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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EFRAIN J. SANCHEZ, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

GRUPO DECO CALIFORNIA
CORPORATION, a California Corporation;
GRUPO DECO AMERICA CORPORATION,
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. BC 526934

Honorable Kenneth R. Freeman

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE
INCENTIVE AWARDS**

Date: June 21, 2022

Time: 10:00 a.m.

Dept.: 14

Complaint Filed: November 6, 2013

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1 **I. INTRODUCTION**

2 In connection with the \$80,000 Settlement Fund secured by Plaintiffs Efrain Sanchez,
3 Luis Franco and Alejandro Ruiz (“Plaintiffs”) and Class Counsel, on behalf of the Class,
4 Plaintiffs respectfully request the Court grant Plaintiff’s Motion for Award of Attorneys’ Fees
5 and Costs and Class Representative Incentive Award by approving this application for an award
6 of one-third of the common fund or \$26,666.67 for attorneys’ fees and \$15,000.00 for
7 reimbursement of costs (preliminarily approved not to exceed \$15,000). Further, Plaintiffs
8 respectfully request that this Court award a \$2,500.00 incentive award to each of the three
9 Plaintiffs for their role in obtaining this Settlement for the Class and in consideration for the
10 general release 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 (2016), the California Supreme Court affirmed an award of attorneys’ fees
15 equal to 1/3 of the common fund, which correlated to the lodestar with a 2 multiplier. Here,
16 Class Counsel’s lodestar is significantly in excess of the requested fee award (approximately
17 \$361,082.50) and no positive multiplier is required in connection with this Settlement to reach
18 the requested award. Plaintiffs’ counsel has expended significant resources, costs and time in
19 litigating this action since 2013. Therefore, Plaintiffs respectfully submit that the requested fee
20 award is well within the range approved in *Laffitte* and is therefore undoubtedly reasonable.

21 Since the attorneys’ fees requested are well within the range of reasonableness and
22 Counsel obtained significant positive results for the Class Members, Plaintiffs, by and through
23 Class Counsel, respectfully requests that the Court award the requested fees equal to one-third
24 (1/3) of the \$80,000.00 common fund and approve payment of Class Counsel’s litigation
25 expenses in the amount of \$15,000.00 in accordance with the preliminarily approved Settlement
26 Agreement. In addition, Plaintiffs respectfully request the Court award the requested \$2,500.00
27 to each of the three appointed Class Representative for their efforts and service to the Class.
28

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
4 a 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,*
8 *Miss. v. Roper*, 445 U.S. 326, 338, *rehg. denied*, 446 U.S. 947 (1980). “When a fee is set by a
9 court rather than by contract, the object is to set it at a level that will approximate what the
10 market would set. . . . The judge, in other words, is trying to mimic the market in legal services.”
11 *Gaskill 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
16 fees 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. Defendants asserted
19 numerous defenses to the case that created difficulties with proof and complex legal issues for
20 Class Counsel to overcome. For example, Defendants contended that they maintained compliant
21 policies, paid at least minimum wages for all hours worked, paid all overtime wages when
22 legally required, provided timely meal breaks and rest breaks, timely paid wages upon
23 termination, properly reimburse necessary expenses, and provided compliant wage statements
24 and maintained accurate records, or that any alleged violations, to the extent Plaintiffs can prove
25 any, are due solely to individual preference. Defendants’ financial condition provided for
26 additional uncertainty and risk of diminishing Class recovery. (Hawkins Final Approval Decl.
27 ¶ 26.; see also Ex. 3, Declaration of James R. Hawkins in Support of Motion for Preliminary
28

1 Approval (“Hawkins Prelim. Decl.”) ¶¶ 7, 15, 30-32; Ex. 4, Hawkins First Supplemental
2 Declaration for Preliminary Approval (“Hawkins Suppl. Decl.”) ¶ 7.)

3 There was also a significant risk that, if the litigation was not settled, Plaintiffs would be
4 unable to certify the action as a class action and maintain class certification through trial and
5 thereby not recover on behalf of any employees other than themselves. Throughout the action,
6 Defendants challenged whether Plaintiffs can prove commonality or whether a class action trial
7 was manageable under the standards set forth in *Duran v. U.S. Bank Nat’l Assn.* 59 Cal. 4th 1
8 (2014). With such precedent in mind, Defendants alleged any claims involved highly
9 individualized inquiries which were not appropriate or ripe for class certification. As a result,
10 there was considerable risk that Plaintiffs would not prevail on a motion for certification or that
11 Defendants would prevail on its defenses, thus, defeating any and all recovery to the Class. Even
12 if Plaintiffs were to obtain class certification, liability was by no means a foregone conclusion.
13 (Hawkins Final Approval Decl. ¶ 23-28, 56).

