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California Class, Aggrieved Employees, and FLSA Collective*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO**

RANDY CURRAN, CIERRA WOOLEN,
LUISA MAZON, ROBERTO RAMIREZ,
LINDA FANG, and ALEXIS BELL,
individually and on behalf of others similarly
situated,

Plaintiffs,

v.

ADVANCED CARRIER SERVICES,
LLC, B-Z CONVEYANCE, LLC,
DELIVERY RESPONSE ON-TIME
PARCEL LLC, ONDOT LLC,
AMAZON.COM, INC., and AMAZON
LOGISTICS, INC.,

Defendants.

Civil Action No.: CV2024-0847

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS**

Action Filed: March 29, 2024

Trial Date: None set

Hearing Date: November 26, 2024

Time: 9:00 a.m.

Dept.: 11

Judge: Hon. Timothy Fall

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

2 **PLEASE TAKE NOTICE** that on November 26, 2024 at 9:00 a.m., or as soon thereafter
3 as they may be heard in Department 11 of the Superior Court of the State of California for the
4 County of Yolo, Plaintiffs Randy Curran, Cierra Woolen, Luisa Mazon, Roberto Ramirez, Linda
5 Fang, and Alexis Bell (collectively “Plaintiffs”), on behalf of themselves and all others similarly
6 situated and aggrieved, will and hereby do move this Court for entry of an Order awarding
7 attorneys’ fees and costs.

8 This Motion is brought in accordance with the Court’s Preliminary Approval Order, and
9 said Motion will be based on this notice, the accompanying points and authorities, the Declarations
10 filed herewith, the Class Action Settlement Agreement, and the complete files and records in this
11 action.

12 The Motion is unopposed, as Defendants do not oppose the relief requested, and no class
13 member has objected to the settlement after being provided with notice, including to the requests
14 made herein.

15
16 Dated: November 1, 2024

Respectfully submitted,

17 **BERGER MONTAGUE PC**

18 /s/ Alexandra K. Piazza

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19 MICHAELA L. WALLIN, *pro hac vice*

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24 *Attorneys for Plaintiffs, on behalf of themselves and*
25 *all others similarly situated and aggrieved*

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26	(2016) 1 Cal. 5th 480	<i>passim</i>
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13	4 Newberg and Conte, Newberg on Class Actions § 14.6 (4th ed. 2007)	7

1 **I. INTRODUCTION**

2 Plaintiffs Randy Curran, Cierra Woolen, Luisa Mazon, Roberto Ramirez, Linda Fang, and
3 Alexis Bell (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, file
4 this Motion for Award of Attorneys’ Fees and Costs with respect to the Settlement Agreement
5 involving the claims against Defendants Advanced Carrier Services, LLC (“ACDS”), B-Z
6 Conveyance, LLC (“BZCY”), Delivery Response On-Time Parcel LLC (“DROT”), OnDot LLC
7 (“ONDT”) (together, the “DSP Defendants”) and Amazon.com, Inc. and Amazon Logistics, Inc.
8 (together, “Amazon”) (collectively, “Defendants”).

9 As described in Plaintiffs’ contemporaneously filed Motion for Final Approval, the Parties
10 agreed to resolve this matter for a total non-reversionary Settlement Amount of Two Million Three
11 Hundred and Sixty-Four Thousand dollars (\$2,364,000).¹ This settlement resolves the claims in
12 Plaintiffs’ Complaint, alleging the DSP Defendants’ unlawful policy and practice of failing to pay
13 all wages due to Delivery Associates (also referred to as “DAs”), including overtime compensation,
14 missed meal and rest breaks, and associated penalties, based on alleged violations of California law
15 and the Fair Labor Standards Act. The settlement was reached through an intensive and
16 comprehensive pre-filing ADR process that included arm’s-length negotiations lasting for several
17 years, extensive review and analysis of data exchanged through the ADR process, and three days of
18 mediation with the assistance of two respected wage and hour mediators. On August 20, 2024, the
19 Court issued its Order preliminarily approving to the proposed Settlement.

