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TELLAS, JR., individually, and on behalf of all others similarly situated

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ORANGE, CIVIL COMPLEX CENTER

9 DANIEL ALPIREZ TAPIA, and MICHAEL
10 TELLAS Jr., individually and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 v.

14 INTERNATIONAL ALUMINUM
CORPORATION dba INTERNATIONAL
15 ALUMINUM COMPANY, a Texas
Corporation, and DOES 1-50, inclusive,

16 Defendants.

Case No. 30-2015-00819914-CU-OE-CXC
Assigned for All Purposes To:
Hon. Peter Wilson
CX-102

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
ATTORNEYS' FEES, COSTS,
ENHANCEMENT AWARDS AND
ADMINISTRATION COSTS**

17 Date: July 18, 2019
18 Time: 2:00 p.m.

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1 **I. INTRODUCTION**

2 Plaintiffs Daniel Tapia and Michael Telles, Jr. (“Plaintiffs”), on behalf of themselves and
3 the 302 member conditionally certified class, respectfully request that this Court grant final
4 approval of the settlement, which seeks to resolve claims against International Aluminum Corp.,
5 dba International Window . (“IAC” or “Defendant”) in exchange for a non-reversionary Gross
6 Settlement Amount (“GSA”) of Three-Hundred Twenty Seven Thousand Seven Hundred and
7 Fifty Dollars and Zero Cents (\$327,750.00). The Class Members overwhelmingly supported the
8 Settlement, as there were 2 objection forms¹ submitted and only one request for exclusion from
9 the Settlement. The proposed Settlement is projected to pay an average of \$578.71 per Class
10 Member, with the highest estimated payment at \$2,792.10.

11 Plaintiffs move for final approval of attorneys’ fees in the amount of \$109,250.00, which
12 represents one-third of the GSA. As will be demonstrated herein, Class Counsel’s attorney fee
13 request is supported using the percentage fee method and the lodestar method. Second, Plaintiffs
14 move for final approval of payment of the litigation costs in the amount of \$8,059.29, all of which
15 was incurred in litigating this matter. Third, Plaintiffs move for final approval of the Class
16 Representative Payments to Plaintiffs in a sum not to exceed \$5,000.00 each, to compensate the
17 Class Representatives for providing a general release of their claims against IAC – a release
18 significantly greater than the Class Members provided – and for the risks they absorbed and time
19 spent litigating the case. Plaintiffs played a vital role in representing Class Members in this case
20 and spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth,
21 Plaintiffs move for final approval of the payment of \$18,500.00 in administrative costs to Phoenix
22 Settlement Administrators. Fifth, Plaintiffs move for final approval of the \$10,000.00 PAGA
23 Payment and the payment to the Labor and Work Development Agency (“LWDA”) for its share
24 of the PAGA Payment (\$7,500.00, which is 75% of \$10,000.00; with the remaining \$2,500.00

25 _____
26 ¹ The two objection forms submitted by class members are attached to the declaration of the
27 settlement administrator Elizabeth Kruckenberg from Phoenix Class Action Administration. It is
28 the opinion of class counsel, the settlement administrator and defense counsel that the objection
forms submitted are not objections based on the language of the objections submitted by the 2
class members. The attachments of the objection forms are translated into English for the Court
to make its own determination.

1 payable to Class Members).

2 This case required hundreds hours of attorney time from Class Counsel and sought relief
3 on behalf of 302 persons within the State of California who are or were employed by IAC as on
4 exempt employees in the State of California between November 13, 2011 and April 15, 2019.
5 This litigation involved interviews with Class Members; the review and analysis of documents,
6 policies, and practices; the exchange of formal and informal discovery; motion practice, a federal
7 complaint, and a full day of mediation. Most importantly, the Settlement and all its terms received
8 overwhelming support from Class Members, as there were 2 objection forms and only one request
9 for exclusion. As previously identified, counsel does not view the objection forms received as
10 true objections based on the language in the objections. Therefore, Plaintiffs respectfully request
11 the Court grant final approval of the Settlement, attorneys' fees, litigation costs, class
12 representative payments, administration costs, and payment to the LWDA in the amounts
13 preliminarily approved by the Court, as fully disclosed to Class Members, and as requested
14 herein.

