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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

BRAULIO JAVIER, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

HELENA AGRI-ENTERPRISES, LLC a
Delaware Limited Liability Company;
HELENA CHEMICAL COMPANY, a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 22CECG02269

[Consolidated with Case No. 22CECG03145]

CLASS AND REPRESENTATIVE ACTION

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

Date: November 5, 2024

Time: 3:27 p.m.

Dept.: 502

Judge: Hon. Kristi Culver Kapetan

Complaint Filed: July 27, 2022

FAC Filed: November 14, 2022

Trial Date: None Set

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1 **I. INTRODUCTION**

2 In connection with the \$600,000.00 Settlement secured by Plaintiff Braulio Javier
3 (“Plaintiff”) on behalf of the Class, Plaintiff respectfully requests the Court grant this Motion for
4 Award of Attorneys’ Fees and Costs and a Class Representative Service Award, granting an award
5 of 35% of the common fund or \$210,000 for attorneys’ fees and \$18,843.64 for reimbursement of
6 actual litigation costs incurred. Further, Plaintiff requests that this Court approve a Class
7 Representative Service Award in the amount of \$10,000.00 to Plaintiff, for the time, effort, and risk
8 he undertook in obtaining this settlement for the Class and in consideration for the broad releases
9 he is required to enter.

10 The fee requested falls well within the benchmark of 25% to 40% of a common fund and is
11 fair compensation for undertaking such complex, risky, and time-consuming litigation on a
12 contingent basis. In *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480 (August 11, 2016),
13 the California Supreme Court affirmed an award of attorneys’ fees equal to 1/3 of the common
14 fund, which correlated to the lodestar with a 2.13 multiplier. Here, Class Counsel’s lodestar is
15 currently \$194,432.50. The requested fee award only requires a modest lodestar multiplier of 1.08,
16 which is well within the range of multipliers approved by California courts. See e.g., *Wershba v.*
17 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or even
18 higher.”)

19 This settlement was only achieved through the vigorous pursuit of Plaintiff’s claims by
20 Class Counsel. Since the attorneys’ fees requested are well within the range of reasonableness and
21 the results achieved for the Class Members are excellent, Plaintiff, by and through Class Counsel,
22 respectfully request that the Court award the requested fees of \$210,000 and approve payment of
23 Class Counsel’s actual litigation expenses in the amount of \$18,843.64 in accordance with the
24 preliminarily approved Settlement. In addition, Plaintiffs respectfully request the Court approve the
25 requested Class Representative Service Award in the amount of \$10,000.00 to Plaintiff for his
26 efforts in this case, and in exchange for a general release.

27 ////

28 ////

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

17 At the time this case was brought, the result was far from certain. Defendant’s numerous
18 defenses to the case created difficulties with proof and complex legal issues for Class Counsel to
19 overcome. While Class Counsel believes Plaintiff’s claims are meritorious, Defendant has denied
20 liability, disputed damages, and raised factual and legal arguments which could render the Class
21 Members’ claims worthless at either class certification or trial. Specifically, Defendant argued, *inter*
22 *alia*, that this Court could significantly reduce the civil penalties specified under PAGA; Plaintiff’s
23 PAGA and class claims are unmanageable; a Court could rule that Plaintiff’s claims are not
24 certifiable or without merit in light of recent case law; Plaintiff would have difficulty certifying
25 their rest period, meal period, minimum wage, overtime, and reimbursement claims in light of,
26 Defendant’s facially lawful policies, among other things; Plaintiff’s derivative wage statement
27 claims are meritless and Plaintiff would fail to meet the requisite standards for such penalties; and
28 that Defendants complied with the law at all times and the claims lacked factual basis. (Declaration

1 of James R. Hawkins In Support of Final Approval (“Hawkins Final Decl.”) ¶28; Declaration of
2 James R. Hawkins In Support of Preliminary Approval (Hawkins Preliminary Decl.) ¶¶ 46-53).