20 Class Counsel moves this Court to approve an award of attorneys’ fees in the amount of one-
21 third (33 1/3%) of each of the DSP Gross Settlement Amounts in the total amount of \$780,000.00.
22 The requested fee is reasonable and appropriate pursuant to a common fund analysis, as the
23 requested percentage has been approved on numerous occasions in California courts and is fair

24 ¹ These terms are memorialized in the proposed Class, Representative, and Collective Action
25 Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), was attached as
26 Exhibit 1 to the Declaration of Sarah R. Schalman-Bergen filed in connection with Plaintiffs’
27 Motion for Preliminary Approval. For ease of review, these Exhibits are reattached here to the
28 Declaration of Sarah Schalman-Bergen, submitted with the instant Motion. Unless otherwise
defined herein, the defined terms used herein will have the same meaning as those defined in the
Settlement.

1 compensation for undertaking such complex, risky, and time-consuming litigation on a contingency
2 basis. Importantly, there were no objections to the amount of attorneys' fees requested by Class
3 Counsel, which was fully disclosed in the Court-approved Class Notice. In addition, the requested
4 fee is reasonable to adequately compensate the three firms that comprise Class Counsel who have
5 come together to pursue this matter and present this Settlement to the Court. Though not required,
6 the requested fee is further supported by a lodestar cross-check, representing a multiplier of less
7 than 1.25, without the additional anticipated work necessary to obtain final approval and
8 administration of the Settlement.

9 Pursuant to the Settlement, Class Counsel also requests reimbursement of actual litigation
10 expenses in the amount not to exceed \$40,000, and which currently total \$35,238.37. The requested
11 reimbursement of litigation expenses is appropriate because they were reasonably incurred in the
12 prosecution and resolution of this matter.

13 For the reasons set forth herein below, these requests for attorneys' fees and litigation
14 expenses, are reasonable and should be approved in their entirety.

15 **II. BACKGROUND**

16 Plaintiffs set forth the factual and procedural background of this settlement, as well as the
17 terms of the Settlement, in the accompanying Motion for Final Approval and incorporate that
18 summary herein.

19 Notably, at the conclusion of the notice period, and after all Class Members have been
20 advised of the existence of the Settlement, including the amounts they can expect to receive, as well
21 as the amounts that will be requested for attorneys' fees, costs, and service awards, there are no
22 objections and no requests for exclusion from the Settlement.

23 **III. THE REQUESTED ATTORNEYS' FEE AWARD SHOULD BE APPROVED**

24 **A. Legal Standard**

25 California has long recognized the propriety and importance of awarding attorneys' fees to
26 a party who has recovered or preserved a monetary fund for the benefit of themselves and others.
27 (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal. 5th 480, 488–89.) In the context of class action
28

litigation, attorneys’ fees may properly be awarded pursuant to the common fund doctrine when a class settlement agreement establishes a relief fund from which the attorneys’ fees are to be drawn. (*Id.*) Under the terms of this class action settlement agreement, Plaintiffs move for an award of attorneys’ fees and costs in the amount of one-third (33 1/3%) of each of the DSP Gross Settlement Amounts in the total amount of \$780,000.00. This request is in line with the longstanding benchmark for fees in common fund cases and in line with the California Supreme Court’s decision in *Laffitte*, approving a one-third of common fund fee award. (*See Laffitte, supra*, at 485.)

Indeed, public policy promotes approval of reasonable fee requests since “[t]he function of an award of attorney’s fees is to encourage the bringing of meritorious . . . claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent-counsel.” (*Kerr v. Quinn* (2nd Cir. 1982) 692 F.2d 875, 877; *City of Riverside v. Rivera* (1986) 477 U.S. 561, 578 (internal quotation marks and citations omitted).) “The rule with respect to attorney fees is that ‘the amount to be awarded as attorney’s fees is left to the sound discretion of the trial court.’” (*Glendora Community Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465, 474 (citation and internal quotation marks omitted).)