15 II. BACKGROUND, INVESTIGATION, DISCOVERY

16 Defendant is International Aluminum Corp. ("IAC"), dba International Window and is a
17 Texas Corporation doing business in California. IAC started doing business in Downey
18 California around 2011. IAC is a manufacturer of diversified lines of quality aluminum and vinyl
19 products has locations in Downey and Fullerton where it employees non-exempt manufacturing
20 employees during the Class Period. Plaintiffs were employed by IAC as non exempt employees
21 by Defendant. Mr. Telles was employed between December 5, 2013 until approximately May 23,
22 2015 as a non-exempt employee. Mr. Tapia was also a non-exempt employee and held the
23 positions of assembler, and also worked in warehouse and installation. Mr. Tapia was employed
24 between June 2014 and March 5, 2015. During Plaintiffs' tenure, the other non-exempt
25 employees in the proposed Plaintiffs' Class performed similar job functions and duties related to
26 the manufacturing of aluminum and siding products business. There are approximately 302
27 putative class members. (Hawkins Decl. ¶ 10).

28 The Settlement Class consists of all current and former non-exempt employees

1 employed by Defendant in California from November 13, 2011 through the date of preliminary
2 approval which was April 15, 2019. (Settlement Agreement, Article II, f.). (Hawkins Decl. ¶ 12).

3 On November 13, 2015, Plaintiff Tapia filed his original complaint alleging claims against
4 Defendant International Aluminum Corporation, a Texas Corporation, and International Window
5 Corporation, a business form unknown, (“Defendants”) for the failure to (1) pay overtime wages,
6 (2) provide meal periods, (3) rest periods, (4) comply with accurate itemized wage statements,
7 and (5) for unfair competition. On December 18, 2015, Plaintiff Tapia filed an amended putative
8 class action complaint adding Plaintiff Michael Telles, Jr., (“Plaintiff Telles”) and a sixth cause of
9 action for penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”).

10 Thereafter, numerous amendments, arbitration, and a filing of a federal class action
11 complaint alleging the same claims occurred. As a result of the settlement, a Third Amended
12 Complaint was filed in this action on or about November 5, 2018, reuniting all the claims into this
13 one action. (Hawkins Decl. ¶¶ 3-9).

14 Throughout this litigation, Defendant has steadfastly denied Plaintiffs’ allegations and
15 raised defenses to the claims, individually and on a class wide basis. Defendant maintains that its
16 policies and practices meet the requirements of the Labor Code and applicable Wage Order with
17 regard to the provision of meal and rest breaks and the payment of all compensation owed to its
18 employees. (*Id.*) To date, no motion for class certification has been filed, no class has been
19 certified, and the Court has not made any findings that Defendant engaged in any wrongdoing or
20 in violation of any state law, rule, or regulation, with respect to the issues presented in the
21 litigation. (*Id.*)

22 Plaintiffs and Defendant exchanged extensive information and documents through both
23 formal and informal means related to the claims asserted. (Hawkins Dec. ¶ 11). Throughout the
24 litigation, Defendant produced thousands of pages of information and data, including policies,
25 handbooks, time and payroll records of an agreed upon sample of the putative class reflecting
26 time punches at the start of employees’ shifts, and at the end of the shift, and meal period punches
27 as well as the applicable pay rates. (*Id.*) Defendant also provided Plaintiffs’ personnel file,
28 records regarding documents identifying the non-exempt positions and information regarding the

1 number of employees holding these positions during the relevant time period. (*Id.*) Defendant
2 also provided substantial information concerning the total number of potential class members, the
3 total number of workweeks at issue, and the applicable hourly rates and other summary data
4 related to the alleged class. (*Id.*) The parties also engaged in a Belaire West process to
5 communicate with other class members. (*Id.*)

6 After exchanging relevant information and engaging in numerous discussions regarding
7 the claims alleged, on August 27, 2018, the Parties participated in a private mediation with
8 mediator Hon. James P. Gray. (Hawkins Decl. ¶ 7). During the course of the mediation, the
9 parties exchanged further information and documentation concerning Plaintiffs' claims and
10 Defendant's defenses, and aggressively advocated for their respective positions. (*Id.*) At the
11 conclusion of the mediation, the parties signed a Memorandum of Understanding. The long form
12 settlement agreement was later negotiated and is presented here for final approval.

