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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHELLE NOURIAN MARTINEZ, on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

HELZBERG'S DIAMOND SHOPS,
INC., and DOES 1-25 inclusive,

Defendant.

Case No. 5:20-cv-01085-PSG-SHK

**NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
ATTORNEYS' FEES, COSTS,
AND SERVICE AWARD**

Date: September 10, 2021
Time: 1:30 p.m.
Courtroom: 6A (6th Floor)
Judge: Hon. Philip S.
Gutierrez

TO ALL PARTIES AND ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on September 10, 2021, at 1:30 p.m. in Courtroom 6A before Hon. Philip S. Gutierrez of the United States District Court, Central District of California, Plaintiff Michelle Nourian Martinez ("Plaintiff") will and does hereby move the Court for an award of attorneys' fees, costs, and service award. Specifically, Plaintiff seeks an order approving:

(1) an award to Class Counsel of \$158,333.33 (one-third (33.33%) of the Settlement) in attorneys' fees under a common fund approach;

(2) an award to Class Counsel of \$6,715.00 in actual costs; and

1 (3) a service award of \$10,000.00 to Plaintiff for his service as Class
2 Representative (“Class Representative”);

3 Pursuant to the Parties’ “Joint Stipulation of Class Action and PAGA
4 Settlement Agreement” (the “Settlement Agreement” or “Settlement”) and
5 California wage and hour law, including but not limited to California Labor Code
6 §§226(e), 1194(a), 2699 and California Code of Civil Procedure § 1021.5,
7 Plaintiff is authorized to apply for an award of reasonably attorneys’ fees and
8 costs. Defendant Helzberg’s Diamond Shops, Inc. (“Defendant” or “Helzberg”)
9 does not oppose Class Counsel’s requested amount of fees and costs nor the
10 service award.

11 This Motion is based on this notice, the following attached Memorandum
12 of Points and Authorities, the Declarations of Richard A. Hoyer (“Hoyer Dec.”),
13 and Michelle Nourian Martinez (“Martinez Dec.”), and all other records,
14 pleadings, and papers on file in this action and such other evidence or argument
15 as may be presented to the Court at the hearing on this Motion. Accompanying
16 this Motion is also Plaintiff’s Proposed Order Granting Attorneys’ Fees, Costs,
17 and Service Awards.

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I. INTRODUCTION

Plaintiff seeks an award of attorneys' fees in the amount of \$158,333.33 (one-third (33.33%) of the \$475,000.00 Settlement), \$6,715.00 in costs, and a \$10,000 service award to Plaintiff.

The requested fee award should be approved under the common fund doctrine. This Settlement is an excellent and expeditious result for the Class Members ("CMs"), benefiting 31 Helzberg employees. The Court should grant the requested fee award because: it ensures that benefiting CMs equitably contribute a *pro-rata* share towards the fees that led to the Settlement; it mimics the marketplace had the CMs each individually retained Class Counsel; and it encourages competent counsel to take on complex contingency cases such as this. In addition, 33.33% of the Settlement fund is a reasonable award because it is commensurate with the awards approved by this and other courts in comparable class actions. Indeed, courts in similar wage and hour cases routinely award attorneys' fees that exceed the plaintiffs' recovery. This is because such awards encourage the vindication of important employee rights. Further, all of the factors that support an upward adjustment of fees are met here too, including: (1) Class Counsel have obtained a superb result for the CMs; (2) they faced considerable risks in prosecuting this litigation; (3) they displayed skillful representation and high-quality work that resulted in this Settlement benefiting the CMs; and (4) Class Counsel carried the heavy financial burden of representing Plaintiff and CMs on a contingency basis. Moreover, the requested 33.33% fee has been supported by CMs, and is further confirmed by the lodestar cross-check.

Likewise, Plaintiff's request for reimbursement of actual costs should be approved. Class Counsel have incurred approximately \$6,715.00 in actual costs to date, which will only increase with the additional costs to necessary to finalize

1 this Settlement. Additionally, CMs have expressed their approval of this award
2 as no CM objected or even opted out of the Settlement.

3 Finally, a service award of \$10,000 for the Plaintiff is appropriate because
4 she assumed the financial and reputational risk serving as the class
5 representative in this action and spent considerable time assisting with the
6 prosecution and resolution of this case. Neither Defendant nor the CMs oppose
7 the award. Critically, Plaintiff (who has since been terminated by Defendant)
8 has agreed to a general release of all potential claims against Defendant,
9 beyond the narrower Class release. The requested service award is also well
10 within the range of service awards routinely granted by courts.

11 Based on the foregoing, Plaintiff respectfully requests that the Court grant
12 this motion and approve the requested attorneys' fees, costs, and service
13 awards.

14 **II. PROCEDURAL HISTORY AND WORK PERFORMED BY CLASS**

15 **COUNSEL¹**

16 **A. Class Counsel**

17 Class Counsel, Hoyer & Hicks ("HH") are highly-regarded members of the
18 wage and hour and employment class and collective action bar, with extensive
19 experience in this highly-specialized type of litigation. Declaration of Richard A.
20 Hoyer Supporting Motion for Attorneys' Fees, Costs, and Service Award ("Hoyer
21 Dec.") at ¶¶1-4.

22 **B. Pleadings**

23 Plaintiff filed this action in the Central District of California on May 27,
24 2020. (Dkt. No. 1) After submitting a PAGA Notice and the period for the
25 LWDA's response elapsed, Plaintiff requested that Defendant stipulate to the
26 filing of a First Amended Complaint ("1AC") to add a cause of action for PAGA

27 ¹ This brief does not repeat the case background set forth in Plaintiff's Motion for Final Approval of Settlement,
28 concurrently filed herewith.