3 The Settlement was a direct result of Class Counsel’s ability to convince Defendant that
4 Plaintiff would likely prevail on issues of liability while maintaining class certification through
5 trial, and successfully prove monetary damages. In doing so, Class Counsel displayed skills
6 consistent with those that might be expected of attorneys of comparable experience. (Hawkins Final
7 Decl. ¶ 43).

8 To represent the Class on a contingent fee basis, Class Counsel had to devote the necessary
9 time and resources to this case. (*Id.* ¶¶ 42-50). In so doing, Class Counsel gave up the hourly work
10 that a firm can rely on for the risky contingent fee work in this case. *Powers v. Eichen*, 229 F.3d
11 1249, 1256 (9th Cir. 2000).

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

14 The United States Supreme Court has ruled that the parties to a class action may properly
15 negotiate not only the settlement of the action itself, but also the payment of attorneys’ fees. See
16 *Evans v. Jeff D.*, 475 U.S. 717, 734-35, 738, n.30 (1980). In *Hensley v. Eckerhart*, 461 U.S. 424,
17 437 (1983), the Supreme Court held that negotiated, agreed-upon attorneys’ fee provisions are the
18 ideal towards which the parties should strive: “A request for attorney’s fees should not result in a
19 second major litigation. Ideally, of course, litigants will settle the amount of a fee.” *Id.*

20 The United States Supreme Court has reemphasized this policy and further stressed that the
21 trial court “has a responsibility to encourage agreement” on fees. *Blum v. Stenson*, 465 U.S. 886,
22 902 n.19 (1984). Here, as part of the Settlement, Defendant agreed not to oppose an award 35% of
23 the Gross Settlement Amount for attorneys’ fees. Such a fee is commensurate with what the market
24 would provide for similar services and the Court therefore can most certainly enforce the
25 agreement. See *Deposit Guaranty Nat. Bank, supra*, 445 U.S. at 338.

26 Here, the Settlement is the result of non-collusive, informed, and arm’s-length negotiations
27 between experienced counsel for the Class and Defendant with the assistance of Gig Kyriacou, an
28 experienced wage and hour mediator, after a full day mediation session. The case was not settled

1 at mediation, but a resolution was reached during the continued negotiations that followed with the
2 mediator's assistance. (Settlement ¶ 42). Such bargaining is the best measure of the market for
3 fees. The requested fee and cost award was negotiated during adversarial bargaining at arms' length
4 by counsel for each of the parties, after the substantive terms of the Settlement had been negotiated,
5 and these amounts fairly reflect the marketplace value of the services of Class Counsel. As a result,
6 the fee agreed to by the parties should be approved.

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

10 Class Counsel seeks an attorney fee award for their successful prosecution and resolution
11 of this action, calculated as 35% of the cash value of the common fund created by the Settlement.
12 In cases such as this one, the Courts have long recognized that an appropriate method for
13 determining the award of attorneys' fees is based on a percentage of the total value of benefits
14 afforded to class members by the settlement. *Laffitte*, 1 Cal. 5th at 494 ("the percentage method has
15 been generally approved in common fund cases"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
16 (1980); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Vincent v.*
17 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The awarding of a fee based on a
18 percentage of the common fund recovered is to "spread litigation costs proportionately among all
19 the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*,
20 *supra*, 557 F.2d at 769. The Gross Settlement Amount is \$600,000.00. Accordingly, Class Counsel
21 requests \$210,000.00 in attorneys' fees as it is properly calculated as a percentage (35%) of the
22 common fund created for the benefit of the Class.

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

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

19 We join the overwhelming majority of federal and state courts in holding that when
20 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. The recognized advantages of the
24 percentage method – including relative ease of calculation, alignment of incentives
25 between counsel and the class, a better approximation of market conditions in a
26 contingency case, and the encouragement it provides counsel to seek an early
27 settlement and avoid unnecessarily prolonging the litigation convince us the
28 percentage method is a valuable tool that should not be denied our trial courts.