13 1. The Settlement Provides Reasonable Compensation to Class Members

14 Even without the presumption of fairness and reasonableness, the settlement clearly is
15 within the range of reasonableness. The predominant claims in this action arise from violations
16 of California law with respect to the failure to provide second meal periods, third rest breaks and
17 overtime relating to unlawful rounding practices. After investigation, the alternative workweek
18 theory plead in the complaints appeared to lack factual merit. (Hawkins Decl. ¶¶ 17-24).

19 Here, Plaintiffs allege Defendant participated in a consistent rounding of time practice
20 which resulted in non-deminimis time in favor of the employer. In *Troester v. Starbucks*, (2018)
21 S234969, the California Supreme Court recently held that the de minimis doctrine adopted under
22 the federal Fair Labor Standards Act (FLSA) does not apply to California employers. The Court
23 held that the relevant wage order and statutes do not permit application of the de minimis rule on
24 the facts given to us by the Ninth Circuit. Thus, Defendant was liable for unlawful rounding of
25 time while the class members were subject to the control of the employer. Here, such
26 uncompensated time generally results in uncompensated overtime hours, and most of the
27 employees in the putative class worked overtime hours. (*Id.*)

28 Plaintiffs also asserted Defendant failed provide second meal periods or third rest periods

1 and Defendant failed to have written meal and rest period policies or employee handbooks that
2 existed during the relevant time period. However, Defendant argued its written policies were in
3 the form of wage orders which they had posted in the break rooms. Defendant further asserted in
4 its discovery responses that it provided compliant meal and rest periods. However, Defendant's
5 sampling of time records reveal no recordation for second meals. Defendant also asserted that it
6 had a bell system where all work would cease and thus no lunch needed to be recorded for the
7 first meal period. However, Plaintiffs argued the two shifts overlapping by a couple hours does
8 not seem reasonable that the entire production would shut down and certainly there was no
9 evidence of a second lunch bell system. Further, when Plaintiff Telles worked in the field, there
10 are no records of a second meal being recorded either. (*Id.*)

11 Defendant also disputed the propriety of certification in this case and contends that its
12 policies and practices concerning the claims asserted in this lawsuit are compliant with California
13 law. Accordingly, it denies it has any liability for the claims asserted by Plaintiffs. (*Id.*)

14 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS'** 15 **RESPONSE**

16 **A. Terms of the Settlement**

17 The GSA is Three-Hundred Twenty Seven Thousand Seven Hundred and Fifty Dollars
18 and Zero Cents (\$327,500.00). The Gross Settlement Amount includes, without limitation, the
19 Settlement Administration Costs of \$18,500.00; the Class Representative Enhancements of up to
20 \$5,000 each; Court-approved attorneys' fees up to \$109,250.00, litigation costs to Class Counsel
21 in the amount of \$8,059.29; Penalties paid pursuant to PAGA of \$7,500; and employers share of
22 taxes, deductions, and withholdings. The Net Settlement Amount ("NSA") is approximately
23 One Hundred and Fifty One Thousand Dollars (\$174,190.71²). (Settlement Agreement, Article
24 II, ¶¶ u, v; Elizabeth Kruckenberg Decl. ¶ 12).

25 Additionally, IAC's share of employer taxes will be paid separate and apart from the
26 GSA. (Amendment to Settlement Agreement, 3.06 (f)). Each Individual Settlement Payment to

27 ² The Settlement assumes an NSA of \$151,000. However, litigation costs are \$8,059.29 as opposed to the \$30,000
28 allocated in the settlement, and the administration costs are actually \$18,500 instead of the \$20,000 allocated in the
agreement, thus increasing the Net Settlement Amount.

1 Settlement Class Members will be allocated as follows: 33% to wages, and 67% to interest and
2 penalties. (*Id.*) Counsel. Participating Class Members' Individual Settlement Amount shall be
3 based on a *pro rata* value equal to the Net Settlement Amount multiplied by the ratio of (a) the
4 number of Eligible Workweeks. The Settlement is a common fund settlement with no reversion
5 to Defendant. Thus, each of the participating Settlement Class Members will be paid his or her
6 pro-rata share of the NSA. (Settlement Agreement Article III, ¶¶ 3.04-3.06).