B. The California Supreme Court Has Endorsed the Use of a Percentage Approach to Award Attorneys’ Fees in Class Action Wage and Hour Cases

In *Laffitte, supra*, the California Supreme Court joined the “overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Id.* at 503.) In so doing, the Court described the “recognized advantages of the percentage method,” including “ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” (*Id.*)

Most of the Ninth Circuit and other federal courts are in accord. (*See Aichele v. City of Los Angeles* (C.D. Cal. Sept. 9, 2015, No. CV1210863DMGFFMX) 2015 WL 5286028, at *5 (“Many courts and commentators have recognized that the percentage of the available fund analysis is the

1 preferred approach in class action fee requests because it more closely aligns the interests of the
2 counsel and the class, *i.e.*, class counsel directly benefit from increasing the size of the class fund
3 and working in the most efficient manner.”).²

4 One of the principal advantages of the percentage approach for awarding attorneys’ fees in
5 class action litigation is that it is result-oriented, thereby promoting the more efficient use of attorney
6 time and resources, rather than encouraging attorneys to prolong litigation in order to inflate their
7 recoverable hours. (*See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire*
8 *Litig.* (1st Cir. 1995) 56 F.3d 295 (“[U]sing the [percentage of fund] method . . . enhances efficiency,
9 or, put in the reverse, using the lodestar method in such a case encourages inefficiency. Under the
10 latter approach, attorneys not only have a monetary incentive to spend as many hours as possible
11 (and bill for them) but also face a strong disincentive to early settlement”).) Similarly, the percentage
12 method better approximates the workings of the marketplace by ensuring that attorneys receive
13 compensation for the true value of their services and skills. (*Id.* at 307 (“Another point is worth
14 making: because the [percentage of fund] technique is result-oriented rather than process-oriented,
15 it better approximates the workings of the marketplace . . . the market pays for the result achieved”)
16 (quoting *In re Continental Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 572).)

17 **C. Class Counsel’s Request for One-Third of the Fund for Attorneys’ Fees is**
18 **Presumptively Reasonable**

19 Courts in California regularly approve requests for one-third of the common fund. (*See*
20 *Laffitte, supra* (approving one-third contingency fee request from \$19 million settlement fund); *In*

21 ² See also *Knight v. Red Door Salons, Inc.* (N.D. Cal. Feb. 2, 2009, No. 08-01520 SC) 2009
22 WL 248367, at *5 (“use of the percentage method in common fund cases appears to be dominant”) *in*
23 citing *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047; *In re Activision Sec. Litig.*
24 (N.D. Cal. 1989) 723 F. Supp. 1373, 1374–77 (collecting authority and describing benefits of the
25 percentage method over the lodestar method); *Morales v. Conopco, Inc.* (E.D. Cal. Oct. 18, 2016,
26 No. 2:13-2213 WBS EFB) 2016 WL 6094504, at *7 (“Because of the ease of calculation and the
27 pervasive use of the percentage of recovery method in common fund cases, the court thus adopts
28 this method.”); *Swedish Hosp. Corp. v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1271 (“a percentage
of the fund method is the appropriate mechanism for determining the attorney fees award in
common fund cases”); *Camden I Condominium Ass’n Inc. v. Dunkle* (11th Cir. 1991) 946 F.2d
768, 774 (“we believe that the percentage of the fund approach is the better reasoned in a common
fund case”).