1 penalties. Hoyer Dec. at ¶7. The Court granted the parties' stipulation and
2 Plaintiff filed the operative First Amended Complaint on August 7, 2020 (Dkt.
3 No. 20) adding the claim for PAGA penalties. Shortly thereafter, the parties
4 discussed and agreed to an early mediation. *Id.*

5 **C. Discovery**

6 Plaintiff served her Initial Disclosures pursuant to Rule 26(a) on August
7 12, 2020, with accompanying documents. Hoyer Dec. at ¶8. Class Counsel
8 strategized regarding what to include in the document, including discussions
9 regarding potential witnesses and persons with information regarding Plaintiff's
10 claims. *Id.* In addition, Class Counsel compiled documents relevant to Plaintiff's
11 claims. *Id.*

12 Plaintiff also then prepared formal discovery requests, which counsel
13 served on Defendant on September 18, 2020. Hoyer Dec. at ¶9. Shortly
14 thereafter, the parties decided to prepare for an early mediation. To facilitate
15 case resolution, the Parties agreed to focus on an informal exchange of
16 discovery for purposes of mediation. Hoyer Dec. at ¶10. As a condition of a
17 participating in an early mediation of the case, Plaintiff required that Defendant
18 produce substantial informal discovery, including but not limited to Defendant
19 and Plaintiff exchanging documents, aggregate information regarding the total
20 workweeks, wage rates, pay periods and class members, as well as actual
21 timekeeping data, payroll documents, and internal store staffing data for an
22 audit sample of employees to confirm the other class wide data provided. The
23 Parties agreed to stay all formal proceedings pending the mediation. *Id.* Counsel
24 also made a thorough study of the legal principles applicable to the claims
25 asserted against Defendant. *Id.*

1 **D. Mediation, Settlement Negotiations, and Settlement Approval**
 2 **Motions**

3 The Parties agreed to mediate this case on behalf of the 31 CMs. Hoyer
 4 Dec. at ¶11. The Parties mediated this dispute on February 5, 2021 before
 5 respected mediator Steve Pearl. *Id.* The Parties engaged in arm's-length
 6 negotiations, culminated by the execution of a memorandum of understanding
 7 which set forth settlement terms resolving the matter. *Id.* After the mediation,
 8 counsel for the Parties worked to finalize the settlement for the CMs and
 9 corresponding notice documents, subject to the Court's approval. *Id.* The
 10 Settlement Agreement was fully-executed on March 2, 2021. *Id.*

11 Class Counsel was required to present the settlement agreement to the
 12 Court for preliminary approval as to the Class. Hoyer Dec. at ¶12. Accordingly,
 13 Class Counsel drafted and prepared the appropriate papers and submitted
 14 them on March 5, 2021. *Id.* (Dkt. Nos. 30 to 30-2.) Class Counsel researched
 15 applicable case law defining the standard for approval of California wage and
 16 hour class action settlements. *Id.* Class Counsel also researched case law
 17 approving service awards similar to the ones distributed to the Named Plaintiff
 18 under the settlement agreement. *Id.* Finally, Class Counsel drafted and revised
 19 the approval papers to ensure compliance with applicable case law and also
 20 the settlement agreement. *Id.* After preparing drafts of the approval papers,
 21 Class Counsel sent them to Defendant's Counsel to review and revise. *Id.*
 22 Counsel for the Parties thereafter conferred regarding revisions to the approval
 23 papers before ultimately reaching agreement. *Id.* The Court granted preliminary
 24 approval of the Settlement as to the California Class on April 12, 2021. (Dkt.
 25 No. 31.)

26 Class Counsel was likewise obligated to request that the Court finally
 27 approve the Settlement following the administration process detailed in the
 28 settlement agreement. *Id.* at ¶13. Class Counsel drafted and prepared final
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1 approval papers that have been submitted to the Court concurrently with this
2 fee motion. *Id.* The work Class Counsel performed on the final approval papers
3 is substantially similar to work the Class Counsel performed on the preliminary
4 approval papers described above. *Id.*

5 Class Counsel also spent significant time preparing this motion. *Id.* at ¶14.
6 Beyond drafting this motion and researching applicable case law, Class
7 Counsel also conferred with each other regarding the arguments to include
8 herein and the most effective way to present Class Counsel's fees and costs to
9 the Court. *Id.* In addition, Class Counsel undertook the time-consuming project
10 of reviewing each individual bill, or time entry, for this case and determining
11 whether each entry warranted a request for recovery. *Id.* Finally, rather than
12 present a large, disorganized file of time entries to the Court, Class Counsel
13 reasoned that the most effective way for the Court to review Plaintiff's Counsel's
14 attorneys' fees was to summarize the billed hours based on the following
15 categories: (1) Case Management; (2) Factual Investigation and Research; (3)
16 Pleadings; (4) Discovery; (5) Outreach; (6) Mediation; and (7) Settlement. Hoyer
17 Dec. at ¶¶41. Accordingly, Class Counsel assigned each time entry a category,
18 which allowed them to filter from the time entries. *Id.* For example, based on this
19 summary system, Class Counsel was able to filter all the time entries associated
20 with pleadings or settlement. *Id.*

21 **E. Miscellaneous**

22 **1. Communicating with Named Plaintiff and CMs**

23 Class Counsel spent substantial time communicating with the Named
24 Plaintiff and CMs in this case. Hoyer Dec. at ¶15. A substantial portion of these
25 communications occurred during the initial phases of the case, when Class
26 Counsel was conducting fact investigations to determine the scope of Plaintiff's
27 class allegations. *Id.* These communications generally involved interviewing
28 Plaintiff and CMs regarding their respective work experiences while employed

1 by Defendant. *Id.* Plaintiff also engaged in a substantial outreach campaign,
 2 during which they attempted to contact and interview all CMs. *Id.* Finally,
 3 following preliminary approval of the Settlement, Class Counsel provided status
 4 updates to CMs who contacted them regarding the progress of settlement
 5 administration. *Id.* Class Counsel also recorded updated contact information for
 6 these individuals to ensure their checks were sent to the proper address. *Id.*

7 **2. Communicating with the Administrator**

8 Class Counsel generally communicated with the Administrator regarding
 9 the administration of the settlement. Hoyer Dec. at ¶16. Class Counsel, for
 10 example, communicated with the Administrator regarding distributing notice
 11 packets to CMs. *Id.* Class Counsel also communicated with the Administrator
 12 regarding pending deadlines called for in the settlement agreement and issues
 13 with the initial dataset. *Id.* In addition, Class Counsel communicated with the
 14 Administrator regarding preparing a declaration in support of the final approval
 15 of the settlement. *Id.*

16 **III. ARGUMENT**

17 **A. 33.33% of the Common Fund is a Reasonable Attorneys' Fees** 18 **Award.**

19 **1. The Court Should Apply the Common Fund Doctrine to** 20 **Award Attorneys' Fees.**