7 **B. Released Claims**

8 Subject to approval by this Court, and in exchange for the consideration recited in the
9 Amendment to Settlement Agreement, the Class Released Claims are limited to the wage and hour
10 claims asserted in the complaints. (Amendment to Settlement Agreement ¶ 5.02).

11 **C. The Class Members Support the Settlement – 2 Erroneous Objections and**
12 **One Opt-Out**

13 On April 15, 2019 the Court granted Preliminary Approval of the Settlement,
14 conditionally certified the Class, appointed Phoenix Settlement Administrators to act as the
15 administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed
16 to the Class via U.S. First Class Mail. On May 6, 2019, Phoenix mailed the Notices to 302 Class
17 Members. (Kruckenberg Decl. ¶¶ 3-10). Out of the 302 Notices, 12 were deemed undeliverable
18 after the Notices were returned to Phoenix and Phoenix had conducted a skip trace and National
19 Change of Address search to find the most recent addresses. (Kruckenberg Decl. ¶ 4). One Class
20 Member asked to be excluded and 2 Class Members submitted the objections forms. The
21 statements contained within the objection forms confirm these are not objections but confirm the
22 Class Members support for the settlement. (Kruckenberg Decl. ¶ 9; Ex. B). Therefore, there
23 should be 99.99% participation rate and 301 out of 302 Class Members will be mailed a
24 settlement check.

25 The Parties agreed per Stipulation and Ordered by the Court that checks remaining
26 uncashed after the expiration of the 180 days after issuance shall be distributed pursuant to
27 California Code of Civil Procedure section 384 with 50% to the State Treasury for deposit in the
28 Trial Court Improvement and Modernization Fund and 50% to the Equal Access Fund.

(Settlement Agreement ¶ 3.06 (i).)

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Satisfies the Standard for Final Approval

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is reached through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the plaintiffs’ case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice.³ Subject only to the Class’ reaction to the Settlement, the Court preliminarily presumed the

³See Memorandum of Points and Authorities in Support of Preliminary Approval, pages 6-10, filed on January 17, 2019. In addition to the *Dunk* factors, Class Counsel also detailed the other factors such as the strengths of Plaintiff’s case, risks and costs of further litigation, as well as the reasonableness of the GSA amount in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116. *Id.*

1 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and
2 adequate time provided to the Class to object to the Settlement, 2 class members submitted
3 erroneous objection forms and only 1 class member requested exclusion from the Settlement,
4 **resulting in a 99.99% participation rate from the Class.** (Kruckenberg Decl. ¶¶ 9-10). Thus, the
5 proposed Settlement is entitled to the presumption that it is fair and in all other respects proper
6 and should be finally approved.

7 **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**
8 **A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage**
9 **of a Common Fund**

10 Class Counsel applies for an award of attorneys' fees in the sum of \$109,250.00 (which is
11 33.33% of the GSA), and litigation costs of \$8.59.29. (Hawkins Decl. ¶ 34, **Exh. 2**). When a
12 settlement results in a common fund for the benefit of a class, class counsel may be awarded fees
13 as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the
14 "percentage of recovery" method). The California Supreme Court confirmed in *Laffitte v. Robert*
15 *Half Int'l, Inc.* that "[t]he percentage of fund method survives in California class action cases." 1
16 Cal.5th 480, 506 (2016), in stating:

17 The recognized advantages of the percentage method—including relative ease of
18 calculation, alignment of incentives between counsel and the class, a better approximation
19 of market conditions in a contingency case, and the encouragement it provides counsel to
20 seek an early settlement and avoid unnecessarily prolonging the litigation—convince us
21 the percentage method is a valuable tool that should not be denied our trial courts.

22 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34
23 (1977) ("when a number of persons are entitled in common to a specific fund, and an action
24 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
25 that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v.*
26 *Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
27 benefit of all parties, the trial court acts within its equitable power to prevent the other parties'
28 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects

1 the results achieved for the putative class than the lodestar method and “establishes reasonable
2 expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages
3 early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities*
4 *Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally
5 favored in common fund cases because it allows courts to award fees from the fund ‘in a manner
6 that rewards counsel for success and penalizes it for failure.’”).⁴