14 The Settlement was possible only because Class Counsel was able to convince
15 Defendants that Class Counsel could potentially prevail on the difficult legal issues regarding
16 liability and obtain and maintain class certification for the Class through trial and overcome
17 difficulties in proof as to monetary relief. In successfully navigating these hurdles so as to
18 convince Defendants to settle, Class Counsel displayed significant skill. (Hawkins Final
19 Approval Decl. ¶ 39-44, 54, 56).

20 To represent the Class on a contingent fee basis, Class Counsel had to devote the
21 necessary time and resources to this contingent case. (Hawkins Final Approval Decl. ¶ 52-56).
22 In so doing, Class Counsel gave up the hourly work that a firm can bank on for the risky
23 contingent fee work in this case which could have paid Class Counsel nothing. *Powers v.*
24 *Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

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

3 The United States Supreme Court has ruled that the parties to a class action properly may
4 negotiate not only the settlement of the action itself, but also the payment of attorneys' fees. See
5 *Evans v. Jeff D.*, 475 U.S. 717, 734-35, 738, n.30 (1980). In *Hensley v. Eckerhart*, 461 U.S. 424,
6 437 (1983), the Supreme Court held that negotiated, agreed-upon attorneys' fee provisions are
7 the ideal towards which the parties should strive: "A request for attorney's fees should not result
8 in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Id.*

9 The United States Supreme Court has reemphasized this policy and further stressed that
10 the trial court "has a responsibility to encourage agreement" on fees. *Blum v. Stenson*, 465 U.S.
11 886, 902 n.19 (1984). Here, as part of the Settlement, Defendants agreed not to oppose an award
12 of one-third (1/3) of the Settlement Fund for attorneys' fees. Such a fee is commensurate with
13 what the market would provide for similar services and the Court therefore can most certainly
14 enforce the agreement. As the United States Supreme Court has instructed:

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

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

20 Here, the Settlement is the result of continuing discussions after a full-day of non-
21 collusive, informed, and arm's-length negotiations between experienced counsel for the Class
22 and Defendants with the assistance of Michelle Reinglass. (Hawkins Final Approval Decl., ¶ 22).
23 The requested fee and cost award was negotiated during adversarial bargaining by counsel for
24 each of the parties, after the substantive terms of the Settlement had been negotiated. Such arm's
25 length bargaining fairly reflects the marketplace value of the services rendered by Class Counsel
26 in this case. As a result, the fee agreed to by the parties should be approved.

1 **IV. CLASS COUNSEL'S FEE AWARD IS PROPERLY CALCULATED AS A**
2 **PERCENTAGE OF THE TOTAL VALUE CREATED FOR THE BENEFIT**
3 **OF THE CLASS.**

4 Class Counsel seeks an attorney fee award for their successful prosecution and resolution
5 of this action, calculated as one-third (1/3) of the cash value of the common fund created by the
6 Settlement. In cases such as this one, the Courts have long recognized that an appropriate
7 method for determining the award of attorneys' fees is based on a percentage of the total value of
8 benefits afforded to class members by the settlement. *Laffitte*, 1 Cal. 5th at 494 ("the percentage
9 method has been generally approved in common fund cases"); *Boeing Co. v. Van Gemert*, 444
10 U.S. 472, 478 (1980); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir.
11 1989); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The awarding of a
12 fee based on a percentage of the common fund recovered is to "spread litigation costs
13 proportionately among all the beneficiaries so that the active beneficiary does not bear the entire
14 burden alone." *Vincent, supra*, 557 F.2d at 769. The Settlement Fund is \$80,000.00.
15 Accordingly, Class Counsel requests \$26,640.33 in attorneys' fees as it is properly calculated as
16 a percentage (33-1/3%) of the common fund created for the benefit of the Class.

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

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

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

Id. at 47.

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

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

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

Laffitte, 1 Cal. 5th at 503.

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

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

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

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

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

9 *Id.* at 505.