1 *re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 (“fee awards in class actions average
2 around one-third of the recovery”); *Prater v. On Courier 365, Inc. et al.* (San Mateo Super. Ct. July
3 5, 2024, No. 20-CIV-02814) (approving one-third attorneys’ fee award in the amount of \$1,500,000
4 as fair, reasonable, and adequate); *Brown v. Synctruck*, (Contra Costa Super. Ct. Sept. 21, 2023,
5 MSC18-02499) (33.33% fee award approved); *Gonzalez v. Trimon, Inc.* (Contra Costa Super. Ct.
6 Apr. 17, 2023, No. MSC20-00023) 2023 WL 4687758, at p. *2 (35% fee award plus costs approved
7 as reasonable); *Ibrahimi v. Walgreen Co.* (Contra Costa Super. Ct. Jan. 30, 2019, No. CIVMSC16-
8 02120) 2019 WL 2256046, at p. *2 (35% fee award plus costs representing 1.48 multiplier approved
9 as reasonable); *Banda v. Verizon California, Inc.* (Los Angeles County Super. Ct. Jan. 13, 2015,
10 No. BC434587) 2015 WL 4875367 (35% fee on \$15,000,000 settlement); *Mambuki, et al. v.*
11 *Securitas Security Services USA, Inc.* (Santa Clara Super. Ct. 2008, No. 1-05-CV-047499, J.C.C.P.
12 No. 4460) (33 1/3% fee award (1.9 multiplier) plus costs); *Rundberg v. Intrawest Napa Dev. Co.*
13 (Napa County Super. Ct. 2014, No. 26-56886) (40% fee award); *Chavez v. Netflix, Inc.* (2008) 162
14 Cal.App.4th 43, 66 fn. 11 (40% fee award.) *Cristman v. Good Guys, Inc.* (San Diego Super. Ct.
15 2007, No. GIS 21939) (33 1/3% fee award plus costs); *BCI Overtime Cases* (San Bernardino Super.
16 Ct. 2007, J.C.C.P. No. 4280) (33 1/3% fee award plus costs); *Birch v. Office Depot* (S.D. Cal. Sept.
17 28, 2007, No. 06 CV 1690 DMS (WMC)) 2007 WL 9776717 (40% fee awarded on \$16,000,000
18 settlement); *Menchyk v. Beverages & More, Inc.* (Alameda Super. Ct. 2006, No. RG 05196918) (33
19 1/3% fee award plus costs); *O’Hara, et al. v. Factory 2-U Stores, Inc.* (Alameda Super. Ct. 2002,
20 No. 834123-5) (33 1/3% fee award plus costs); *Davis v. The Money Store, Inc.* (Sacramento Super.
21 Ct. 2000, No. 99AS01716) (33 1/3 % fee award); *In re Milk Antitrust Litig.* (Los Angeles Super. Ct.
22 1998, No. BC070061) (33 1/3% award); *Zelada v. Majestic Terminal Services*, (San Bernardino
23 County Super. Ct. 2019, No. CIVDS1916968) (38% fee awarded on \$1,800,000 settlement); *In re*
24 *Cal. Indirect Purchaser X-Ray Film Antitrust Litig.* (Alameda County Super. Ct. Oct. 22, 1998, No.
25 960886) 1998 WL 1031494, at *9 (awarding 30% fee award and collecting California cases where
26 fee awards constituted 30 to 45 percent of common fund.)³

27 ³ Similarly, California Federal Courts regularly approve attorneys’ fees of one-third. See *In*
28

1 Additionally, this Court has approved and held attorneys’ fees greater than 33% to be fair
2 and reasonable in similar common fund cases. (See *Manosh v. Four Wheel Campers, LLC* (Yolo
3 Super. Ct. May 21, 2024, No. CV-2021-0808) (J., Nelson) (approving fee award of 38% of gross
4 settlement amount as reasonable and appropriate in wage and hour class and PAGA action); see also
5 *Myers v. Raleys* (Yolo Super. Ct. May 19, 2022, No. CV2011-2668) (J., McAdam) (approving 40%
6 attorneys’ fees in wage and hour class action).) This Court also routinely approves one-third
7 attorneys’ fees in comparable wage and hour class actions. (See *Chamberlan v. Classic VMS, Inc.,*
8 *et al.* (Yolo Super. Ct. May 14, 2024, No. CV-2022-0652) (J., McAdam) (approving one-third
9 attorneys’ fees in wage and hour class settlement); *Blakes v. PGP International, Inc.* (Yolo Super.
10 Ct. Nov. 14, 2023, No. CV2022-1544) (J., Mock) (approving one-third fee award of one million
11 dollar wage and hour settlement); *Hernandez v. Clark Pacific Corporation* (Yolo Super. Ct. Oct. 9,
12 2023, No. CV-2019-644) (J., Mock) (approving one-third attorneys’ fees in \$2,593,000.00 wage
13 and hour class action settlement); *Hernandez et al. v. Yolo Federal Credit Union et al.* (Yolo Super.
14 Ct. Aug. 4, 2022, No. CV2021-1000) (J., McAdam) (approving one-third attorneys’ fees in wage
15 and hour class action)).