21 “[A] litigant or a lawyer who recovers a common fund for the benefit of
 22 persons other than himself or his client is entitled to reasonable attorney’s fees
 23 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).
 24 Accordingly, the Ninth Circuit routinely awards attorneys’ fees under the
 25 common fund approach “[b]ecause the benefit to the class is easily quantified
 26 in common-fund settlements” and avoids the “often more time-consuming task
 27 of calculating the lodestar.” *In re Bluetooth v. Headset Prods. Liab. Litig.*, 654
 28 F.3d 935, 942 (9th Cir. 2011); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir.
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1 2003) (same). The common fund approach is an appropriate method for
2 awarding attorneys' fees because it "ensures that each member of the winning
3 party contributes proportionately to the payment of attorneys' fees." *Staton*, 327
4 F.3d at 967. This approach ensures that the class members, who have accepted
5 the benefits from a common fund recovery, also accept their fair *pro-rata*
6 responsibility to contribute towards the attorneys' fees and costs that created
7 the fund in the first place. *Id.* In other words, "[t]hose who benefit from the
8 creation of the fund should share the wealth with the lawyers whose skill and
9 effort helped create it." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
10 1291, 1300 (9th Cir. 1994).

11 The equity of the common fund approach is further confirmed by the fact
12 that it mirrors the legal marketplace by being comparable to what clients and
13 counsel would have likely negotiated at the outset of the matter. The typical
14 contingency fee contract ranges from 33 1/3 to 40 percent of the total recovery.
15 See Alba Conte, *Attorney Fee Awards* § 2:8 (3rd ed. 2013). Thus, common fund
16 fee awards of 33% are more than a reasonable charge to a class because they
17 are equal to or less than the amount class counsel would have likely negotiated
18 with the class *ex ante*. See *Vizcaino v. Microsoft Corp.*, 142 F.Supp.2d 1299,
19 1304 (W.D. Wash. 2001) *aff'd* 290 F.3d 1043 (9th Cir. 2002) (finding that an
20 attorney fee of 28% of the common fund was below market rate because
21 applicable retainer established 30% as contingency fee). Specifically, "the
22 common fund doctrine is properly applied if (1) the class of beneficiaries is
23 sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the fee
24 can be shifted with some exactitude to those benefiting." *Paul, Johnson, Alston*
25 *& Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). These requirements are
26 met where "each member of a certified class has an undisputed and
27 mathematically ascertainable claim to part of a lump-sum [settlement]
28 recovered on his behalf." *Id.*

1 In a diversity action such as this, federal courts apply state law both to
2 determining the right to fees and the method of calculating them. See *Vizcaino*
3 *v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Mangold v. California*
4 *Public Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995). The California
5 Supreme Court recently held that the percentage-of-fund method of calculating
6 attorneys' fees survives in California courts. *Laffitte v. Robert Half Int'l Inc.*, 1
7 Cal. 5th 480, 503–06 (2016). A court “may determine the amount of a
8 reasonable fee by choosing an appropriate percentage of the fund
9 created.” *Id.* at 503. The California Supreme Court suggested considerations of
10 the risks and potential value of the litigation, the contingency, novelty, and
11 difficulty of the litigation, the skill shown by counsel, and a lodestar cross-check
12 were all appropriate means of discerning an appropriate percentage award in a
13 common fund case. *Id.* at 504. Notably, while the California Supreme Court
14 recognized the Ninth Circuit's 25 percent benchmark for percentage awards in
15 common fund cases, it did not adopt such a benchmark for California
16 cases. *Id.* at 495, 503–06; *Emmons v. Quest Diagnostics Clinical Laboratories*,
17 2017 WL 749018 (E.D.Cal. Feb. 27, 2017, Case no. 1:13-cv-00474-DAD-BAM).
18 The California Supreme Court recently noted the recognized advantages of the
19 percentage method: “including relative ease of calculation, alignment of
20 incentives between counsel and the class, a better approximation of market
21 conditions in a contingency case, and the encouragement it provides counsel
22 to seek an early settlement and avoid unnecessarily prolonging the litigation.”
23 *Laffitte, supra*, at 503 (citations omitted).

24 A common fund award of attorneys' fees and costs is appropriate here
25 because Plaintiff has created an ascertainable common fund from which
26 reasonable attorneys' fees can be recovered. Hoyer Dec. at ¶22. The proposed
27 Settlement creates a common fund of \$475,000 that will substantially benefit
28 approximately 31 Helzberg employees. *Id.* Each participating CM will receive

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1 an ascertainable, *pro-rata* share of the Settlement. Thus, the common fund
 2 doctrine enables the Court to determine a reasonable fee with “some
 3 exactitude.” *Paul*, 886 F.2d at 271. In addition, Plaintiff’s requested fee award
 4 constitutes a fair charge to the CMs for excellent and expeditious result obtained
 5 by the Settlement. Hoyer Dec. at ¶22. Because each participating CM will
 6 receive a portion of the fixed Settlement fund based on its distribution formula,
 7 equity requires that they also contribute a pro-rata share to the attorneys’ fees
 8 that netted them this positive result. Moreover, the requested one-third of the
 9 fund is actually equal to the fee that Class Counsel would have expected if they
 10 had negotiated individual retainer agreements with each Class Member. *Id.*
 11 Thus, the requested award ensures that Class Counsel receive an appropriate
 12 fee award for the actual benefit conferred to the Class. *Id.*

13 **2. The Average Fee Award in the Ninth Circuit and Under** 14 **California Law is 33% in Class Actions.**

15 Class Counsel’s request for one-third of the Settlement Amount is well
 16 within the range customarily approved by California courts in comparable class
 17 actions. *Ontiveros v. Zamora*, 303 F.R.D. 356, 372 (E.D. Cal. 2014) (quoting *Six*
 18 *(6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.
 19 1990)). When deciding if a departure from the Ninth Circuit’s Federal 25 percent
 20 benchmark is appropriate, courts may consider “the result achieved, the risk
 21 involved in the litigation, the skill required and quality of work by counsel, the
 22 contingent nature of the fee, awards made in similar cases, and the lodestar
 23 crosscheck.” *Nwabueze v. AT&T Inc.*, Civ. No. 3:09-1529 SI, 2013 WL 6199596,
 24 at *10 (N.D. Cal. Nov. 27, 2013). Ultimately, the exact percentage varies
 25 depending on the facts of the case, and in “most common fund cases, the award
 26 exceeds that benchmark.” *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482,
 27
 28