7 The purpose of the common fund/percentage approach is to “spread litigation costs
8 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
9 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
10 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
11 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
12 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
13 105, 110, the California Supreme Court recognized that the common fund doctrine has been
14 applied “consistently in California when an action brought by one party creates a fund in which
15 other persons are entitled to share.” The reasons for applying the common fund doctrine include:
16 “...fairness to the successful litigant, who might otherwise receive no benefit because his
17 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the
18 others who are entitled to share in the fund and who should bear their share of the burden of its
19 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
20 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
21 is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*
22 Because there is a defined and clearly traceable benefit to the Class, the Court can base an award
23 of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

24 **1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
25 **Comparable Common Fund Cases**

26 _____
27 ⁴ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar
28 cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion
to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-
check and use other means to evaluate the reasonableness of a requested percentage fee”).

1 Assessing an appropriate fee based on a percentage of the fund involves considering “all
2 of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where
3 awards were challenged by defendants or objectors – the only parties with standing to appeal.
4 *Wershba*, 91 Cal.App.4th at 236. Several studies of class action fee awards have found that the
5 median common fund fee award is approximately one-third of the total settlement fund.⁵

6 The requested fee falls in the mid-range of percentage class fee awards, which generally
7 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
8 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
9 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class.
10 Numerous state and federal courts in California routinely approve fee requests equal to or greater
11 than 33% of the common fund. Indeed, courts have found that an award of 33% of the common
12 fund represents the “benchmark” in California.⁶ In short, Class Counsels’ fee request of
13 \$109,250.00 (33.33% of the GSA) is in line with awards in similar cases in California and
14 nationwide and demonstrates that Class Counsels’ fee request is consistent with market rates and
15 is reasonable.

16 **2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

17 Class Counsels’ fee request is reasonable when calculated using the lodestar method.
18 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
19 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at
20 48. The court then may enhance this lodestar figure by a “multiplier” to account for a range of
21 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
22 success achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer*

23 ⁵*See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee
24 awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich,
25 *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T.
Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report*
26 *to the Advisory Committee on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in
the traditional range of approximately one-third of the total settlement”).

27 ⁶ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL 163293, *5
28 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v.*
Kellogg Co. (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (“This percentage compares
favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a
lodestar cross-check as well.”).

1 v. *Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), [“[t]here is no...rule limiting the factors
2 that may justify an exercise of judicial discretion to [adjust the] lodestar”].

3 As of the date of filing, Class Counsel worked 213.90 documented hours on this case, and
4 an estimated 50 additional hours undocumented. The documented hours calculates the base
5 lodestar at \$152,855 at rates reflecting those currently earned in the marketplace. All of the work
6 and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this
7 case. (Hawkins Decl. ¶ 26). As Class Counsel’s lodestar fee is in excess of their fee request, a
8 multiplier on their lodestar fee is not sought herein. In fact, the requested fee results in a so-
9 called “negative multiplier” which suggests the percentage of the fund amount is reasonable and
10 fair. See *Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*
11 *Securities Litigation*, 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16 (N.D. Cal. 2007).

12 **3. Class Counsel’s Hourly Rates are Reasonable**

13 Class Counsels’ hourly rates are between \$450 and \$850 and are in line with rates
14 typically approved in wage and hour class action litigation and which rates have been approved
15 by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and
16 San Diego County Superior Courts.

17 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
18 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084,
19 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and
20 experience, the nature of the work performed, the relevant area of expertise and the attorney’s
21 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
22 Class Counsels’ skill and experience support their hourly rates. Their practice is limited
23 exclusively to litigation, focusing on the representation of employees in wage and hour and
24 consumer class action matters. (Hawkins Decl. ¶ 24). As prominent attorneys in the field of wage
25 and hour class action litigation, Class Counsel continually monitors the prevailing market rates
26 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
27 paralegals to be consistent with the prevailing market rates in the private sector for attorneys and
28 staff of comparable skill, qualifications and experience. Other wage and hour attorneys working

1 as class counsel before California courts charge comparable if not higher rates. Therefore, as they
2 are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

3 **4. Class Counsel's Total Hours are Reasonable**

4 In determining a lodestar fee, reasonable hours include, in addition to time spent during
5 litigation, the time spent before the action was filed, including time spent interviewing clients,
6 investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight*
7 *Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to
8 establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

9 Class Counsel expended a total of approximately 213.90 documented hours on this case,
10 and an estimated 50 additional hours undocumented. The work performed to achieve a settlement
11 that will provide valuable consideration to the Class, is summarized by Class Counsel in the
12 declaration submitted herewith. (Hawkins Decl. ¶ 26; Ex. 2). All tasks and work performed were
13 reasonable and necessary to the prosecution of this case. The work performed was justified in
14 light of the result achieved.