16 Notably, “[e]mpirical studies show that, regardless of whether the percentage method or the
17 lodestar method is used, fee awards in class actions average around one-third of the recovery.”

18 _____
19 *re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 457–58, 463 (upholding fee award of
20 33.3% of settlement); *Marshall v. Northrop Grumman Corporation* (C.D. Cal. Sept. 18, 2020, No.
21 16-CV-6794 AB (JCX)) 2020 WL 5668935, *appeal dismissed* (9th Cir. Feb. 16, 2021) 2021 WL
22 1546069 (awarding one-third of \$12.375 million settlement fund); *Waldbuesser v. Northrop*
23 *Grumman Corp.* (C.D. Cal. Oct. 24, 2017, No. CV 06-6213-AB (JCX)) 2017 WL 9614818
24 (awarding one-third of \$16.75 million settlement fund); *Bickley v. Schneider Nat. Carriers, Inc.*
25 (N.D. Cal. Oct. 13, 2016, No. 4:08-CV-05806-JSW) 2016 WL 6910261 (awarding one-third of \$28
26 million settlement fund); *Lusby v. GameStop Inc.* (N.D. Cal. Mar. 31, 2015, No. C12-03783 HRL)
27 2015 WL 1501095, at *9 (in wage and hour action, awarding fees in the amount of one-third of
28 common fund); *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013, No. 10-CV-1116- IEG
WMC) 2013 WL 163293, at *5 (“Under the percentage method, California has recognized that most
fee awards based on either a lodestar or percentage calculation are 33 percent....”); *Burden v.*
SelectQuote Insurance Services (N.D. Cal. Aug. 2, 2013, No. C 10-5966 LB) 2013 WL 3988771, at
*4 (same); *Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. 2013) 297 F.R.D. 431, 450 (same);
Barnes v. The Equinox Group Inc. (N.D. Cal. Aug. 2, 2013, No. C 10-3586 LB) 2013 WL 3988804,
at *4 (same); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010, No. 08-CV-821-IEG
(BLM)) 2010 WL 2196104, at *8 (same).

(*Chavez, supra*, 162 Cal.App.4th at 65, n. 11 (citation omitted); *see also Cotchett, Pitre & McCarthy v. Universal Paragon Corp.* (2010) 187 Cal.App.4th 1405, 1421 (contingency fees typically range from 33 to 40 percent of class benefit); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 (in wage and hour action, stating “fee awards in class actions average around one-third of the recovery” and awarding fees in that amount) (citing 4 Newberg and Conte, *Newberg on Class Actions* § 14.6 (4th ed. 2007)).) Indeed, “a 33% contingent fee of the total recovery is on the low end of what is typically negotiated *ex ante* by plaintiffs’ firms taking on large, complex cases analogous to [this one].” (*Young v. Cty. of Cook* (N.D. Ill. Sept. 20, 2017, No. 06 C 552) 2017 WL 4164238, at *6.)

As such, “one-third of the common fund is a reasonable reflection of the hypothetical market price of [class counsel’s] services in this case...[and], there is no need to cross-check this percentage against the lodestar.” (*Id.* (awarding fees of one-third of \$32.5 million common fund); *see also Manosh v. Four Wheel Campers, LLC* (Yolo Super. Ct. May 21, 2024, No. CV-2021-0808) (J., Nelson) (applying “the percentage-fee method” and approving 38% fee award as reasonable).) Counsel’s request for one-third of the common fund here is consistent with this authority and warrants approval.