Laffitte, 1 Cal. 5th at 503 (citations omitted). The Supreme Court in *Laffitte* went on to approve the
percentage method for the calculation of the fee award, and affirmed a fee award of one-third (1/3)
of the common fund. *Id.*, at 504. The Court in *Laffitte* indicated that the trial courts may utilize a
“lodestar cross-check” to double check the reasonableness of the percentage fee award. *Id.* In
Laffitte, the Supreme Court affirmed the propriety of a lodestar cross-check where the multiplier

1 exceeded 2. Indeed, the Court explicitly held that the lodestar is a cross check that should not
2 override the primary use of the percentage method:

3 [W]e emphasize the lodestar calculation, when used in this manner, does not
4 override the trial court's primary determination of the fee as a percentage of the
5 common fund and thus does not impose an absolute maximum or minimum on the
6 potential fee award. A lodestar cross-check is simply a quantitative method for
7 bringing a measure of the time spent by counsel into the trial court's reasonableness
8 determination; as such, it is not likely to radically alter the incentives created by a
9 court's use of the percentage method.

10 *Id.* at 505.

11 Because the Gross Settlement Amount is a pure common fund, and the percentage of the
12 fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao*
13 support an award based upon the percentage of the common fund. Here, as noted above, 35% is
14 within the reasonable range of comparable awards for common fund cases, which establishes the
15 requested award as reasonable. Moreover, as discussed below, the use of the lodestar cross-check
16 in this case further supports the reasonableness of the percentage fee award.

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

18 A summary of the rates and hours of Plaintiffs' counsel are provided in the Declaration of
19 Class Counsel (*See*, Hawkins Final Decl., ¶¶ 45-50) The reasonableness of the requested attorneys'
20 fee of \$210,000 is established by reference to Class Counsel's lodestar cross-check in this matter.
21 The lodestar is \$194,432.50, and therefore the requested fee would represent a multiplier of
22 approximately 1.08 on that billed time. (Hawkins Final Decl. ¶¶ 47–48.) This is well below the
23 lodestar multipliers approved in other cases. *See e.g., Wershba v. Apple Computer, Inc.*, 91 Cal.
24 App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher."); *Pellegrino v. Robert*
25 *Half Internat., Inc.* (2010) 182 Cal.App.4th 278, at 293; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002)
26 290 F.3d 1043, 1051 and fn. 6 (approving 3.65 multiplier and collecting cases "finding a range of
27 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
28 1.5-3.0 range"); *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); *see also* 4 Newberg on Class

1 Actions § 14.7 (stating that courts typically approve 25% to 33.34% percentage awards with
2 lodestar cross-checks of 1.9 to 5.1).

3 In a common fund settlement “[t]he lodestar method is merely a cross-check on the
4 reasonableness of a percentage figure.” *Vizcaino, supra*, 290 F.3d at 1050, n.5. A multiplier of 1.14
5 resulting from the lodestar cross-check in the present case strongly supports the reasonableness of
6 the requested fee award.

7 **C. Class Counsel’s Hourly Rates Are Reasonable**

8 Reasonable hourly rates are determined by “prevailing market rates in the relevant
9 community.” *Blum*, 465 U.S. at 895. Typically, the forum where the district court sits is recognized
10 as the “relevant community.” *Shirrod v. Dir., OWCP*, 809 F.3d 1082, 1087 (9th Cir. 2015) (citing
11 *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1053 (9th Cir. 2009)). Thus, Plaintiff’s
12 Counsel are entitled to the hourly rates charged by attorneys of comparable experience, reputation,
13 and ability for similar litigation. *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *Ketchum v. Moses*,
14 24 Cal. 4th 1122, 1133 (2001). *See also Serrano v. Unruh*, 32 Cal. 3d 621, 640 n.31 (1982) (“The
15 formula by which ‘reasonable market value’ is reached is variously phrased” as “comparable
16 salaries earned by private attorneys with similar experience and expertise in equivalent litigation,”
17 and the “hourly amount to which attorneys of like skill in the area would typically be entitled.”)
18 (citations omitted). The reasonableness of Class Counsel’s rates is confirmed by comparing such
19 rates with the rates of comparable counsel practicing complex and class litigation. *See LG Corp. v.*
20 *Huang Xiaowen*, 2017 U.S. Dist. LEXIS 143409 (S.D. Cal. 2017) (finding a rate of \$850 to \$890
21 an hour for lead counsel reasonable); *see also San Diego Comic Convention v. Dan Farr Prods.*,
22 2018 U.S. Dist. LEXIS 110391 (S.D. Cal. 2018) (finding rates of \$795 and \$785 an hour
23 reasonable).