1 491-92 (E.D. Cal. 2010); *In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1377-78
 2 (N.D. Cal. 1989) (“nearly all common fund awards range around 30%”).²

3 In California, federal and state courts customarily approve payments of
 4 attorneys’ fees amounting to one-third of the common fund in comparable class
 5 actions. See *Williams v. MGMPathe Commc’n Co.*, 129 F.3d 1026, 1027 (9th
 6 Cir. 1997) (33% of total fund awarded); *Van Vranken v. Atl. Richfield Co.*, 901
 7 F. Supp. 294, 297-98 (N.D. Cal. 1995) (citation to 73 district court opinions in
 8 which fees in the range of 30-50 percent of the common fund were awarded);
 9 *In Re Pacific Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (33% fee
 10 award); *Quezada v. Con-Way Freight, Inc.*, No. 09-cv-3670 (N.D. Cal. Jan. 15,
 11 2015), Order Granting Final Approval ¶ 9, ECF No. 214 (awarding one-third of
 12 \$2 million settlement fund as fees); *Wren v. RGIS Inventory Specialists*, No. C-
 13 06-05778, JCS, 2011 WL 1230826, at *29 (N.D. Cal. Apr. 1, 2011) (approving
 14 fee award that constituted 42% of the common fund); *Stuart v. Radioshack*
 15 *Corp.*, No. c-07-4499 EMC, at *5-*7, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010)
 16 (awarding one-third of \$4.5 million settlement fund); *Knight v. Red Door Salons,*
 17 *Inc.*, No. 08-01520 SC, 2009 WL 248367, at *5 (N.D. Cal. Feb. 2, 2009)
 18 (approving attorneys’ fees award equal to 30% of the settlement fund); *Martin*
 19 *v. FedEx Ground Package Sys., Inc.*, No. C 06-6883 VRW, 2008 WL 5478576,
 20 at *8 (N.D. Cal. Dec. 31, 2008) (approving fee award of 1/3 of the common fund
 21 in a trucker meal break class action).³

22
 23 ² We again note that there is no 25-percent benchmark for attorneys’ fees under
 California law. See *Lafitte, supra*; *Emmons, supra*.

24 ³ See also *In Re Activision Sec. Litig.*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989)
 25 (noting that fee awards in common fund cases “almost always hover[] around
 26 30% of the fund created by the settlement”); *Barbosa v. Cargill Meat Sols. Corp.*,
 27 297 F.R.D. 431, 448 (E.D. Cal. 2013) (awarding attorneys’ fees in the amount
 28 of one-third of the \$1,290,000.00 Gross Settlement Fund); *Singer v. Becton*
Dickinson and Company, 2010 WL 2196104 at *8 (S.D. Cal. June 1, 2010)
 (awarding 33 1/3% fee in class action); *Ingalls v. Hallmark Mktg. Corp.*, Case
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B. Class Counsel's Fee Award is Reasonable Under the Circumstances of this Case.

1. The Fee Request is Justified by the Substantial Monetary Results.

The ultimate reasonableness of the fee “is determined primarily by reference to the level of success achieved by the plaintiff.” *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009). Here, Plaintiff, through Class Counsel, achieved a high level of success through the monetary results and expeditiousness of the Settlement, which justifies the requested fee award.

The proposed settlement provides \$475,000 in total monetary relief to the Settlement CMs. The average CM will receive an award of approximately \$9,206.99, and the maximum award will be \$18,560.56. Declaration of Simpluris representative Meagan Brunner (“Brunner Dec.”) at ¶14. In addition, the gross

No. 08cv4342, Doc. No. 77 (C.D. Cal. Oct. 16, 2009) (awarding 33.33% fee). *Cicero v. DirectTV, Inc.*, 2010 WL 2991486, at *7 (C.D. Cal. July 27, 2010) (case survey of class action settlements demonstrate that “50% [of settlement fund] is the upper limit, with 30-50% commonly awarded in cases in which the common fund is relatively small.”); *Regino Primitivo Gomez, et al. v. H&R Gunlund Ranches, Inc.*, No. CV F 10–1163 LJO MJS, 2011 WL 5884224 (E.D. Cal. 2011) (approving attorneys’ fees award equal to 45% of the settlement fund); *Birch v. Office Depot, Inc.*, Case No. 06cv1690 DMS (S.D. Cal. Sept. 28, 2007), Order Granting Final Approval ¶ 13, ECF No. 48 (awarding a 40% fee on a \$16,000,000 wage and hour class action settlement); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (noting that “fee awards in class actions average around one-third of the recovery”). See also *Big Lots Overtime Cases*, JCC Proceeding No. 4283 (San Bernardino Super. Ct., Feb. 4, 2004) (approving award of attorneys’ fees of 33% of the recovery); *Barela v. Ralph’s Grocery Co.*, No. BC070061 (Los Angeles Super. Ct., June 5, 1998) (same); *Davis v. The Money Store, Inc.*, No. 99AS01716, (Sacramento Super. Ct., Dec. 26, 2000) (same); *Ellmore v. Ditech Funding Corp.*, No. SAVC 01-0093 (C.D. Cal., Sept. 12, 2002) (same); *Miskell v. Auto. Club of S. Cal.* (Orange County Super. Ct., No. 01CC09035, May 27, 2003) (same); *Sconce/Lamb Cremation Cases*, JCC Proceeding No. 2085, (Los Angeles Super. Ct., Mar. 24, 1992) (same).

1 recovery represents approximately 11% of Plaintiffs' reasonable estimate of the
 2 total non-PAGA damages and penalties, and roughly 7% of the total estimated
 3 damages.⁴ Moreover, because this is a non-reversionary settlement, the Court
 4 is assured that the entire net settlement amount will be distributed to the CMs.
 5 *Id.* Even compared against other larger settlements, this degree of recovery is
 6 consistent with amounts routinely found to be commensurate with a 33.33% fee
 7 award. *See supra*, Section III.A.2.

8 **2. The Risks Associated with this Litigation Justified the** 9 **Fee Request.**

10 Class Counsel have taken considerable risk in litigating this case not just
 11 because it has been undertaken on a wholly contingency basis, as discussed
 12 below, but also because Defendant had several considerable defenses to
 13 Plaintiff's claims that made success far from certain.

