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SUPERIOR COURT OF THE STATE OF CALIFORNIA

LOS ANGELES COUNTY

CENTRAL CIVIL WEST

OMAR RODRIGUEZ, individually and on behalf of all others similarly situated,

Plaintiff,

v.

HAWK II ENVIRONMENTAL CORP., a California corporation; and DOES 1–10, inclusive,

Defendants.

Case No. BC625121

Assigned to the Hon. John Shepard Wiley, Jr., Department 311

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND ENHANCEMENT AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Class Action]

Date: August 28, 2017
Time: 11:00 a.m.
Dept: 311

Date Action Filed: June 24, 2016
Trial Date: Not yet set

TO EACH PARTY AND TO EACH PARTY'S ATTORNEY OF RECORD: NOTICE IS HEREBY GIVEN that, on August 28, 2017, at 11:00 a.m., or as soon thereafter as the matter may be heard, in Department 311 of the above-entitled Court located at 600 Commonwealth Avenue, Los Angeles, California 90005, Plaintiff Omar Rodriguez will move for an order awarding Class Counsel attorneys' fees of $83,325, reimbursement of costs in the amount of $6,643.34, and an enhancement payment to the named Plaintiff in the amount of $7,500.

The Motion will be made and based upon this Notice; the Memorandum of Points and Authorities appended hereto; the Declarations of Abigail Zelenski, Joseph Hekmat, and Omar Rodriguez filed and served herewith, as well as all of the materials attached thereto; all of the pleadings, papers, and documents contained in the file of the within action; and such further evidence or argument that may be presented at or before the hearing of the Motion.

DATED: June 12, 2017

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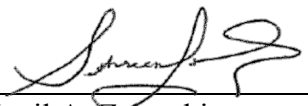


Abigail A. Zelenski
David Zelenski
Joseph Hekmat
Sehreen Ladak
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

Table of Contents

Table of Authorities

CASES

STATUTES

I. Introduction.

In connection with the $250,000 all-cash, non-reversionary settlement generated by counsel for Plaintiff Omar Rodriguez in this case, this Court should approve Plaintiff's Motion for Award of Attorneys' Fees, Reimbursement of Costs, and Enhancement Award by granting this application for an award of (1) $83,325 in attorneys' fees to Class Counsel, (2) $6,643.34 for reimbursement of litigation costs, and (3) $7,500 enhancement payment to named Plaintiff Omar Rodriguez. Class Counsel secured a settlement of $250,000 on behalf of a class of 104 employees who were purportedly not provided with proper overtime compensation, with proper rest-and-meal breaks, with all wages owed to them on the final day of their employment, with reimbursement for their uniform costs, and with adequate pay stubs. For their services in generating a settlement fund for the benefit of a Class comprised of hourly employees, Class Counsel seeks a fee of $83,325 from the settlement amount and reimbursement of $6,643.34 for litigation costs incurred. This award will fairly compensate Class Counsel for work already performed in the case and for all of the work remaining to be performed in the case, including responding to Class Member inquiries, preparing the final-approval motion, and ensuring the settlement is fairly administered and implemented.

Defendant Hawk II Environmental Corp. ("Defendant" or "Hawk") called upon experienced counsel, Devon Lyon of Lyon Legal. (Decl. of Abigail Zelenski in Support of Mot. for Award of Attorneys' Fees, Reimbursement of Costs, and Enhancement Award ("Zelenski Decl.") ¶ 9.) Nevertheless, for a class size of 104 members, Plaintiff achieved an outstanding result with a $250,000 all-cash, non-reversionary settlement, which will automatically pay outstanding wages, damages, and penalties to all Settlement Class Members on account of alleged violations of the California Labor Code.

The public policy of California recognizes the extreme importance of deterring the type of misconduct Plaintiff has alleged in this action. Accordingly, unlike the prevailing "American Rule" in litigation in which each party bears its own attorney's fees, in employment cases of this nature, as well as in civil-rights cases, antitrust cases, and other unique situations, the law requires that the wrongdoer pay the legal fees of the prevailing party. California law provides for payment of mandatory attorneys' fees and costs in the event of the nonpayment of wages. See Cal. Lab. Code §§ 218.5 and 1194(a). California Labor Code section 226(e) provides that an employee "is entitled to an award of costs and reasonable

attorney's fees." Cal. Lab. Code § 226(e). California Labor Code section 2699(g)(1) provides "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g)(1).