24 Class Counsel’s rates are reasonable and consistent with attorneys of comparable
25 experience and qualifications in their areas of practice. As demonstrated by their hundreds of
26 successful wage and hour employment law actions, including in this particular area of law, James
27 Hawkins, APLC is an experienced and highly-skilled law firm with expertise in representing
28 employees in California wage and hour class actions. (Hawkins Final Decl., ¶ 45; Hawkins

1 Preliminary Decl.¶¶ 63(a)–(ff)). Counsel’s ability to secure a favorable Settlement for the class in
2 this case despite the many challenges Plaintiff faced is a further testament to their expertise.

3 **D. The Percentage Award is Supported by the Results Achieved, the Risks of**
4 **Litigation, the Skill Required and the Quality of Work, The Contingent Nature of**
5 **the Fee and the Financial Burden, and Awards in Similar Cases**

6 A common understanding in the determinations of fees in both common fund and statutory
7 fee situations is that, because courts must use their discretion to resolve a number of intangible
8 factors based on the circumstances of each particular case, such fee determinations are incapable
9 of mathematical precision. See, A. Conte, *Attorney Fee Awards*, 2nd Ed., 207, at 44. In determining
10 an appropriate fee in a common fund case, a court must decide, based on the unique posture of each
11 case, what percentage of the common fund would most reasonably compensate Class Counsel given
12 the nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt, supra*,
13 886 F.2d at 272 (the benchmark percentage fee may be adjusted to account for the circumstances
14 involved in this case.) Courts apply a five-part test in reviewing a reasonable percentage fee in
15 common fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
16 quality of work; (4) the contingent nature of the fee and the financial burden carried by the Plaintiff;
17 and (5) awards made in similar cases. *In re Omnivision Technologies, Inc.*, 2007 WL 4293467 at
18 *9 (N.D. Cal. 2007). Here, each of these five factors strongly support an award of the percentage
19 fee (33-1/3%) requested in this case.

20 **i. The Favorable Result Supports Approval.**

21 “The overall result and benefit to the class from the litigation is the most critical factor in
22 granting a fee award.” *Omnivision*, 2007 WL 4293467 at *9; See also *In re Heritage Bond Litig.*,
23 2005 U.S. Dist. LEXIS 13627, at *27-28 (C.D. Cal. June 10, 2005). Class Counsel obtained a very
24 favorable result in this case for the Class Members despite facing numerous challenges that
25 threatened all recovery. The Settlement provides monetary benefits to the Class Members that are
26 comparable to or even exceed those recovered in similar wage and hour class actions. The
27 Settlement is particularly advantageous to the Class because the proceeds will be distributed shortly
28 as opposed to waiting additional years for a similar, or possibly, less favorable result.