D. The Requested Fee Is Further Supported By Other Relevant Factors

There is no definitive set of factors California courts require to be considered in determining the reasonableness of an attorneys’ fees award, and trial courts may consider such factors as: (1) the contingent nature of the fee agreement; (2) extent to which the nature of the litigation precluded other employment by the attorneys; (3) experience, reputation, and ability of the attorneys who performed services in the litigation and their displayed skill; (4) amount involved and the results obtained; and (5) the informed consent of the client to the fee agreement. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810, n.21; *Glendora Community Redev. Agency, supra*, 155 Cal.App.3d at 474.) As described below, these factors further support approval of the requested fee.

1 The requested fee award is supported by the contingency risk assumed in prosecuting the
2 case. The California Supreme Court has recognized that attorney fee awards should be enhanced to
3 compensate attorneys for the risks of loss involved in contingency cases. (*Ketchum v. Moses* (2001)
4 24 Cal.4th 1122, 1133; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154;
5 see also *Consumer Privacy Cases, supra*, 175 Cal.App.4th at 556.) Class Counsel all undertook this
6 matter solely on a contingent basis, with no guarantee regarding the potential duration of the
7 litigation or the ultimate recovery of fees or costs. While Class Counsel believes the claims in this
8 case are meritorious, Counsel recognizes the factual and legal challenges involved in complex
9 litigation generally, as well as the specific risks posed by the facts in this case. While attorneys who
10 represent corporations are routinely paid (often quite handsomely) on an hourly basis, plaintiffs in
11 wage and hour cases can rarely afford to pay their attorneys by the hour, especially if they expect to
12 be represented by a law firm well known for achieving good results. As firms committed to wage
13 and hour class actions, including the ones at hand, Class Counsel must accept cases on a wholly
14 contingent basis, with no guarantee of recovery of fees, or even the reimbursement of litigation
15 costs. As California case law recognizes, Class Counsel's commitment to this litigation should not
16 be assessed in a vacuum.⁴ The significant time Class Counsel has spent in settlement efforts in this
17 case prevented them from pursuing other work and further supports the requested fee.

18 The experience and ability of Class Counsel further supports the requested fee. The
19 settlement achieved here involves complicated allegations of California law, the Fair Labor
20 Standards Act, as well as class and collective action litigation. Class Counsel analyzed the data and
21 assessed the risks under the law and negotiated the terms of the Settlement. This required counsel
22 well versed in class action litigation and wage and hour law to marshal the evidence and present it
23 to achieve this Settlement. As set forth in the accompanying declarations of Class Counsel, these
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26 ⁴ California courts "agree ...that 'riskiness,' difficulty or contingent nature of the litigation is
27 a relevant factor in determining a reasonable attorney fee award." (*Salton Bay Marina, Inc. v.*
28 *Imperial Irrigation District* (1985) 172 Cal.App.3d 914, 955, citing *La Mesa-Spring Valley School*
Dist. of San Diego County v. Nobuo Otsulca (1962) 57 Cal.2d 309, 316; see also, *In re Quantum*
Health Resources, Inc. (C.D. Cal. 1997) 962 F. Supp. 1254, 1257.)

1 firms have extensive experience in this area, and drew upon this extensive experience to reach the
2 Settlement.

3 “The overall result and benefit to the class from the litigation is the most critical factor in
4 granting a fee award.” (*In re Omnivision Techs., Inc.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1046.)
5 Here, and as detailed in Plaintiffs’ Motion for Preliminary Approval and Motion for Final Approval,
6 incorporated by reference herein, Class Counsel was able to secure an excellent result for Settlement
7 Class Members – a Settlement to which no Settlement Class Members have objected. This factor
8 supports approval of the fee award.