Statutes governing conditions of employment are construed broadly in favor of protecting employees. Lusardi Construction Co. v. Aubry, 1 Cal. 4th 976, 985 (1992); Bureerong v. Uvawas, 922 F. Supp. 1450, 1469 (C.D. Cal. 1996) ("the California law governing wages is remedial in nature and must be 'liberally construed'"). In Smith v. Superior Court, 39 Cal. 4th 77, 92 (2006), the Supreme Court held that the relevant sections of the California Labor Code should be construed to provide protection for workers:

> Finally, defendant relies on Hale v. Morgan (1978) 22 Cal. 3d 388 (Hale) and other authorities in asserting that penalties are never favored by courts of law or equity and that the statutes imposing penalties or creating forfeitures must be strictly construed . . . (citations omitted) . . .

Smith at 92. The rule of strict construction of penal statutes "has generally been applied in this state to criminal statutes, rather than statutes which prescribe only civil monetary penalties." People ex rel. Lungren v. Superior Court, 14 Cal. 4th 294, 312 (1996). Moreover, Hale v. Morgan, 22 Cal. 3d 388 (1978), "did not purport to alter the general rule that civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose." People ex rel. Lungren at 313. Statutes providing for payment of attorneys' fees in labor disputes should be construed in a liberal fashion so that high quality counsel will undertake the substantial risks in cases of this nature.

Defendant does not oppose Plaintiff's request for an award of attorneys' fees, reimbursement of costs, and enhancement award. Class Counsel respectfully requests that the Court award $83,325 in attorneys' fees, $6,643.34 for reimbursement of reasonable costs incurred in the prosecution of this case, and a $7,500 class representative service award to Plaintiff. A detailed and precise statement of all of the services provided in connection with this application for a fee award is set forth in the Declarations of Abigail Zelenski and Joseph Hekmat filed herewith.

II. Background, Strengths and Weakness of the Case, and Risks of Maintaining Class-Action Status Through Trial.

On or about February 17, 2016, Plaintiff sent a pre-litigation demand letter to defense counsel outlining the facts and claims of the instant action. On or about February 24, 2016, Plaintiff and

Defendant (collectively the "Parties"), through their respective counsel of record, entered into an agreement tolling their claims, defenses, and the applicable statute of limitations until April 23, 2016. After receipt of the initial demand letter, Defendant began negotiating releases with several dozen putative Class Members in exchange for payment of allegedly due amounts ranging from $187 to $840 each. (Mar. 30, 2017, Supp.'l Decl. of Abigail Zelenski in Supp. Of Preliminary Approval of Class-Action Settlement at ¶ 6.)

On or about April 24, 2016, the parties entered into a second tolling agreement extending the initial tolling agreement through June 24, 2016. On or about April 25, 2016, pursuant to section 2699.3(a)(1), Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA"), through his attorney of record, of the specific provisions of the California Labor Code alleged to have been violated.

On or about June 24, 2016, Plaintiff filed a Class-Action Complaint in Los Angeles County Superior Court. (*See generally* June 24, 2016, Compl.) The Complaint asserts the following eight causes of action against Defendant: (1) failure to provide accurate itemized wage statements under Labor Code section 226; (2) failure to provide meal breaks under sections 512 and 226.7 of the Labor Code; (3) failure to provide rest breaks under section 226.7 of the Labor Code; (4) failure to pay proper overtime compensation under Labor Code sections 510, 1194, and 1198; (5) failure to reimburse employees for their uniforms in violation of Labor Code section 2802; (6) violation of section 17200 *et seq*. of the California Business and Professions Code; (7) failure to pay wages upon termination in violation of Labor Code sections 201, 202, and 203; and (8) civil penalties under the Private Attorneys General Act (Labor Code section 2698 *et seq.*). (*Id.*)

After the matter was filed in June 2016, the Parties agreed to attend private mediation. Prior to the mediation, the Parties engaged in informal class discovery and Defendant produced payroll records in the form of payroll journal reports for all of the putative class members, timecards from a sampling of 21 employees (representing one-fifth of the alleged Class), purported releases solicited from employees, weekly employee schedules, and an exemplar arbitration agreement.

On December 13, 2016, the Parties participated in a full-day mediation before Henry Bongiovi, an AV-Rated attorney and seasoned mediator with extensive experience in California employment and labor

laws. Both parties and their counsel of record were in attendance at the mediation, including Plaintiff, on behalf of himself and the Class, and Joe Bezerra, Jr. on behalf of Defendant. The Parties mediated for almost the entire day, came to an agreement, and executed a short-form settlement agreement before Mr. Bongiovi. The Parties later formalized the settlement reached at the mediation into the Settlement now presented to this Court for preliminary approval. The Settlement Agreement was preliminarily approved by this Court on or about April 13, 2017.