1 There is little question that the result achieved in this litigation is favorable. Plaintiffs and
2 Class Counsel secured a common fund of \$600,000 on behalf of the Class. As a result, 821
3 Participating Class Members will receive a pro-rata share of the Settlement. The average estimated
4 payment amongst all Class Members is \$405.01 and the highest is \$1,162.96. (*Id.*) The amount
5 obtained per participating Class Member on a gross basis, \$730.82 per participating Class Members
6 (\$600,000 / 821 participating Class Members) compares favorably to other similar class action
7 settlements.¹

8 **ii. The Risks of Litigation and of Losing Were Significant**

9 “The risk that further litigation might result in Plaintiff not recovering at all, particularly a
10 case involving complicated legal issues, is a significant factor in the award of fees” *Omnivision*,
11 2007 WL 4293467 at *9. Defendant’s numerous defenses to the case created difficulties with proof
12 and complex legal issues for Class Counsel to overcome. Broadly, Defendant’s defenses included,
13 *inter alia*, that this could Court significantly reduce the civil penalties specified under PAGA; that
14 Plaintiffs’ PAGA claim and class claims are unmanageable; that Plaintiff would have difficulty
15 certifying his meal period, minimum wage, overtime, and reimbursement claims; that Defendant’s
16 policies were facially lawful; and that Plaintiff’s derivative wage statement claims are meritless;
17 and Plaintiff would fail to meet the requisite standards for such penalties. (Hawkins Preliminary
18 Decl. ¶¶ 46–53). Many of the defenses asserted by Defendant present serious threats to the claims
19 of Plaintiff and the other Class Members. (Hawkins Final Decl. ¶¶ 28–30).

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

21 Practice in the narrow areas of wage and hour and class action litigation requires skill,
22 knowledge, and experience in two distinct subsets of the law. Expertise in one does not necessarily
23 translate into expertise in the other. Class Counsel must have expertise in both. The issues presented
24 in this case required more than just a general appreciation of wage and hour law and class action

25
26 ¹ See, *Salguero v. Deliv, Inc.*, Case No. 19STCV32534 (Los Angeles County Superior Court, 2021) (\$635,000.00
27 settlement for 3,021 class members with an average payment on a gross basis of \$210.20); *Sanderson v. A Bright*
28 *Future*, Case No. 34-2019-00252816-CU-OE-GDS (Sacramento County Superior Court, 2020) (\$105,000.00
settlement for 471 class members with an average payment on a gross basis of \$222.93); *Ortegon-Ramirez v. Cedar*
Fair, L.P., Case No. 1-13-CV-254098 (Santa Clara County Superior Court, 2015) (\$4,750,000.00 settlement for
31,425 class members with an average payment on a gross basis of \$151.15).

1 procedure as this area of practice is still developing. This area of law is potentially worsening for
2 plaintiffs as evidenced by the dicta in *Estrada v. Royalty Carpet Mills, Inc.*, 76, Cal.App.5th 685,
3 706 (2022), which suggests that on-premises rest periods are legal, an argument that would kill one
4 of Plaintiffs’ primary claims, in this case, for on-premises rest periods alleged to be non-compliant.

5 The Settlement was possible only because Class Counsel was able to persuade Defendant
6 that Plaintiff could potentially prevail on the difficult legal issues regarding liability, maintain class
7 certification, overcome difficulties in proof as to monetary relief and take the case to trial. (Hawkins
8 Final Decl. ¶¶ 43–44). In successfully navigating these hurdles Class Counsel displayed the
9 necessary dual skill set. The high quality of the work in this case was mandated by the very
10 vigorous and contentious defense presented by counsel for Defendant. Class Counsel was required
11 to invest substantial time and resources in investigation, mediation and settlement, and preliminary
12 and final approval. (Hawkins Final Decl. ¶¶ 43–50).

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 The attorney being paid by the hour can go to the bank with his fee, whereas the attorney
19 working on a contingent basis can only log hours while working without pay towards a result that
20 will hopefully entitle him to a marketplace contingent fee. *Powers v. Eichen*, 229 F.3d 1249, 1256-
21 1257 (9th Cir. 2000). Here, Class Counsel subjected themselves to risks of the risks of the market
22 by taking an all or nothing contingent fee case. The necessity and financial burden of private
23 enforcement makes the requested award appropriate. Counsel working on contingency, whether in
24 private matters or in class action litigation, are entitled to a premium in order to compensate for
25 both the risks and the delay in payment. See e.g., *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734
26 (9th Cir. 2016) (courts “must” apply a risk service); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
27 Cir. 2016) (abuse of discretion not to apply risk multiplier). The simple fact is that despite the most
28 vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner*, 378 F.2d

1 872, 875 (4th Cir. 1967). Class Counsel has invested time and money into contingency cases which
2 ultimately generated no fee, which further emphasizes the need for contingent cases to provide
3 premium compensation when successful.