14 First, Defendant asserted complete liability defenses against Plaintiff's
 15 claims, many of which were supported by the declarations gathered by
 16 Defendant. For example, Defendant asserted that the CMs in fact were properly
 17 classified as exempt employees, and that even if one or two CMs may have
 18 been misclassified, those CMs as managers had an opportunity to take off-duty
 19 meal or rest periods whenever they wanted. Hoyer Dec. at ¶¶24-25. These
 20 defenses were supported by numerous declarations obtained by Defendant
 21 from nearly half the CMs. *Id.* Defendant also intended to raise several defenses
 22 against class certification, including a lack of numerosity, that individualized
 23 determinations regarding the proper classification of any single CM, and the
 24 amount of wages owing (including overtime or meal period premium wages), if
 25 any, would overwhelm common issues. *Id.* If Defendant succeeded on any of
 26 these or other defenses to class certification, Plaintiff would be left with only her
 27 individual claims and the Class would likely recover nothing. *Id.*

28 ⁴ Notably 75% of the duplicative estimated PAGA damages would have to be paid to the LWDA.
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1 If this case were to go to trial as a class action (which Defendant would
 2 vigorously oppose if this Settlement Agreement were not approved), Class
 3 Counsel estimates that fees and costs would exceed \$1,000,000.00. Hoyer
 4 Dec. at ¶¶26-27. Litigating the class claims would require substantial additional
 5 preparation and discovery. *Id.* It would require depositions of experts, the
 6 presentation of percipient and expert witnesses at trial, as well as the
 7 consideration, preparation, and presentation of voluminous documentary
 8 evidence and the preparation and analysis of expert reports. *Id.* Recovery of the
 9 damages and penalties previously referenced would also require complete
 10 success and certification of all of Plaintiff's claims, a questionable feat in light of
 11 recent developments in wage and hour and class and collective action law as
 12 well as the legal and factual grounds that Defendant has asserted to defend this
 13 action, and in particular the declarations they obtained from over half the CMs
 14 in defense against Plaintiff's claims. *Id.*

15 Despite all of these risks, Class Counsel persevered, on a contingency
 16 basis, and brought this case to a fast, efficient, and good resolution for the CMs.
 17 As such, these numerous litigation risks further justify a one-third award from
 18 the common fund.

19 **3. Class Counsel's Skill and Quality Work Justify the Fee**
 20 **Request.**

21 Class Counsel have demonstrated substantial skill, diligence, and high
 22 quality of work in achieving the proposed Settlement and its creation of a
 23 common fund of \$475,000. Hoyer Dec. at ¶28.

24 **4. The Contingent Nature of the Fee and Financial Burden**
 25 **Carried by Class Counsel Justifies the Fee Request.**

26 The risks associated with the contingent nature of this action further justify
 27 the requested fee. Indeed, "[i]t is an established practice in the private legal
 28 market to reward attorneys for taking the risk of non-payment by paying them a
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premium over their normal hourly rates for winning contingency cases.” *Fischel v. Equitable Life Assurance Soc’y of U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002) (internal citation omitted). By undertaking a class action on a contingency fee basis, counsel not only must turn away other income-generating opportunities but must take on a substantial risk of “never receiving compensation *at all*.” *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1217-18 (2008). The contingent nature of the work performed by class counsel here, including the risk they took in advancing costs, also weighs in favor of granting the fee request. *See Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 580 (“A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services.”); *Barbosa v. Cargill Meat Solutions Corp.* (E.D.Cal 2013) 297 F.R.D. 431, 449 (“Like this case, where recovery is uncertain, an award of one-third of the common fund as attorneys’ fees has been found to be appropriate.”)

In the present case, Class Counsel has worked on this case since before July 2020, and in effect has loaned their legal services to the CMs since that time. Class Counsel has prosecuted this case wholly on a contingency basis, and done so at great risk of never receiving any compensation due to the risky nature of class action litigation in general, and due to the evidence provided by Defendant at the mediation. Hoyer Dec. at ¶29. In addition to the contingent risk of this case, Class Counsel’s representation of Plaintiff and the CMs in this action forced them to forego other cases, including hourly paid matters. *Id.* at ¶30.

5. CMs’ Positive Reaction to the Requested Fee Award Supports its Approval.

The reaction of CMs to the requested fee should also be considered in determining the reasonableness of a requested fee award. *In re Heritage Bond*

1 *Litig.*, Nos. 02-ML-1475-DT (RCX), CV 01-5752 DT (RCX), 2005 WL 1594389,
 2 at *15 (C.D. Cal. June 10, 2005) (“absence of objections from the class is also
 3 a factor in determining the proper fee award”). Thus, the absence of disapproval
 4 constitutes strong evidence in support of the reasonableness of the requested
 5 fee and cost award. The deadline for submission of objections and opt-outs was
 6 August 5, 2021, yet no CM has objected to the Settlement despite being
 7 informed of Plaintiff’s requested attorneys’ fees and costs award. See Brunner
 8 Dec. at ¶¶15-18. This positive reaction further underscores its reasonableness.
 9 Hoyer Dec. at ¶31.

10 **C. The Lodestar Cross-Check Confirms the Reasonableness of**
 11 **the Fee Award.**

12 **1. The Ninth Circuit Confirms Fee Awards with a Lodestar**
 13 **Cross-check.**

14 Under California law,⁵ courts in California, in exercising their broad
 15 discretion to determine the appropriate fee pursuant to a fee-shifting statute,
 16 may also base their calculations on the “lodestar/multiplier” method. See, e.g.
 17 *Lafitte, supra*; *PCLM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095
 18 (“*Drexler*”) (“trial court has broad authority to determine the amount of a
 19 reasonable fee,” ordinarily using lodestar/multiplier approach); *Lealao, supra*, at
 20 26 (“In so-called ‘fee shifting’ cases, in which the responsibility to pay attorney
 21 fees is statutorily or otherwise transferred from the prevailing plaintiff or class to
 22 the defendant, the primary method for establishing the amount of ‘reasonable’
 23 attorney fees is the lodestar method.”); *Chavez v. City of Los Angeles* (2010) 47
 24 Cal.App.4th 970, 985 (same under CCP §1021.5).

25 Under the lodestar approach, “[i]n defining a ‘reasonable fee’ in such
 26 representative actions the law should ‘mimic the market’” *Lealao*, 82 Cal.App.4th
 27 at 47 (citation and footnote omitted). A trial court using this approach should

28 ⁵ State law applies in this diversity action.