9 Finally, the agreement of Plaintiffs to enter into a contingency fee arrangement further
10 supports the requested attorney fee award. (*Glendora Community Redev. Agency, supra*, 155
11 Cal.App.3d at 472-73) Here, Plaintiffs entered into a consensual contingency fee agreement.
12 Additionally, Settlement Class Members have been notified of the requested attorneys’ fees and
13 costs by means of the Class Notice and no class members have objected.

14 All of the foregoing factors support the requested fee award in this case.

15 **E. A Lodestar Cross-Check, If Applied, Supports Plaintiffs’ Fee Request**

16 California courts have the discretion to employ (or decline to employ) a “lodestar cross-
17 check” on a request for a percentage of the fund fee award. (*Laffitte, supra*, 1 Cal. 5th at 505.)
18 However, as noted above, the California Supreme Court in *Laffitte* has made clear that this cross-
19 check is not required. (*Id.*) Plaintiffs submit that a lodestar cross-check is not necessary in this case,
20 as it is recognized that the lodestar cross-check can reward unnecessary overbilling, inflation of
21 timekeeping records, and inefficient litigation. (*See Albion Pac. Prop. Res., LLC v. Seligman* (N.D.
22 Cal. 2004) 329 F. Supp. 2d 1163, 1170-71 (noting that “[a] fee applicant should neither be rewarded
23 for hiring expensive legal counsel nor penalized for hiring more efficient legal counsel. Thus, if a
24 fee applicant can demonstrate that its attorneys billed fewer hours than reasonably competent
25 counsel would have billed, the fee applicant should be reimbursed at an above-average hourly
26 rate”).) Indeed, in this case, because of the experience and efforts of counsel with respect to the
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28

claims at issue in this case, the Parties were able to reach a settlement at an early stage, which brings substantial benefit to Class Members.

In this case, given that this settlement arose as a direct result of Plaintiffs' Counsel's background, experience, and efforts in this sphere, *see* Declarations of Counsel, Plaintiffs' Counsel submits that a lodestar cross-check may not be the most meaningful metric by which to evaluate the fee request. As Judge Rice in the Southern District of Ohio observed:

It would be inequitable for a court to reduce a fee award based on a lodestar cross-check without considering a law firm's work other cases raising the same or similar issues. That work may, as it did here, substantially enhance the result Class Counsel is able to achieve. This is true for several reasons, including that (1) successfully litigating a particular issue may improve the settlement prospects of cases raising the same issue, (2) developing expertise in a specific niche improves the firm's ability to effectively litigate within that niche, and (3) the work product from one case can be used in a case raising the same issue, resulting in value that is not adequately reflected in a lodestar calculation.

These factors weigh in favor of and confirm the appropriateness of what courts in this district already do: base common fund fee awards in wage and hour cases on a percentage-of-the-fund. In most cases, the percentage-of-the-fund approach automatically factors into the award any enhancement to the settlement derived from Class Counsel's work in similar cases. The percentage approach encourages efficiency, judicial economy, and aligns the interests of the lawyers with the class.

Arp v. Hohla & Wyss Enterprises, LLC (S.D. Ohio Nov. 5, 2020, No. 3:18-CV-119) 2020 WL 6498956, at *7–8 (quotation marks and citation omitted) (also explaining that “[a] firm’s expertise in a niche area provides important context when analyzing the reasonableness of a[t]torneys’] fees” as “[f]or example, Class Counsel’s success on a specific type of case or specific issue augments their ability to obtain a favorable result in cases of the same type” and approving fee request to counsel with significant experience in wage and hour issues related to restaurant delivery drivers and noting “[i]n cases that involve the issues described above, a lodestar cross-check, if applied at all, should be afforded little weight”).