Settlement is an extremely attractive option for both Plaintiff and Defendant, given the reasonable arguments that can be made by both sides. Plaintiff alleges he was forced to clock out and work beyond eight hours a workday without payment of overtime wages. (June 26, 2016, Compl. ¶ 15.) Plaintiff further alleges that he was not provided adequate meal or rest breaks, was not reimbursed for his uniform, or paid wages all owed upon his termination. (June 26, 2016, Compl. ¶¶ 11–22.) Specifically, Plaintiff contends that Defendant failed to provide accurately itemized wage statements in violation of California Labor Code section 226 by (a) failing to list employee identification numbers or only the last four digits of employees' social security numbers on its pay stubs, (b) failing to list employees' actual hours worked on its pay stubs, and (c) failing to include the inclusive dates worked on its pay stubs. Plaintiff further contends that Defendant forced Plaintiff and Class Members to clock out at least fifteen minutes prior to the end of each shift to avoid payment of overtime wages in violation of Labor Code sections 510, 1194, and 1198. Plaintiff also contends that Defendant prevented employees from taking uninterrupted meal breaks and rest breaks in violation of Labor Code sections 226.7 and 512. In addition, Plaintiff contends that Defendant failed to promptly pay due wages at the time of each member's termination of employment constitute continuing wages under Labor Code sections 201, 202, and 203. Lastly, Plaintiff contends that Defendant failed to reimburse members for uniforms violated California Labor Code section 2802. Accordingly, Plaintiff contends that Defendant violated Business and Professions Code section 17200 *et seq.* and responsible for civil penalties under the Private Attorneys General Act (PAGA), California Labor Code section 2698 *et seq*.

On the other hand, Defendant denies each of Plaintiff's allegations and admits no wrongdoing. Plaintiff recognizes that Defendant has arguable defenses regarding class size and commonality. Defendant alleges that it obtained valid releases from the majority of the Class Members, except

approximately thirty individuals who would have otherwise been considered a part of the putative class between February 2016 and December 2016. Defendant will likely allege that, pursuant to Chindarah v. Pick Up Stix, Inc., 171 Cal. App. 4th 796 (2009), an employee and employer may settle a bona fide dispute over past overtime wages, even though the statutory right to receive overtime pay is not waivable. In carving out the exception to Labor Code sections 206.5 and 1194, however, the court noted that the "there is no statute providing that an employee cannot release his claim to past overtime wages as part of a settlement of a ***bona fide dispute over those wages***." *Id.* at 803 (emphasis supplied). Nor, for that matter, did the releases in *Chindarah* "condition the payment of wages concededly due on their executions." *Id.* Here, the releases explicitly state that the employee signing the release "may or may not be one of the employees that was affected," and in fact, recited the net amount ($187 to $840 each) as "consideration for the execution of this Agreement." The releases also required the employees to give up unknown claims (under Civil Procedure section 1542) as well as the right to testify in any investigation or litigation brought by or on behalf of any other person or class of persons." Plaintiff alleges that the employees were not advised of the nature of the dispute and the settlement funds were conditioned—not only on a release of past wages owed—but on future rights as well. Further, the releases were all in English even though many of Defendant's employees only speak Spanish. Plaintiff alleges that Defendant had knowledge of this (which is why it recently supplied it employees with copies of Arbitration agreements in Spanish), and yet proceeded to provide English-only releases. As such, Plaintiff contends these waivers were invalid and improper. Although the releases are arguably invalid, Defendant still has a potential argument that the releases were, in fact, valid, thereby defeating class certification.

Defendant also contends that Plaintiff would only qualify to represent those employees who worked at the gas station location(s) at which he worked, rather than all three owned by Defendant. On the other hand, Plaintiff argues that the policies and employment environment were identical and pervasive throughout all the locations, and therefore Plaintiff is an adequate class representative for all employees for the duration of the class period set forth in the Settlement. Settlement is, therefore, an extremely attractive option for both Parties, given the reasonable arguments that can be made by both sides.