10 Because the Settlement Fund is a pure common fund, and the percentage of the fund is
11 the comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao* support
12 an award based upon the percentage of the common fund. Here, as noted above, one-third is
13 within the reasonable range of comparable awards for common fund cases, which establishes the
14 requested award as reasonable. Moreover, as discussed below, the use of the lodestar cross-
15 check in this case further supports the reasonableness of the percentage fee award as it falls
16 squarely within the range approved in *Laffitte*. See also *Taylor v. Fedex Freight, Inc.*, 2016 U.S.
17 Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte* to approve 30% fee award with cross-
18 check lodestar multiplier of 2.26).

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

20 The reasonableness of the requested attorneys' fee of \$26,640.33 is also established by
21 reference to Class Counsel's lodestar cross-check in this matter. Class Counsel's total lodestar is
22 approximately \$361,082.50 not including certain fees still to be incurred to complete final
23 approval and the settlement process.¹ (Hawkins Final Approval Decl. ¶ 49). This is
24 substantially in excess of the requested award. An award which seeks less than the lodestar plus

25 ¹ Class Counsel's hourly rates used in the lodestar are also reasonable. Class Counsel's hourly
26 rates have been approved by Court's throughout California, including the Courts in the Superior
27 Court of California. The reasonableness of Class Counsel's hourly rates is further confirmed by
28 comparing such rates with the rates of comparable counsel practicing complex and class
litigation as detailed in the National Law Journal Billing Survey. See *Zest IP Holdings, LLC v.*
Implant Direct MFG., LLC, 2014 U.S. Dist. LEXIS 167563 (S.D. Cal. 2014) (finding that
"Mayer Brown's \$775 average billing rate for partners" and "Mayer Brown's \$543 average
associate billing rate" are reasonable rates when compared within 21 other firms practicing in the
Southern District of California.) See Hawkins Decl., Exhibit 5 - 2011 NLJ Bill Survey.

multiplier that was approved in *Laffitte* is undoubtedly fair, reasonable and justified under California law.¹

In a common fund settlement “[t]he lodestar method is merely a cross-check on the reasonableness of a percentage figure”. *Vizcaino v. Microsoft Corp.*, *supra*, 290 F.3d 1043, 1050, n.5. (9th Cir. 2002). In this case, consideration of Class Counsel’s overall lodestar as a cross-check to the percentage figure strongly supports the reasonableness of the requested fee award. In addition, Class Counsel anticipates performing additional work that is not included in this current lodestar amount.

C. The Percentage Award is Supported by 1) the Results Achieved; 2) the Risks of Litigation, 3) the Skill Required and the Quality of Work, 4) The Contingent Nature of the Fee and the Financial Burden, and 5) Awards in Similar Cases.

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

¹ Lodestar cross-checks with multipliers far in excess of 2 are commonly approved. See *e.g.*, *Pellegrino*, 182 Cal.App.4th at 293; *Vizcaino*, *supra*, 290 F.3d at 1051 (3.65 multiplier approved because of substantial risk); *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).

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

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

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

D. The Results Achieved

“The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.” *Omnivision*, 2007 WL 4293467 at *9; See also *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13627, at *27-28 (C.D. Cal. June 10, 2005). Class Counsel obtained a very favorable result in this case for the Class Members. The Settlement provides meaningful monetary benefits to the Class Members that are comparable to or even exceed those recovered in similar wage and hour class actions. The Settlement is particularly advantageous to the Class Members because the proceeds will be distributed in the near term without waiting additional years for a similar, or possibly, less favorable result.

There is little question that the result achieved in this litigation is favorable. The average estimated payment amongst the Settlement Class Members is estimated to be \$48.04 and the highest settlement payment is \$2,175.39. (Hernandez Decl. ¶14.)

E. The Risks of Litigation

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

As detailed above, at the time this case was brought, the result was far from certain. Defendants’ numerous defenses to the case created difficulties with proof and complex legal issues for Class Counsel to overcome. Here, a number of defenses asserted by Defendants presented serious threats to the claims of Plaintiffs and the other Class Members. (Hawkins Final Approval Decl. ¶ 24-28; Ex. 3, Hawkins Prelim. Decl. ¶¶ 7, 15, 30-32; Ex. 4, Hawkins First Suppl. Decl. ¶ 7.)