1 “ensure that the fee awarded is within the range of fees freely negotiated in the
 2 legal marketplace in comparable litigation.” *Id.* at 50. The California Supreme
 3 Court explained that “fee awards should be fully compensatory” and “adjusted
 4 in some manner to reflect the fact that the fair market value of legal services
 5 provided on that basis [of the fair market value] is greater than the equivalent
 6 non-contingent hourly rate.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-
 7 1133. Thus, attorneys’ fee awards often apply a substantial lodestar multiplier
 8 to reflect the actual value of the services rendered by counsel. In class actions,
 9 “[m]ultipliers can range from 2 to 4 or even higher.” *Wershba v. Apple Computer,*
 10 *Inc.* (2001) 91 Cal.App.4th 224, 255 (emphasis added).⁶ Class Counsel here
 11 seek a multiplier of 1.45 to their lodestar (as of August 2, 2021) of \$109,563.82.
 12 (Hoyer Dec. at ¶49), which is well within the range of multipliers approved under
 13 California law.

14 The Ninth Circuit has also approved two methods of determining
 15 attorneys’ fees in class action cases where, as here, the amount of the
 16 attorneys’ fee award is taken from the common fund set aside for the entire
 17 settlement: the “percentage of the fund” method and the “lodestar” method.
 18 *Vizcaino*, 290 F.3d at 1047. Under either approach, “[r]easonableness is the
 19 goal, and mechanical or formulaic application of either method, where it yields
 20 an unreasonable result, can be an abuse of discretion.” *Fischel v. Equitable Life*

22 ⁶ In *Spann v. JC Penney Corporation* (N.D.Cal. Sept. 30, 2016) – F.Supp.3d. –
 23 2016 WL 5844606, the first published order to cite to *Laffitte*, that court
 24 approved “a 3.07 multiplier, which is well within the range for reasonable
 25 multipliers.” *Spann, supra*, at *14. See also *Vizcaino*, 290 F.3d at 1052–1054
 26 (surveying multipliers in 23 class action suits and recognizing that courts applied
 27 multipliers of 1.0 to 4.0 in 83% of surveyed cases); *Parkinson v. Hyundai Motor*
 28 *Am.* (C.D.Cal. 2010) 796 F.Supp.2d 1160, 1170 (observing that “multipliers
 may range from 1.2 to 4 or even higher”); *Hopkins v. Stryker Sales Corp.*, 2013
 (N.D.Cal. 2013) 2013 WL 496358, *4 (“Multipliers of 1 to 4 are commonly found
 to be appropriate in complex class action cases.”).

1 *Assurance Soc’y of the U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002). In contrast to
 2 the common fund method, determining the lodestar amount is “often more time
 3 consuming[.]” *Bluetooth*, 654 F.3d at 942. Under the lodestar method, the Court
 4 determines the lodestar amount by multiplying a reasonable hourly rate by the
 5 number of hours reasonably spent litigating the case. *See Ferland v. Conrad*
 6 *Credit Corp.*, 244 F.3d 1145, 1149 (9th Cir. 2001). *Laffitte* recommends that
 7 district courts apply one method but cross-check the appropriateness of the
 8 amount by employing the other, as well. *See Bluetooth*, 654 F.3d at 944.

9 **2. Class Counsel’s Hourly Rates are Reasonable.**

10 Class Counsel are entitled to the hourly rates charged by attorneys of
 11 comparable experience, reputation, and ability for similarly complex federal
 12 litigation. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)
 13 (“the established standard when determining a reasonable hourly rate is the
 14 ‘rate prevailing in the community for similar work performed by attorneys of
 15 comparable skill, experience, and reputation’”); *Jordan v. Multnomah Cnty.*, 799
 16 F.2d 1262, 1266-1267 (9th Cir. 1986) (“judges awarding fees must make
 17 certain that attorneys are paid the full value that their efforts would receive on
 18 the open market in non-civil-rights cases . . .”).

19 Here, Class Counsel’s hourly rates are reasonable in light of their
 20 significant experience, expertise, and skill. Hoyer Dec. at ¶¶32-37.⁷ Class
 21 Counsel’s rates have been approved by several California courts over the past
 22 several years. *Id.* at ¶34 (Exhibits 1-2 thereto). HH has clients that pay these
 23 rates on an hourly, non-contingent basis. *Id.* at ¶35. Even without accounting
 24 for contingent risk, Class Counsel’s rates are well within the range of rates
 25 charged by similarly experienced and qualified attorneys practicing in this area.
 26 Hoyer Dec. at ¶36.

27 ⁷ HH seeks the following hourly rates: partners Richard Hoyer (\$725) and Ryan
 28 Hicks (\$525), associate Eisha Perry (\$350), and \$150 for clerk/paralegal work.
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We note that this Court has recently relied upon the *2018 Real Rate Report: The Industry's Leading Analysis of Law Firm Rates, Trends, and Practices* ("Real Rate Report") as a useful guidepost to assess the reasonableness of these hourly rates in the Central District. See also *Eksouzian v. Albanese*, No. CV 13-728 PSG (AJWx), 2015 WL 12765585, at *4–5 (C.D. Cal. Oct. 23, 2015). Relying on that report, this Court has found that in 2018 in "Los Angeles, partners working in the Employment and Labor field have hourly rates ranging from \$456 to \$716, and associates' rates range from \$345 and \$540. See *Real Rate Report* at 76. In addition, paralegals in the labor and employment practice area earn an average hourly rate between \$105 and \$260. See *id.* at 11–12." *Lowe v. Popcornopolis*, CV 19-6984 PSG (RAOx), (C.D. Cal. December 15, 2020) at pp. *16-17. Class Counsel's requested rates are in line with those approved in this District and rates from 2018 from the Real Rate Report.

3. The Number of Hours Claimed is Reasonable.

Under fee-shifting statutes like the California wage and hour laws at issue in this case, plaintiffs' attorneys are entitled to be compensated for "every item of service which, at the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest" *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982). "[T]he standard is whether a reasonable attorney would have believed the work to be reasonably expended in pursuit of success at the point in time when the work was performed." *Wooldridge v. Marlene Indus. Corp.*, 898 F.2d 1169, 1177 (6th Cir. 1990); see also *Norman v. Hous. Auth.*, 836 F.2d 1292, 1306 (11th Cir. 1988) ("[T]he measure of reasonable hours is determined by the profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done").