Further, as a class action, the case presents a clear risk of lengthy and expensive litigation. It would probably be a significant amount of time before this case could go to trial so that, *inter alia,* the Parties could properly complete class discovery, Plaintiff could file a motion for certification, and the Parties could file cross-motions for summary judgment. That said, in preparation for mediation, the Parties have, in fact, conducted some informal and formal discovery. Defendant provided Plaintiff relevant information regarding extensive employment records of Plaintiff and 21 Class Members. Defendant also provided all of the 104 Class Members' payroll detail reports. Nevertheless, the law makes clear that exhaustive, protracted, and costly discovery need not be conducted in a class action before a settlement can be reached. 7-Eleven Owners for Fair Franchising v. Southland Corp., 85 Cal.App.4th 1135, 1150 (2000). "In the context of class action settlement, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement . . . '[N]otwithstanding the status of discovery, Plaintiffs' negotiators had access to a plethora of information regarding the facts of their case.'" Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1239-40 (9th Cir. 1998) (citations omitted.) Here, there was sufficient investigation conducted to permit counsel to enter into the Settlement.

For all of the foregoing reasons, the parties decided to settle. Plaintiff filed the Motion for Conditional Class Certification and Preliminary Approval of Class-Action Settlement on February 6, 2017. Plaintiff filed a Supplemental Declaration of Abigail Zelenski in Support of Preliminary Approval of Class-Action Settlement on March 30, 2017. On April 13, 2017, this Court granted preliminary approval. (See generally Apr. 13, 2017, Preliminary Approval Order.)

III. Argument.

A. A Common-Fund Attorneys' Fee Award Is Appropriate.

Here, Class Counsel has secured a non-reversionary, common fund of $250,000 for Plaintiff and a Class of approximately 104 current and former employees of Defendant. "Although American courts . . . have never awarded counsels' fees as a routine component of costs, at least one exception to this rule has become well-established as the rule itself: that one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." Quinn v. State, 15 Cal. 3d 162, 167 (1975). The courts in California

explained the reason for the approval of a contingency fee in Ketchum v. Moses, 24 Cal. 4th 1122 (2001):

> As we explained in Radar v. Thrasher (1962) 57 Cal. 2d 244, 253 []: "'[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a *larger compensation* than would otherwise be reasonable.' . . . The economic rationale for fee enhancement in contingent cases has been explained as follows: "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*." . . . "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."

Id. at 1132–33 (emphasis added; citations omitted).

An award of contingent attorney's fees to counsel is justified under the "common-fund" doctrine. Serrano v. Priest, 20 Cal. 3d 25, 34 (1977). See also Boeing Co. v. Van Gemert, 444 U.S. 472, 478, 100 S. Ct. 745, 749 (1980). An attorney who recovers a common fund for the benefit of persons other than his or her clients is entitled to a fee from the common fund. Mills v. Electric Auto-Lite Co., 396 U.S. 375, 392–96 (1970); In re Pac. Enterprises Sec. Litig., 47 F. 3d 373, 379 (9th Cir. 1995); In re Activision Sec. Litig., 723 F. Supp. 1373, 1375 (N.D. Cal. 1989); Glendale City Employees' Ass'n v. City of Glendale, 15 Cal. 3d 328, 341 n.19 (1975). It is well-established that the "experienced trial judge is the best judge of the value of professional services rendered in [the] court . . . ." Serrano, 20 Cal. 3d at 49. The common-fund doctrine is predicated on the principle of preventing unjust enrichment. It provides that, when a litigant's efforts create or preserve a fund from which others derive benefits, the litigant may require the passive beneficiaries to compensate those who created the fund. Both state and federal courts in California have embraced this doctrine. Serrano, 20 Cal. 3d at 35.

In the present case, it is clear that a common fund has been created and that the requisites supporting payment of fees by the beneficiaries of that fund are satisfied. Under the foregoing doctrine, courts have historically and consistently recognized that class litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify individual representation. In Paul, Johnson, Alston & Hunt v. Graulty, 886 F. 2d 268, 271 (9th Cir. 1989), the Ninth Circuit embraced this principle when it stated:

> Since the Supreme Court's 1885 decision in Central Railroad & Banking Co. of Ga. v. Pettus, 113 U.S. 116, 28 L.Ed. 915, 5 S.Ct. 387 (1885), it is well settled that the lawyer who creates a common fund is allowed an extra reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit. The amount of

such a reward is that which is deemed 'reasonable' under the circumstances.

Id. at 271 (citations and emphasis omitted).

Accordingly, in the determination of a reasonable common-fund fee award, the awarding of attorneys' fees is to serve as an economic incentive for counsel to bring class-action litigation in order to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing.

When this case was originally filed, the prospect of a long, drawn-out battle with Defendant was almost a certainty. Effective prosecution and ultimate settlement of this case took creativity, as well as tenacity on such mundane tasks as researching case law and analyzing documents. Accordingly, this case provided remedies to Class Members that otherwise would have been at public expense.