15 **5. Costs of Litigation are Reasonable**

16 Class Counsel seeks reimbursement of the litigation costs and expenses of \$8,059.29
17 (originally estimated not to exceed \$30,000.00). These costs were reasonable and necessary to
18 prosecute this case and the results achieved and are fair, and reasonable. (Hawkins Decl. ¶ 27; Ex.
19 3).

20 **VI. THE CLASS REPRESENTATIVE AWARDS ARE REASONABLE**

21 Class Counsel seeks approval \$5,000.00 service awards to the named Plaintiffs/Class
22 Representative, Daniel Tapia and Michael Telles, Jr. The requested service awards are
23 reasonable in light of the general releases of all claims Plaintiffs agreed to, greater than the
24 release given by Class Members, the benefits Plaintiffs conferred upon the entire Class, resulting
25 in payments to all Class Members, the time spent assisting counsel with the investigation and
26 prosecution of these claims, commitment to responding to discovery and to their anticipated
27 depositions, and consenting to the proposed Settlement. Furthermore, in pursuing this action on
28 behalf of the Class, Plaintiffs risked a judgment entered against them for attorneys' fees and costs

1 in the event this matter had been lost. (Hawkins Decl. Ex. 4-Tapia Decl. and Ex. 5, Telles Decl.)

2 Courts routinely approve service payments, or incentive awards, to compensate named
3 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
4 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
5 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
6 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on
7 the foregoing, the \$5,000 service payment to each of the named Plaintiffs/Class Representatives is
8 fair, appropriate, and justified as part of the overall settlement.

9 **VI. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

10 The Parties agreed to hire Phoenix Settlement Administrators as the administrator, and the
11 Court approved this choice. The Administrator was responsible for formatting, printing and
12 mailing the Notice. It was also responsible for updating addresses and re-mailing Notices returned
13 as undeliverable, responding to Class Member inquiries, answering questions from Counsel for
14 the Parties, and providing a declaration to document its duties and responsibilities under the
15 settlement. Plaintiffs now request that the Court approve the \$18,500.00 fee to Phoenix
16 Settlement Administrators for services rendered and to be rendered. (Kruckenberg Decl. ¶¶ 2-9).
17 Following the grant of final approval, the Administrator's duties will continue in order to
18 calculate and mail the Individual Settlement Payment checks to Class Members, perform tax
19 reporting obligations, disburse other payments as ordered by the Court, and perform such other
20 duties as set forth in the Settlement Agreement. The fee of \$18,500.00 for services rendered and
21 to be rendered is fair and reasonable and should be granted.

22 **VII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

23 The payment of \$7,500 (75% of \$10,000) to the LWDA for its share of the applicable
24 penalties claimed under the California Labor Code's Private Attorney general Act of 2004, as
25 amended ("PAGA"), is reasonable under the circumstances. The Parties negotiated a good faith
26 amount to the LWDA. The sum to be paid to the LWDA was not the result of self-interest at the
27 expense of other Class Members. The LWDA was provided notice of the Settlement concurrently
28 with the filing of the preliminary approval motion and the instant motion. Plaintiff did not receive

1 a response or objection to the Settlement from the LWDA. (Hawkins Decl. ¶ 29). Thus, Plaintiffs
2 request the Court finally approve the sum of \$7,500 for payment to the LWDA.

3 **VIII. CONCLUSION**

4 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
5 of the Class Action Settlement, award Class Counsels' attorneys' fees in the sum of \$109,250.00
6 and litigation costs of \$8,059.29, award the named Plaintiffs an enhancement award payment in
7 the sum of \$5,000.00 each, award \$18,500.00 to Phoenix Settlement Administrators for
8 settlement administration services, and approve a payment to the LWDA in the amount of
9 \$7,500.00.

10
11 Dated: June 25, 2019

JAMES HAWKINS APLC

By: /s/ Gregory Mauro

JAMES R. HAWKINS, ESQ.

GREGORY MAURO, ESQ.

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