In any event, a lodestar cross-check supports the requested fee award. As summarized in each of the accompanying declarations of Class Counsel, Class Counsel have collectively spent a minimum of 1,350 hours on the litigation, resulting in a lodestar of approximately \$675,000 at a

1 blended rate of \$500, not including the work that will be necessary to bring this Settlement to a
2 successful conclusion.⁵ Thus, the multiplier that would apply to obtain the requested \$780,000.00
3 fee would be 1.16. Courts in the Ninth Circuit have “routinely awarded” multipliers in “the 1x to 4x
4 range”, *Perks v. Activehours, Inc.* (N.D. Cal. Mar. 25, 2021, No. 5:19-CV-05543-BLF) 2021 WL
5 1146038, at *8, and will often award higher multipliers where the circumstances warrant it because
6 of the excellent results obtained, complexity of the case, and risks involved. (*See, e.g., Craft v.*
7 *County of San Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113, 1123 (awarding 25% of common
8 fund, equivalent to a 5.2 multiplier) (collecting cases); *see also Stevens v. SEI Investments Company*
9 (E.D. Pa. Feb. 28, 2020, No. CV 18-4205) 2020 WL 996418, at *13 (holding that “multiples ranging
10 from 1 to 8 are often used in common fund cases” and awarding fees equivalent to a multiplier of
11 6.16).) Class counsel anticipates incurring additional time in connection with this settlement,
12 including at the Final Approval Hearing, and overseeing the timely and proper administration of the
13 settlement if the Court grants approval. Thus, the lodestar cross-check, which is not required,
14 strongly supports the requested fee.

15 **IV. THE REQUESTED REIMBURSEMENT OF ATTORNEYS’ COSTS IS**
16 **APPROPRIATE AND SHOULD BE APPROVED**

17 Over the course of this litigation, Class Counsel incurred ordinary litigation costs totaling
18 \$35,238.37 as of the date of this filing and may incur additional expenses prior to the conclusion of
19 this matter. These costs include filing fees, mediation fees, court costs, and legal research, and are
20 described in the accompanying declarations of Class Counsel. Such costs are appropriate for

21 ⁵ In assessing counsel’s lodestar (for cross-check purposes or otherwise), a court is permitted
22 to “us[e] counsel declarations summarizing overall time spent, rather than demanding and
23 scrutinizing daily time sheets in which the work performed was broken down by individual task.”
24 *Laffitte, supra*, 1 Cal. 5th at 505 (also stating “detailed time sheets” are not required as part of a
25 lodestar calculation – whether as a cross-check or otherwise); *In re Rossco Holdings, Inc.* (C.D.
26 Cal. May 30, 2014, No. CV 14-917-JFW) 2014 WL 2611385, at *8 (“In California, an attorney
27 need not submit contemporaneous time records in order to recover attorney fees”); *Rodgers v.*
28 *Claim Jumper Rest., LLC* (N.D. Cal. Apr. 24, 2015, No. 13-CV-5496 YGR) 2015 WL 1886708, at
*10 (“Plaintiff’s counsel is not required to record in great detail how each minute of his time was
expended” and can instead “meet his burden of justifying his fees by simply listing his hours and
“identifying the general subject matter of his time expenditures”); *Rodriguez v. Cty. of Los Angeles*
(C.D. Cal. 2014) 96 F. Supp. 3d 1012, 1023-24 (“Courts generally accept the reasonableness of
hours supported by declarations of counsel.”).

1 reimbursement. (See *In re United Energy Corp. Sec. Litig.* (C.D. Cal. Mar. 9, 1989, No. CIV. 86-
2 3538KN(GX)) 1989 WL 73211, at *6; 1 Conte, *Attorney Fee Awards* §2.8 (3d. ed. 2023) (“The
3 prevailing view is that expenses are awarded in addition to the fee percentage.”); see also *In re*
4 *Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F. Supp. 2d 1166, 1177–78 (finding that costs
5 such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized
6 legal research fees, and mediation expenses are reasonable and necessary expenses in a class action
7 litigation).)

8 Because the costs incurred by Class Counsel are reasonable and served to benefit the Class,
9 the Court should approve reimbursement.

10 **V. CONCLUSION**

11 Based on the foregoing, Plaintiffs respectfully request that this Court grant this Motion and
12 enter an Order consistent with the Proposed Order submitted herewith.

13 Dated: November 1, 2024

Respectfully submitted,

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