B. The "Lodestar" Approach Is Mandated by California Law.

Since 1977, California has followed the policy of awarding attorney's fees in cases involving matters of public interest. Serrano v. Priest, 20 Cal. 3d 25 (1977) ("Serrano III"). In doing so, it has, from the beginning, adopted the "lodestar" approach. Serrano III at 48 n. 23. The efforts of counsel, resulting in payments to Plaintiff and those Class Members who participated, vindicated a fundamental public policy of the Labor Code of the State of California. For that reason, Plaintiff's counsel is entitled to an award of reasonable fees. Keeping in mind the fact that the struggle to secure a recovery for Plaintiff has been difficult, the issue, then, is how such fees are to be calculated.

The primacy of the "lodestar" approach in calculating fees in cases such as this was established in Serrano III. It has continued to be the primary and favored approach ever since. In 2000, the Supreme Court, in the context of fees awarded under section 1717 of the California Civil Code, reaffirmed its commitment to the lodestar approach. PLCM Group, Inc v. Drexler, 22 Cal. 4th 1084, 1091 (2000). In 2001, it again reaffirmed that commitment in the context of fees to be awarded under section 425.16 of the California Code of Civil Procedure in so-called SLAPP cases. Ketchum v. Moses, 24 Cal. 4th 1122, 1132–33 (2001).

The clear teaching of the Supreme Court cases is that a contingency-fee multiplier is appropriate and that there are two factors that are *not* to be considered in establishing the lodestar figure. One of these prohibited factors is the amount of the recovery achieved on behalf of the client. The two seminal

cases are Serrano III and Press v. Lucky Stores, 34 Cal. 3d 311, 322 (1983). In the first, no monetary recovery at all was sought or awarded. In the second, the trial court denied attorney's fees on the explicit basis that only injunctive relief had been sought and, hence, no fund had been created. The Supreme Court unhesitatingly rejected this approach and ordered fees awarded on a lodestar basis. Likewise, in Ketchum, there was no monetary recovery because counsel's efforts consisted of succeeding in dismissing the plaintiff's abusive lawsuit.

The second of the prohibited factors is the actual cost to the client of the attorney's services. In the "Serrano series" of opinions, the State Treasurer, challenging the amount of the award, sought discovery of the actual cost of the attorneys' services. Denial of such discovery was upheld on the grounds that it was irrelevant; the only relevant factor is the market rate for the services rendered. Serrano v. Unruh, 32 Cal. 3d 621, 641–42 (1982) ("Serrano IV").

The opinion in Ketchum is instructive and binding on a number of other points. First, it reaffirms the rule that the lodestar figure is calculated by using the prevailing hourly rates for comparable legal services in the community. Ketchum, 24 Cal. 4th at 1132. Furthermore, it explicitly recognizes that, in addition to the expertise presumptively enjoyed by the trial-court judge, it is proper to offer outside opinion and reference as to the prevailing rate for the sort of service rendered. Id. at 1128.

The lodestar figure is arrived at by a careful compilation of the professional time reasonably spent and the ascertainment of reasonable hourly compensation for each attorney. This is done before any consideration of whether to augment the resultant lodestar figure based upon factors such as the contingency (risk of non-compensation) of any fee award. Serrano III, 20 Cal. 3d at 48; Ramos v. Countrywide Loans, 82 Cal. App. 4th 615, 622–23 (2000).

Fees arrived at by application of the lodestar method are not limited by the amount of damages obtained. In Armenta v. Osmose, Inc., 135 Cal. App. 4th 314, 316 (2005), the court awarded fees of $301,625.40 in a case in which the total award of unpaid minimum wages, liquidated damages, and continuing wages under section 203 was only $90,398.22. In Flannery v. Prentice, 26 Cal. 4th 572, 576 (2001), the jury awarded damages of $250,000, and the trial court awarded $1,088,231 in attorney's fees. In Vo v. Las Virgenes Municipal Water District, 79 Cal. App. 4th 440, 442 (2000), the Court approved an award of $470,000 in fees, yet damages were only $37,500.

Were the courts to limit attorney's fees to the amount of the recovery, competent counsel would be prohibited from vigorously representing unpaid employees in cases of this nature. A recalcitrant employer could, by stonewalling a plaintiff, deprive plaintiff's counsel of a reasonable fee. Stokus v. Marsh, 217 Cal. App. 3d 647, 657 (1990). In the just-cited case, the municipal court, following litigation in an unlawful-detainer case, awarded $75,000 in fees. Here, however, a review of the detailed time records of Class Counsel compels a conclusion that the requested lodestar is entirely appropriate.