4 Here, the contingent nature of the fee award, both from the point of view of eventual
5 settlement and the point of view of establishing eligibility for an award, also warrant the requested
6 fee award. A number of difficult issues, the adverse resolution of any one of which could have
7 doomed the successful prosecution of the action, were present here.

8 Class Counsel were required to advance all costs in this litigation. In litigation such as this
9 where a corporate Defendant and their attorneys are well funded, this can prove to be very expensive
10 and risky. The risk of advancing costs in this type of litigation can be significant and cost-
11 prohibitive to many attorneys. The financial burdens undertaken by Class Counsel in prosecuting
12 this action on behalf of the Class were substantial. Class Counsel has advanced approximately
13 \$18,483.64 in costs which could not have been recovered if this case had been lost. (Hawkins Final
14 Decl. ¶ 50, Ex. 6.) Accordingly, the contingent nature of the fee and the financial burdens on Class
15 Counsel also support the fee requested.

16 **v. Awards in Similar Cases**

17 The attorneys' fees requested by Class Counsel are within the range of fees awarded in
18 comparable cases. A review of class action settlements over the past 10 years shows that the courts
19 have historically awarded fees in the range of 20% to 50%, depending upon the circumstances of
20 the case. *In re Warner Communications Sec. Lit.*, 618 F.Supp. 735, 749-50 (S.D. N.Y. 1985). Class
21 Counsels' requested fees are 35% of the total value of the case, a percentage well within the range
22 of reasonableness given the excellent results obtained for the Class, the risks undertaken, and the
23 skill of the prosecution.

24 In *In re Warner Communications Sec. Lit.*, the Court concluded that percentage fees in
25 common fund cases range from 20% to 50%. *Id.*, 618 F.Supp. at 749-50. "Usually 50% of the fund
26 is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do
27 not consume a disproportionate part of the recovery obtained for the class, although somewhat
28 larger percentages are not unprecedented." Newberg on Class Actions, 3rd Ed., 14.03. A fee award

1 of 35% of the common fund is therefore reasonable in light of the prevailing fees that have been
2 awarded in other cases.

3 **E. Class Counsel's Costs Were Reasonably Incurred**

4 Under the common fund doctrine, the attorneys whose efforts helped to create the fund are
5 entitled to recover "the costs of . . . [the] litigation" from the fund, in addition to attorneys' fees.
6 *Vincent v. Hughes Air W., Inc.*, 557 F.2d at 769 (9th Cir. 1977). "In common fund cases, counsel is
7 entitled to reimbursement of expenses that were adequately documented and reasonably and
8 appropriately incurred in the prosecution of the case." *Chemi v. Champion Mortg.* No. 05-1238,
9 2009 WL 1470429 (D.N.J. May 26, 2009); *see In re Omnivision*, 559 F.Supp.2d at 1048-49
10 (awarding payment for reimbursement of expenses, plus interest from settlement fund; discussing
11 that attorneys may recover reasonable expenses that would typically be billed to paying clients in
12 non-contingency matters, including expenses for photocopying, printing, postage, messenger
13 services, legal research in electronic databases, experts and consultants, and travel costs).

14 Class Counsel requests reimbursement for actual expenses and costs in the amount of
15 \$18,483.64, which are detailed in the Declaration of James R. Hawkins in Support of Final
16 Approval. (Hawkins Final Decl. ¶ 50, Ex. 6). These expenses primarily consist of fees for filing,
17 mediation, and court call, and were reasonably incurred in the prosecution of this matter. (*Id.*).

