky. Accordingly, because the risk of advancing costs in this type of litigation
19 can be significant, it is therefore cost prohibitive to many attorneys. The financial burdens
20 undertaken by Plaintiffs and Class Counsel in prosecuting this action on behalf of the Class were
21 substantial. To date, Class Counsel collectively advanced approximately \$14,813.91 in costs which
22 could not have been recovered if this case had been lost. (Hawkins Decl. ¶ 90).

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

25 **v. Awards in Similar Cases**

26 The attorneys’ fees requested by Class Counsel are within the range of fees awarded in
27 comparable cases. A review of class action settlements over the past 10 years shows that the courts
28 have historically awarded fees in the range of 20% to 50%, depending upon the circumstances of

1 the case. *In re Warner Communications Sec. Lit.*, 618 F.Supp. 735, 749-50 (S.D. N.Y. 1985). Class
2 Counsels' requested fees are one-third (1/3) of the total value of the case, a percentage well within
3 the range of reasonableness given the excellent results obtained for the Class, the risks undertaken,
4 and the skill of the prosecution. See *Laffitte*, 1 Cal. 5th at 486, 506 (approving one-third (1/3)
5 attorneys fee award).

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

9
10 No general rule can be articulated on what is a reasonable percentage of a common
11 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
12 common fund in order to assure that the fees do not consume a disproportionate
13 part of the recovery obtained for the class, although somewhat larger percentages
are not unprecedented.

14 Newberg, Newberg on Class Actions, 3rd Ed., 14.03.

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

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

18 Class Counsel requests reimbursement for expenses and costs in the amount of \$14,813.91.
19 This amount has been and preliminarily approved by this Court. These litigation expenses are
20 detailed in the Declaration. (Hawkins Decl. ¶ 90). These expenses primarily involve the costs
21 incurred for initial filing fees, deposition fees, mediation fees, and also include the amounts paid
22 for court filing fees and service charges, document copying fees, and attorney service charges, all
23 of which are costs normally billed to and paid by the client. These costs were reasonably incurred
24 in the prosecution of this matter. (*Id.*).

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

26 Plaintiffs respectfully submit that for their service as the Class Representative, Plaintiff
27 Rovira should be awarded \$7,500.00 and Plaintiffs Renteria and Santos should be awarded \$2,500
28

1 each as the agreed Class Representative Service Award. Defendant has agreed not to oppose the
2 payment of these amounts to Plaintiffs.

3 As the Class Representatives, Plaintiffs have performed their duties to the Class admirably
4 and without exception. Plaintiffs provided valuable information and documents from their
5 employment which were instrumental in Class Counsel's understanding of the case. Plaintiffs also
6 provided Class Counsel with evidence for use at mediation and in litigation. Plaintiffs were also
7 involved in the settlement negotiations and provided invaluable assistance and information which
8 ultimately resulted in the settlement benefitting the Class. (Hawkins Decl. ¶ 66; Class
9 Representative Declarations).

10 Plaintiffs also assumed the risk, among other things, that they might possibly be liable for
11 costs incurred in connection with this case. Plaintiffs also risked being "blacklisted" by other future
12 employers for having sued Defendant in a class action. See *Guippone v. BH S&B Holdings LLC*,
13 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) ("[T]he fact that a Plaintiffs
14 has filed a federal lawsuit is searchable on the internet and may become known to prospective
15 employers when evaluating the person . . . Even where there is not a record of actual retaliation,
16 notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of
17 such for the sake of absent class members.").

18 Without Plaintiffs' support, cooperation and information, no other fellow employees would
19 be receiving any benefit. The payment of the service award to a successful class representative is
20 appropriate and the amount of \$7,500 to Plaintiff Rovira and \$2,500 each to Plaintiffs Renteria and
21 Santos (totaling \$12,500) is only 1.7% of the total Settlement secured on behalf of the Class.

22 This payment to compensate Plaintiffs for their time, effort, and risk in bringing this case to
23 benefit the 662 class members and secure a total settlement of \$750,000.00. Plaintiffs' effort in the
24 lawsuit has conferred a very substantial benefit the Class Members. Accordingly, Class Counsel
25 respectfully requests that the Court approve the requested Class Representative Service Award.

26 **V. Conclusion**

27 The representation of the Class provided by Class Counsel has been wholly contingent.
28 Class Counsel's fee request is well within the realm of reasonableness for fee requests approved by

1 courts given the efforts expended in this case and the stage of proceedings at the time of the
2 Settlement. Moreover, Class Counsel undertook great risks on a contingent fee basis and achieved
3 a favorable result for the benefit of Class Members. Based on the foregoing, Class Counsel
4 respectfully requests approval of the application for award of attorneys' fees of \$250,000.00,
5 reimbursement of litigations costs of \$14,813.91, and a Class Representative Service Award of
6 \$7,500 to Julio Rovira and \$2,500 each to Lorena Renteria and Virgilio Santos.

7
8 Dated: February 1, 2023

Respectfully Submitted:

9 James Hawkins, APLC

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11 By: /Christina M. Lucio/
12 James R. Hawkins
13 Christina M. Lucio

14 Attorneys for Plaintiffs
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