C. Lodestar Rates Are Market Rates.

The hourly rates to be utilized in establishing the lodestar figure are market rates. This has a number of important ramifications, and the market-rate principle applies both to attorney's fees and to services such as paralegal fees. That the hourly rate to be used in calculating the lodestar is not the actual cost of the services but is instead the market rate was re-affirmed by the California Supreme Court in PLCM Group, Inc., where the Court rejected a contention that, because the services were rendered by in-house counsel, the rate should be based upon the cost to the client. This rule harkens back at least to Serrano IV, 32 Cal.3d 621 (1982). In appealing an award of attorney's fees to a public-interest law firm, the State Treasurer complained, *inter alia*, of being denied discovery into the actual salaries paid to the individual attorneys. The Supreme Court held that discovery had been properly denied. The salaries were irrelevant because the proper hourly rate for computation of the lodestar was the reasonable market value of the services rendered. Serrano IV, 32 Cal. 3d at 641–42.

In assessing reasonableness, courts often refer to the "Laffey" Matrix, "an official source of attorney rates based in the District of Columbia area," Syers Props. III, Inc. v. Rankin, 226 Cal. App. 4th 691, 695 (2014) (internal quotations omitted), so named for the case that generated the index: Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354 (D.D.C. 1983). The rates set forth in the Laffey Matrix can be adjusted to areas outside of the District of Columbia by "using the [U.S. Office of Personnel Management's ("OPM")] Locality Pay Tables," and by following the "formula used by Chief Judge Walker in In re HPL Technologies, Inc. Securities Litigation," 366 F. Supp. 2d 912 (N.D. Cal. 2005), and In re Chiron Corp. Securities Litigation, 2007 4249902 (N.D. Cal. Nov. 30, 2007). Syers Props. III, Inc., 226 Cal. App. 4th at 695. (Zelenski Decl. ¶ 13.)

A copy of the current Adjusted Laffey Matrix is attached as **Exhibit 3** to the Zelenski Declaration

filed herewith, and lists billing rates as follows:

June 1, 2016, Through May 31, 2017, Laffey Matrix	
Experience	***Hourly Rate***
20+ Years	$842.52
11–19 Years	$698.70
8–10 Years	$620.16
4–7 Years	$429.42
1–3 Years	$349.86
Paralegals and Law Clerks	$190.70

(Zelenski Decl. Ex. 3.) Adjusting these rates to the Los Angeles area—where Class Counsel work—results in the following hourly rates applied for each Class Counsel timekeeper.

Attorney	***Hourly Rate***
David Zelenski	$698.70
Abigail Zelenski	$698.70
Sehreen Ladak	$349.86
Joseph Hekmat	$620.16
Paralegal/Law Clerk (Jaurigue Law Group)	$190.74

(Zelenski Decl. ¶¶ 13–18.) Accordingly, Plaintiff submits that the hourly rates for Class Counsel, above, are market rates and should be used in calculating Class Counsel's lodestar.

D. The Total Lodestar Dollar Amount Is Reasonable.

Defendant was entitled to and did retain able and experienced counsel. Work on this case began in February 2016 and will continue past the final-fairness hearing in August 2017. The total hours and expenses incurred is reasonable for a case of this nature. The total lodestar in this case is $215,330.32 for approximately 399.85 hours of work through June 7, 2017. (Zelenski Decl. ¶ 21.) Class Counsel requests attorneys' fees of only $83,325, which is ***less than*** the lodestar. (Zelenski Decl. ¶ 22.) The lodestar, however, does not include the time that will be spent in finalizing this Motion, securing final approval, responding to further client and Class Member inquiries, and concluding administration of this case. (Zelenski Decl. ¶ 22.) Thus, by the time the entire class notice process has been completed, and the Court hears the motion for final approval, Class Counsel will have expended substantial additional hours in prosecuting this matter. (Zelenski Decl. ¶ 22.)