18 **F. The Class Representative Should Receive the Requested Service Award**

19 Plaintiff respectfully submits that for his service as the Class Representatives, he should be
20 awarded a Class Representative Service Awards in the amount of \$10,000. Defendant does not
21 oppose this award nor has any Class Member has objected to it.

22 The service award is intended to recognize the time, effort, and risk that Plaintiff undertook
23 in bringing this case and helping to secure the relief obtained for the members of the Class. *See Bell*
24 *v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payment" to
25 named Plaintiffs for their efforts in bringing the class case); *Rodriguez v. West Publishing*, 563 F.3d
26 948, 959 (9th Cir. 2009) (stating that incentive awards are "intended to compensate class
27 representatives for work done on behalf of the class, to make up for financial or reputational risk
28

undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

In addition, public policy considerations require the award of adequate service awards reflective of the risks and efforts undertaken by class representatives. “Many courts have noted a fourth rationale for incentive payments: that such payments do precisely what their name hopes they will—incentivize class members to step forward on behalf of the class.” Newberg on Class Actions § 17:3 (5th ed.) § 17:3.

Plaintiff has performed admirably as the Class Representative. Plaintiff provided valuable information and documents from their employment which was instrumental in Class Counsel’s understanding of the case and their ability to successfully litigate and mediate. Plaintiff was involved in the settlement negotiations and provided invaluable assistance and information which ultimately resulted in this Settlement. (Hawkins Final Decl. ¶ 35; Declaration of Class Representative in Support of Preliminary Approval and in Support of Final Approval, generally). Plaintiff also assumed the risks that he may be liable for costs incurred in this case, and that he may be “blacklisted” by future employers for having brought this action.

The payment of the service award to a successful class representative is appropriate and the total amount of \$10,000 as service payments is only 1.67% of the Gross Settlement Amount secured on behalf of the Class. Further, the service award is comparable to those awarded in other class actions. *See e.g. Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1381 (Cal.App. June 28, 2010) (affirming \$10,000 incentive awards to plaintiffs in class action where average recovery per class member was only \$81); *Nakagaki v. Proven Staffing Consultants LLC*, San Diego County Superior Court, Case No. 37-2022-00026848-CU-OE-CTL (April 21, 2023) (approving \$6,500 service award on \$81,000 settlement); *Carrillo v. SGS North America, Inc.* LASC No. BC560240, Order Granting Final Approval, Dec. 20, 2016 (\$15,000 enhancement award in a \$400,000 claims-made settlement for 52 employees); *Valladares v. The Sygma Network, Inc.*, LASC No. BC406053, Order Granting Final Approval, Apr 6, 2010 (\$10,000 enhancement award in a maximum \$1,195,000 claims-made settlement for 326 employees).

1 By bringing this case, Plaintiff secured a total settlement of \$600,000.00 for 821 Class
2 Members. Plaintiff spent considerable time and effort and undertook significant risks in bringing
3 this action. Accordingly, Class Counsel respectfully requests that the Court approve the requested
4 Class Representative Service Award.

5 **V. CONCLUSION**

6 The services provided by Class Counsel have been wholly contingent, and the requested fee
7 is reasonable compared to fee requests approved by courts given the efforts expended in this case
8 and the stage of proceedings at the time of settlement. Class Counsel undertook great risk on and
9 achieved a favorable result for the benefit of Class Members. Based on the foregoing, Class Counsel
10 respectfully requests approval of the application for award of attorneys' fees of \$210,000.00,
11 reimbursement of actual litigations costs of \$18,483.64, and a Class Representative Service Award
12 of \$10,000.00 to Plaintiff.

13 Dated: October 11, 2024

JAMES HAWKINS, APLC

14
15
16 By: _____



17 James R. Hawkins

18 Christina M. Lucio

19 Mitchell J. Murray

20 Attorneys for Plaintiff
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