Here, Class Counsel, to date, have expended nearly 260 hours of attorney and paralegal time to reach this Settlement and monitor the Settlement process. Hoyer Dec. at ¶¶36-42. These hours reflect reasonably-spent time litigating this case, which Class Counsel sought to efficiently manage to avoid duplication of effort. *Id.* A summary reports of these billing records is included in Class Counsel's declarations for the Court's review.⁸ *Id.* It should also be emphasized that Class Counsel's lodestar does not include the time they will spend attending the final approval hearing, supervising settlement administration, and communicating with settlement Class Members in the future about the settlement. Class Counsel estimates that these future tasks will likely require an additional 15-25 hours of work. Hoyer Dec. at ¶43. These identified hours have been reasonably expended by Class Counsel. Hoyer Dec. at ¶43. Class Counsel also wish to emphasize to the Court the efficient and expeditious resolution achieve in this case for CMs. Class Counsel could have refused an early mediation, and instead engaged in protracted discovery and other motion practice, but instead attempted to obtain a prompt and meaningful settlement for the CMs. It is also very likely that had the case not settled at an early mediation, and Plaintiff instead litigated through the certification motion, that motion would have been denied, ending any potential class claims. Class Counsel should not be punished for their efficiency in resolving this matter.

D. Class Counsel's Costs are Reasonable and Compensable

⁸ If the Court desires detailed time records, Class Counsel will produce them in camera. However, detailed time records are not required for lodestar calculations. *Hensley*, 461 U.S. at 433 ("The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed."). See also *Dakota Medical, Inc. v. RehabCare Group, Inc.*, 2017 WL 4180497 (Case No. 1:14-cv-02081-DAD-BAM) (E.D.Cal. Sept. 21, 2017) ("Additionally, counsels' declarations are sufficient to establish the number of attorney hours worked on this matter.")

from the Settlement.

Class Counsel request the Court to grant their request for taxable costs and other litigation-related expenses reasonably and necessarily incurred in this litigation in the amount of \$6,715.00. Hoyer Dec. at ¶¶50-53. If the Settlement remains unopposed as expected, Plaintiff estimates a final cost figure of \$6,715.00 (not including fees associated with the delivery of courtesy copies of this motion) to finalize the Settlement. *Id.* Any unclaimed costs will be reallocated to the Settlement and distributed to the CMs. *Id.*

Reasonable litigation expenses are ordinarily included in an award of attorneys' fees pursuant to California wage and hour law. *See Rutti v. Lojack Corp.*, No. SACV 06-350 DOC JCX, 2012 WL 3151077, at *12 (C.D. Cal. July 31, 2012).

Here, as set forth in the accompanying Declarations, Plaintiff's reimbursable out-of-pocket expenses include the following:

Date	Vendor	Item	Cost
12/3/20	Steve Pearl Mediation	Mediation	\$ 6,000.00
11/20/20	Simpluris	Belaire Notice	\$ 200.00
6/3/20	OneLegal	Service of Process	\$ 40.00
5/27/20	CACD	Initial Filing Fee	\$ 400.00
5/27/20	LWDA	PAGA Notice Fee	\$ 75.00
		Total	\$ 6,715.00

Hoyer Dec. at ¶52.

All of the expenses set forth above were reasonable, were necessary to the prosecution of the case, and are customarily billed to fee-paying clients, and each of these categories of costs are routinely approved by Federal Courts in California. *Id.* at ¶53.

E. The Service Award to the Class Representative Is Reasonable.

The Court should approve the requested \$10,000 service award to the Named Plaintiff because the awards is just, fair, and reasonable.

1 Service awards are common in class action cases. *Rodriguez v. W. Publ'g*
2 *Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) ("Incentive awards are fairly typical in
3 class action cases."); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th
4 Cir. 2000). "Courts routinely approve incentive awards to compensate named
5 plaintiffs for the services they provided and the risks they incurred during the
6 course of the class action litigation." *Van Vranken*, 901 F.Supp. At 300 (N.D.
7 Cal. 1995) (named plaintiff received \$50,000 for work in class action). These
8 service awards are "intended to compensate class representatives for work
9 done on behalf of the class, to make up for financial or reputational risk
10 undertaken in bringing the action, and, sometimes, to recognize their
11 willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at 958-
12 59. Thus, a service award is an appropriate incentive to encourage and reward
13 named plaintiffs for participating in the lawsuits. *Cook v. Niedert*, 142 F.3d 1004,
14 1016 (7th Cir. 1998). The factors courts use in determining service awards
15 include: (1) time and effort that representatives put into the litigation; see *Van*
16 *Vranken*, 901 F.Supp. at 299; *Cook*, 142 F.3d at 1016; (2) risks of retaliation,
17 see *Roberts v. Texaco*, 979 F.Supp. 185, 202 (S.D.N.Y. 1997); *Cook*, 142 F.3d
18 at 1016; (3) whether the litigation will further the public policy underlying the
19 statutory scheme, see *Roberts*, 979 F.Supp. at 201 n.25; and (4) a comparison
20 between the service awards and the range of monetary recovery available to
21 the class; see *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga.
22 2001); *Roberts*, 979 F.Supp. at 204.

23 Each of these factors supports Plaintiff's requested service awards herein.
24 First, the Class Representatives spent a considerable amount of time assisting
25 this investigation or actively prosecuting this action. Their efforts included:
26 providing extensive intake interviews regarding their individual and class and
27 collective claims and allegations; looking for and reviewing relevant company
28 documents; communicating with Class Counsel regarding mediation;
MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD 21

1 participating in mediation preparation and strategy; reviewing and signing the
2 Settlement and related documents, and supporting Plaintiff's motions for
3 preliminary approval and the instant motion. Hoyer Dec. at ¶¶54-59; See
4 *Martinez Dec.* at ¶¶10-26. In addition, as the face of the lawsuit, the Class
5 Representative spent hours communicating with other potential witnesses and
6 CMs to aid in the investigation of the case as well as to field questions from the
7 CMs once the Settlement was reached and Notice of the Settlement was
8 distributed. *Id.* Altogether, the Class Representative estimates that she spent
9 approximately 120 hours serving as the Class Representative of this class and
10 collective action, which ultimately resulted in the instant Settlement. *Martinez*
11 *Dec.* at ¶20. The requested service award is fair reimbursement for those
12 efforts.