1 As discussed above, there was also a significant risk that, if the litigation was not settled,
2 Plaintiffs would be unable to obtain and maintain class certification through trial and thereby not
3 recover on behalf of any employees other than himself. Defendants also steadfastly challenged
4 Plaintiffs' ability to obtain class certification and, if certified, to demonstrate a viable trial plan
5 and ability to manage the potential individual issues a trial under *Duran*, (2014) 59 Cal. 4th 1,
6 arguing that individual issues precluded class-wide recovery. With such precedent in mind,
7 Defendants contended that any claims involved highly individualized inquiries which were not
8 appropriate or ripe for class certification. As a result, there was considerable risk that Plaintiffs
9 would not prevail on a motion for class certification and/or Defendants would prevail on their
10 defenses, thus, defeating any and all recovery to the class. Even if Plaintiffs successfully
11 obtained class certification of their wage and hour claims, proving class-wide liability was by no
12 means a foregone conclusion. (Hawkins Final Approval Decl. ¶25.)

13 All of these were very substantial risks any of which could have resulted in the Class
14 receiving nothing if the claims were litigated.

15 **F. The Skill Required and the Quality of Work**

16 Practice in the narrow areas of wage and hour and class action litigation requires skill,
17 knowledge, and experience in two distinct subsets of the law. Expertise in one does not
18 necessarily translate into expertise in the other. Class Counsel must have expertise in both. The
19 issues presented in this case required more than just a general appreciation of wage and hour law
20 and class action procedure as this area of practice is still developing as evidenced by the
21 California Supreme Court's ruling in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th
22 1004 (2012) .

23 The Settlement was possible only because Class Counsel was able to convincingly argue
24 that Plaintiffs could potentially prevail on the difficult legal issues regarding liability, maintain
25 class certification, overcome difficulties in proof as to monetary relief and take the case to trial.
26 (Hawkins Final Decl. ¶ 46-48.) In successfully navigating these hurdles Class Counsel displayed
27 the necessary dual skill set. The high quality of the work in this case was mandated by the very
28

1 vigorous and contentious defense presented by counsel for Defendants. Class Counsel was
2 required to invest substantial time and resources in investigation, informal discovery, formal
3 discovery, motion practice, and determination of potential damages, mediation, negotiations, and
4 preliminary and final approval. (Hawkins Final Decl. ¶¶ 44-48.)

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

9 **G. The Contingent Nature of the Fee and the Financial Burden**

10 There is a substantial difference between the risk assumed by attorneys being paid by the
11 hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can
12 go to the bank with his fee. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). The
13 attorney working on a contingent basis can only log hours while working without pay towards a
14 result that will hopefully entitle him to a market place contingent fee taking into account the risk
15 and other factors of the undertaking. *Id.* at 1257. Otherwise, the contingent fee attorney receives
16 nothing. *Id.*

17 In this case, Class Counsel subjected themselves to this contingent fee market risk in this
18 all or nothing contingent fee case wherein the necessity and financial burden of private
19 enforcement makes the requested award appropriate. Counsel retained on a contingency fee
20 basis, whether in private matters or in class action litigation, is entitled to a premium in order to
21 compensate for both the risks and the delay in payment. See e.g. *Stanger v. China Elec. Motor,*
22 *Inc.*, 812 F.3d 734 (9th Cir. 2016) (courts “must” apply a risk enhancement); *Stetson v. Grissom,*
23 *821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier). The simple*
24 *fact is that despite the most vigorous and competent of efforts, success is never guaranteed.*
25 *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967). Indeed, if counsel is not adequately
26 compensated for the risks inherent in difficult class actions, competent attorneys will be
27 discouraged from prosecuting similar cases. *Steiner v. BOC Financial Corp.*, 1980 U.S. Dist.
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LEXIS 14561 at *6- *7 (S.D.N.Y. 1980). Class Counsel has invested time and money into contingency cases which ultimately generated no fee, which further emphasizes the need for contingent cases to provide premium compensation when successful.

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

Class Counsel were required to advance all costs in this litigation. Accordingly, because the risk of advancing costs in this type of litigation can be significant, it is therefore cost prohibitive to many attorneys. The financial burdens undertaken by Plaintiffs and Class Counsel in prosecuting this action on behalf of the Class were substantial. To date, Class Counsel advanced in excess of \$15,000 in costs which could not have been recovered if this case had been lost. (Hawkins Final Decl. ¶ 50, Exhibit 11, Costs).