E. A "Multiplier" May Be Applied to the "Lodestar."

Multipliers are "routinely" used to enhance the lodestar in common-fund cases. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1051 (2002). The purpose of a multiplier is to compensate counsel for

undertaking the risk of working on a contingent-fee basis, and based on the delay in recovering the fee, the skill displayed by counsel in litigating or settling the case, the novelty and complexity of the issues, and the importance of the lawsuit to the class and the public. See Serrano v. Priest, 20 Cal. 3d 25, 48–49 (1977); Ramos v. Countrywide Home Loans, Inc., 82 Cal. App. 4th 615, 622–23 (2000); Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19, 49 (2000). In common-fund cases, multipliers reward attorneys by paying them a premium over their normal hourly rates for taking the risk of winning contingency cases. Vizcaino, 290 F.3d at 1051; see also San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, 155 Cal. App. 3d 738, 755, n.2 (1984). California has adopted a "relatively permissive attitude on the use of multipliers." Lealao, 82 Cal. App. 4th at 43.

In this case, Class Counsel's lodestar is $215,330.32 for 399.85 hours performed through June 7, 2017. Class Counsel seeks only $83,325 in attorneys' fees, or 33.33 percent of the settlement fund. Consequently, Class Counsel seeks only a fraction of the lodestar; here, only 38.7% of the lodestar. This is on the lower side of the range of reasonableness for fee awards in other class actions. See, e.g., Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher."); see also City of Oakland v. Oakland Raiders, 203 Cal. App. 3d 78, 84–85 (1988) (2.34 multiplier); Vizcaino, 290 F.3d at 1051 (3.65 multiplier). It is common for attorneys' fee awards in successful class actions, calculated on a fee-spreading basis, to exceed—often by multiples—the lodestar value of the time spent by counsel. See, e.g., In re Sutter Health Uninsured Pricing Cases, 171 Cal. App. 4th 495, 412 (2009) (affirming that multiplier of 2.52 was "fair and reasonable"); Chavez v. Netflix, Inc., 162 Cal. App. 4th 43, 66 (2008) (affirming award of fees 2.5 times lodestar in class action).

F. The Award Should Include All Reasonably Incurred Costs and Expenses.

The cases cited in the preceding sections of this Memorandum universally approve awards that include reimbursement of all costs and expenses reasonably incurred by counsel in the litigation. These are not limited to the costs recoverable under sections 1032 and 1033.5 of the Code of Civil Procedure. In other words, those costs and expenses that would properly be included in a memorandum of costs and disbursements. Bussey v. Affleck, 225 Cal. App. 3d 1162, 1166 (1990); Cal. Hous. Fin. Agency v. E.R. Fairway Assocs. I, 37 Cal. App. 4th 1508, 1514–15 (1995); Arntz Contracting Co. v. St. Paul Fire and Marine Ins. Co., 47 Cal. App. 4th 464, 492 (1996).

The Zelenski Declaration filed and served herewith sets out such litigation-related costs and expenses in detail. (Zelenski Decl. Ex. 2.) The costs and expenses in the amount of $6,643.34, as set forth in the Zelenski Declaration, should be included in the award. (Zelenski Decl. ¶ 14, Ex. 2.)

G. Class Counsel Are Entitled to Reasonable Attorneys' Fees and Costs under the California Labor Code.

Section 218.5 of the California Labor Code provides that, "[i]n any action brought for the nonpayment of wages . . . the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." Cal. Lab. Code § 218.5. Section 226(e) provides "[a]n employee . . . is entitled to an award of costs and reasonable attorney's fees. Cal. Lab. Code § 226(e). Section 1194(a) provides "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action . . . reasonable attorneys' fees, and costs of suit." Cal. Lab. Code § 1194(a). Finally, PAGA provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g). It is indisputably recognized that Plaintiff and the Class are entitled to recover the reasonable attorneys' fees and costs pursuant to the foregoing provisions of California state law.

H. Plaintiff's Enhancement Award.

On April 13, 2017, this Court appointed Plaintiff Omar Rodriguez as the Class Representative. (Apr. 13, 2017, Preliminary Approval Order ¶ 4.) The Settlement Agreement provides that Plaintiff may seek a Class Representative Service Award in an amount up to five thousand dollars ($7,500) for his time and effort prosecuting this case on behalf of the class and for assuming the risk of paying Defendant's costs in the event of an unsuccessful outcome. (Settlement at ¶ 63.) This service award is in addition to the amount she will receive as a member of the Class. Here, Plaintiff requests a service award in the amount of $7,500. Plaintiff's proposed "enhancement" payment is entirely reasonable as Plaintiff is entitled to this additional amount for the services she rendered as a Class Representative. See Bell v. Farmers Ins. Exch., 115 Cal. App. 4th 715, 726 (2004) (affirming an order for "service payments to the five named plaintiffs compensating them for their efforts in bringing suit"). Enhancement awards "are not uncommon and can serve an important function in promoting class action settlements," Sheppard v.