13 Second, the Class Representative took on substantial risk in bringing this
14 class and collective action and exposed herself to notoriety and personal
15 difficulties from serving as the Named Plaintiff in this lawsuit. It is well
16 established that plaintiffs in the employment context "face[] the risk that new
17 employers would learn that they were class representatives in a lawsuit against
18 their former employer and take adverse action against them. Moreover, each
19 time they change jobs, they will risk retaliation in the hiring process." *Asare v.*
20 *Change Grp. of N.Y., Inc.*, No. 12 Civ. 3371(CM), 2013 WL 6144764, at *15
21 (S.D.N.Y. Nov. 18, 2013); *DeWitt v. Darlington Cnty.*, S.C., 4:11-cv-00740-RSH,
22 2013 WL 6408371, at *14 (D.S.C. Dec. 6, 2013) (noting that incentive payments
23 are especially warranted "where the plaintiff is often a former or current
24 employee of the defendant, and thus, by lending his name to the litigation, he
25 has, for the benefit of the class as a whole, undertaken the risk of adverse
26 actions by the employer or co-workers."). Indeed, because Defendant
27 terminated Plaintiff in February 2021, she was applying to new jobs and subject
28 to that risk of retaliation in the hiring process. See *Martinez Dec.* at ¶¶5, 24-25.

1 The Class Representative also bore the significant financial risk of Defendant's
2 costs in the event she lost at trial. See Martinez Dec. at ¶26. This financial risk,
3 if the case were ultimately tried, could easily total tens, if not hundreds, of
4 thousands of dollars. *Id.*

5 Third, the requested service award will promote the underlying purpose of
6 a service award in wage and hour class actions: to incentivize employees to
7 enforce state and federal labor laws on behalf of their fellow workers. In
8 providing a financial incentive to accept those burdens, a service award
9 promotes the important public policies underlying the wage and hour laws at
10 issue herein. *Ingram*, 200 F.R.D. at 694. California labor laws are supported by
11 a strong public policy in favor of enforcing minimum labor standards for workers
12 and to prevent work under substandard unlawful conditions. Cal. Lab. Code §
13 90.5; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004, 1026 (2012).

14 Fourth, the service award amount of \$10,000.00 is commensurate with
15 the range of recoveries expected for the CMs. Here, the average award is
16 approximately \$9,206.99. Thus, the requested \$10,000.00 service award is
17 roughly equivalent to the average award. This is a far cry from the cases where
18 the requested service awards unreasonably constitute 30 or 40 times the
19 average class award. *In re Online DVD-Rental Antitrust Litig.*, No. 12-15705,
20 2015 WL 846008, at *8 (9th Cir. Feb. 27, 2015) (noting that the Ninth Circuit
21 previously rejected service award amounts that were 30 times the average class
22 recovery). In addition, the service award amounts to just 2% of the total
23 \$475,000 fund, which further underscores its reasonableness. See *Sandoval v.*
24 *Tharaldson Employee Mgmt., Inc.*, No. EDCV 08-482-VAP(OP), 2010 WL
25 2486346, at *10 (C.D. Cal. June 15, 2010) (awarding \$7,500.00 service award
26 that represented 1% of the gross settlement). The reasonableness of the
27 requested service awards is further supported by the fact that the Class
28

1 Representative had to execute a general release not required of the other Class
2 Members.

3 Critically, not one Class Member has objected to this requested service
4 award despite receiving Notice of the request weeks ago, and Defendant does
5 not oppose it either. Hoyer Dec. at ¶59.

6 In addition, these requested service awards are consistent with the
7 awards approved by Courts in this Circuit as well as throughout the State in
8 similar cases.⁹

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12 ⁹ *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2012 WL 381202, at *8
13 (N.D. Cal. Feb. 6, 2012) (awarding service payment of \$12,500); *Lazarin v. Pro*
14 *Unlimited, Inc.*, No. C11-03609 HRL, 2013 WL 3541217, at *10 (N.D. Cal. July
15 11, 2013) (approving three \$25,000 enhancement awards in FLSA settlement);
16 *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17 (N.D. Cal.
17 Apr. 22, 2010) (approving \$20,000 service award); *Ozga v. U.S. Remodelers,*
18 *Inc.*, No. C 09-05112 JSW, 2010 WL 3186971, at *3 (N.D. Cal. Aug. 9, 2010)
19 (awarding \$10,000 incentive award to both named plaintiffs); *Singer v. Becton*
20 *Dickinson & Co.*, 2009 WL 4809646, at *9 (S.D. Cal. Dec. 9, 2009) (approving
21 \$25,000 service award in California wage and hour case); *Razilov v. Nationwide*
22 *Mut. Ins. Co.*, 2006 WL 3312024 (D. Or. Nov. 13, 2006) (approving \$10,000
23 service awards); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL
24 221862, at *16-17 (N.D. Cal. Jan. 26, 2007) *aff'd*, 331 F. App'x 452 (9th Cir.
25 2009) (approving \$25,000 enhancement to each of four named plaintiffs in wage
26 and hour case); *Contreras v. Bank of America*, No. CGC-07-467749 (San
27 Francisco Super. Ct., Sept. 3, 2010) (approving \$10,000 service payment for
28 each class representative); *Castellanos v. The Pepsi Bottling Group*, No.
RG07332684 (Alameda Super Ct., Mar. 11, 2010) (approving award of
\$12,500); *Novak v. Retail Brand Alliance, Inc.*, No. RG 05-223254 (Alameda
Super. Ct., Sept. 22, 2009) (approving award of \$12,500); *Hasty v. Elec. Arts,*
Inc., No. CIV 444821 (San Mateo Super. Ct., Sept. 22, 2006) (approving award
of \$30,000); *Meewes v. ICI Dulux Paints*, No. BC265880 (Los Angeles Super.
Ct. Sept. 19, 2003) (approving service awards of \$50,000, \$25,000 and \$10,000
to the named plaintiffs); *Mousai v. E-Loan, Inc.*, No. C 06-01993 SI (N.D. Cal.
May 30, 2007) (approving service award of \$20,000).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court
3 grant this motion and award Class Counsel fees of \$158,333.33 and costs of
4 \$6,715.00 as well as service awards to the Named Plaintiff and Class
5 Representative in the amount of \$10,000.

6 Respectfully submitted,

7
8 Date: August 11, 2021

HOYER & HICKS

9 /s/ Ryan L. Hicks

10 Ryan L. Hicks
11 Attorney for Plaintiff MICHELLE
12 NOURIAN MARTINEZ
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