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

H. Awards in Similar Cases

The attorneys' fees requested by Class Counsel are within the range of fees awarded in comparable cases. A review of class action settlements over the past 10 years shows that the courts have historically awarded fees in the range of 20% to 50%, depending upon the circumstances of the case. *In re Warner Communications Sec. Lit.*, 618 F.Supp. 735, 749-50 (S.D. N.Y. 1985). Class Counsels' requested fees are one-third (1/3) of the total value of the case, a percentage well within the range of reasonableness given the significant results obtained for the Class, the risks undertaken, and the skill of the prosecution. See *Laffitte*, 1 Cal. 5th at 486, 506 (approving one-third (1/3) attorneys fee award).

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

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

8 Newberg, *Newberg on Class Actions*, 3rd Ed., 14.03, at 14-13.

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

11 **I. Class Counsel's Costs Were Reasonably Incurred**

12 Class Counsel requests reimbursement for expenses and costs incurred in excess of
13 \$15,000, which is the amount preliminary approved by the Court. These litigation expenses are
14 detailed in Exhibit 11 to the Hawkins Declaration. (Hawkins Final Decl. ¶ 50; Ex. 11). These
15 expenses primarily involve the costs incurred for initial filing fees, mediation fees, and also
16 include the amounts paid for court filing fees and service charges, document copying fees, and
17 attorney service charges, all of which are costs normally billed to and paid by the client. These
18 costs were reasonably incurred in the prosecution of this matter. (*Id.*). While Class Counsel has
19 incurred more than \$15,000 in costs to date, Class Counsel only requests \$15,000 as that is the
20 amount that was preliminarily approved.

21 **J. The Class Representative Should Receive the Requested Service Payment**

22 Plaintiffs respectfully submit that for their service as the Class Representatives, Plaintiffs
23 should each be awarded \$2,500.00 as the agreed Class Representative Enhancement Award.
24 Defendants have agreed not to oppose the payment of this amount to Plaintiffs.

25 As the Class Representatives, Plaintiffs have selflessly performed their duties to the Class
26 admirably and without exception. Plaintiffs provided valuable information and documents from
27 their employment which were instrumental in Class Counsel's understanding of the case.
28 Plaintiffs also provided Class Counsel with evidence for use at mediation and in litigation. They

1 were also involved in the settlement negotiations and provided invaluable assistance and
2 information which ultimately resulted in the settlement benefitting the Class. (Hawkins Final
3 Decl. ¶¶ 30-37; See also, Ex. 9, Declaration of Efrain J. Sanchez in support of Preliminary
4 Approval., Ex. 8, Declaration of Alejandro Ruiz in support of Preliminary Approval, and Ex. 10
5 Declaration of Luis Franco in support of Preliminary Approval.)

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

14 Without Plaintiffs’ support, cooperation and information, none of the other employees
15 would have received any benefit. The payment of the enhancement award to a successful class
16 representative is appropriate and the amount of \$2,500 each (total \$7,500.00) is a small portion
17 of the total Settlement secured on behalf of the Class.

18 This payment to compensate Plaintiffs for their effort and risk in bringing this case to
19 benefit the other 377 participating employees and secure a total settlement of \$80,000. Plaintiffs’
20 effort in the lawsuit have conferred a substantial benefit on the Class Members. Accordingly,
21 Class Counsel respectfully requests that the Court approve the requested Class Representative
22 Enhancement Awards.

23 **V. CONCLUSION**

24 The representation of the Class provided by Class Counsel has been wholly contingent.
25 Class Counsel’s fee request is well within the realm of reasonableness for fee requests approved
26 by courts given the efforts expended in this case and the stage of proceedings at the time of the
27 Settlement. Moreover, Class Counsel undertook great risks on a contingent fee basis and
28

1 achieved a favorable result for the benefit of Class Members. Based on the foregoing, Class
2 Counsel respectfully requests approval of the application for award of attorneys' fees of
3 \$26,640.33, reimbursement of litigation costs of \$15,000, and enhancement awards of \$2,500 to
4 each Class Representative (\$7,500.00 total).

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6
7 Dated: May 23, 2022

JAMES HAWKINS APLC

8
9 By:



10 James R. Hawkins
Christina M. Lucio

11 Attorneys for Plaintiff
12 and the conditionally certified class
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