Consol. Edison Co. of N.Y., Inc., 2002 U.S. Dist. LEXIS 16314, at *16 (S.D.N.Y. 2002), and "[c]ourts routinely approve incentive awards to compensate named Plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." In re S. Ohio Correctional Facility, 175 F.R.D. 270, 272 (S.D. Ohio 1997), reversed on other grounds, 191 F.3d 453 (6th Cir. 1999).

Enhancement awards in actions against employers play a particularly important role. Here, Plaintiff asserted claims that may have never been brought. See Crab Addision, Inc. v. Superior Court, 169 Cal. App. 4th 958, 971 (2008) ("Current employees suing their employers run a greater risk of retaliation. . . . For them, individual litigation may not be a viable option . . . . [In addition], employees may be unaware of the violation of their rights and their right to sue.") It is appropriate to provide a payment to class representatives for his services to the class. Van Vraken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995); Wang v. Chinese Daily News, Inc., 231 F.R.D. 602, 614 (C.D. Cal. 2005) ("Proceeding by means of a class action avoids subjecting each employee to the risks associated with challenging an employer"); Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 32 (E.D. Pa. 1985). Courts should consider "the risk to the class representative in commencing suit, both financial and otherwise," as well as "the amount of time and effort spent by the class representative" and "the personal benefit (or lack thereof) enjoyed by the class as a result of the litigation." Smith v. CRST Van Expedited, Inc., 2013 U.S. Dist. LEXIS 6049, at *16 (S.D. Cal. filed Jan. 14, 2013) (quoting Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995)). In light of Plaintiff's willingness to come forward with this action on behalf of a Class of current and former employees, an enhancement award of $7,500 represents a reasonable amount. See, e.g., Cook v. Niedert, 142 F.3d 1044, 1016 (7th Cir. 1997) (approving an incentive award of $25,000 to a class representative); Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 28 (E.D. Pa. 1985) (approving an award of $20,000 apiece to two class representatives).

In furtherance of this action, Plaintiff was willing to come forward with the litigation on behalf of the absent Class of 104 former and current employees, Plaintiff informed counsel of is employment issues, and provided counsel with facts, documents, details, and decision-making, which eventually culminated into the Settlement Agreement. Attached as **Exhibit 2** to the Hekmat Declaration is a Declaration from Plaintiff Omar Rodriguez, detailing his efforts and participation in the litigation of this case. As a result of the Plaintiff's effort, claimants will receive significant payment for unpaid wages and

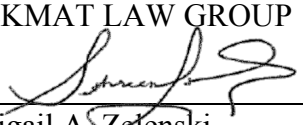
damages under the Labor Code.

IV. Conclusion.

It is respectfully requested that this Court award (1) attorneys' fees in the amount of $83,325.00 to Class Counsel, (2) reimbursement of litigation costs in the amount of $6,643.34 to Class Counsel, and (3) an enhancement award to the named Plaintiff in the amount of $7,500.00.

DATED: June 12, 2017

JAURIGUE LAW GROUP
HEKMAT LAW GROUP



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PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within action; and my business address is 114 North Brand Boulevard, Suite 200, Glendale, California 91203

On **June 12, 2017**, I served the document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND ENHANCEMENT AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on ALL INTERESTED PARTIES in this action as follows:

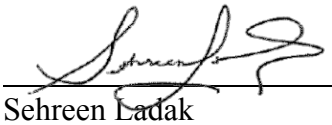
☐ **BY U.S. MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, an envelope(s) containing the document(s) would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Glendale, California in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal-cancellation date or postage-meter date is more than one day after the date of deposit for mailing.

☐ **BY OVERNIGHT DELIVERY OR EXPRESS MAIL:** I enclosed the document(s) in an envelope(s) or package(s) allowed by an overnight-delivery carrier and/or by the U.S. Post Office for express mail, and addressed to the person(s) at the address(es) above. I placed the envelope(s) or package(s) for collection and overnight delivery or express mail at an office or a regularly utilized drop-box of the overnight-delivery carrier, or I dropped it off at the U.S. Post Office.

☐ **BY HAND DELIVERY:** I caused the document(s) to be delivered by hand in open court to at least one of the individuals listed above.

XXX **BY ELECTRONIC MAIL VIA CASE ANYWHERE:** In accordance with the Court's ruling governing Los Angeles Superior Court Case No. BC625121 and related actions requiring all documents to be served upon interested parties via Case Anywhere system.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on **June 12, 2017**, at Glendale, California.



Sehreen Ladak