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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 KURT CASADINE on behalf of
13 himself and all others similarly situated,

14
15 Plaintiff,

16
17 vs.

18
19 MAXIM HEALTHCARE SERVICES,
20 INC., a Maryland Corporation and
DOES 1 through 100, inclusive,

21
22 Defendants.
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27
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Case No.: CV 12-10078-DMG (CWx)

Honorable Dolly M. Gee

**PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF UNOPPOSED
MOTION FOR CLASS
REPRESENTATIVE SERVICE
ENHANCEMENTS,
ATTORNEYS' FEES AND COSTS**

Hearing Date: September 18, 2015

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Complaint Filed: October 24, 2012

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 22, 2015 this Court preliminarily approved the class action settlement negotiated between Defendant Maxim Healthcare Services, Inc. (“Defendant”) and Plaintiffs Kurt Casadine and Alfred Guerrero (“Plaintiffs”). (See Docket No. 95) Now, after approximately two and a half years of hard-fought litigation, substantial discovery and negotiations that resulted in the Settlement, Class Counsel move for an award of: (1) attorneys’ fees in the amount Two Hundred Ten Thousand Dollars (\$210,000.00); (2) reimbursement of litigation costs totaling \$21,907.51; and (3) a Ten Thousand Dollar (\$10,000.00) service enhancement award to Plaintiff Kurt Casadine and a Two Thousand Dollar (\$2,000.00) service enhancement award to Plaintiff Alfred Guerrero. These requests are in accordance with the terms of the preliminarily approved settlement.¹ Furthermore, Defendant has agreed not to oppose these requests.

The attorneys’ fees requested are reasonable whether the Court evaluates the request under the percentage-of-the-benefit method or the lodestar method of awarding attorneys’ fees in class actions. The benefit of the Settlement to class members, which is the direct result of Class Counsel’s efforts, is substantial. The Settlement establishes a guaranteed and non-reversionary cash fund of Six Hundred Thirty Thousand Dollars (\$630,000.00). The Settlement will yield real cash payments to class members. Furthermore, the settlement amount does not reflect the fact that current and future employees of Defendant will likely benefit by a change in Defendant’s compensation and other employment practices as a result of this litigation.

The requested fee is a fair percentage of the common fund and is reasonable considering the undertaking of a complex, risky, expensive and time-consuming

¹ In granting preliminary approval, this Court found the requested class representative enhancement awards and attorneys’ fees and costs to be fair, reasonable and adequate and within the range of reasonableness. (Docket No. 95)

1 litigation on a contingent basis. The requested fees are reasonable and the results
2 achieved for the class are excellent. Class Counsel respectfully requests that the
3 Court enter an Order to that effect.

4 Class Counsel's total lodestar is \$423,328.50. As a result, the \$210,000.00
5 in fees requested reflects a fractional multiplier of 0.49, and should be approved by
6 this Court whether it is evaluated under the percentage-of-the-fund or lodestar
7 method.

8 Furthermore, the \$21,907.51 in litigation costs is reasonable and represents
9 hard costs advances by Class Counsel for the benefit of class members. Lastly, the
10 Class Representative Service Enhancement requests are reasonable as the Class
11 Representatives were diligent and active in this litigation and were essential in
12 securing the benefits delivered to class members through the Settlement. The
13 requested service enhancement awards are more than reasonable given the class
14 representatives' considerable efforts in this litigation.

15 **II. SUMMARY OF LITIGATION AND SETTLEMENT**

16 **A. Class Counsel Conducted Extensive Factual and Legal** 17 **Investigation, Discovery, and Law and Motion Work In This** 18 **Litigation**

19 On or about October 24, 2012, Plaintiff Kurt Casadine and Ronald Kroenig
20 filed a wage and hour class action lawsuit against Defendant Maxim Healthcare
21 Services, Inc. As detailed in the Declarations of Sean M. Blakely and Kevin
22 Mahoney filed concurrently herein, Class Counsel conducted an extensive factual
23 and legal investigation of the claims in this litigation. Prior to filing this instant
24 matter, Class Counsel investigated Plaintiffs' claims, conducted legal research
25 regarding the home health industry and Defendant's business. (Declaration of
26 Sean M. Blakely, "Blakely Decl. ¶6) Specifically, Class Counsel analyzed
27 Plaintiffs' wage and hour claims and Defendant's potential liability for failure to
28 pay all wages, inaccurate wage statements, as well as other violations. (Blakely

1 Decl. ¶(6)

2 After filing Plaintiffs' Complaint, Class Counsel met and conferred with
3 Defendant's counsel in preparation of the scheduling conference. Prior to filing
4 the statement, the Parties undertook significant meet and confer efforts to discuss
5 Plaintiffs' claims. Plaintiffs were employed by Defendant as Home Health Aides
6 who worked consecutive twenty-four (24) hour "Live-In" shifts. Defendant argued
7 that Plaintiffs, as personal attendants, were exempt from overtime premium pay
8 requirements as well as meal and rest period requirements pursuant to the
9 California Industrial Welfare Commission ("IWC") Wage Order 15.

10 Throughout this litigation, discovery was extensive and hard fought, and
11 required significant efforts by Class Counsel to obtain evidence necessary to
12 support Plaintiff's Motion for Class Certification and Plaintiff's claims. Indeed,
13 Class Counsel spent considerable time meeting and conferring with Defendant's
14 counsel regarding various discovery disputes. Indeed, Class Counsel was required
15 to prepare and file two Motions to Compel Discovery before Magistrate Judge
16 Carla Woehrle, both of which were granted in part due to Class Counsel's efforts.
17 (See Docket No. 31, 54)

18 Throughout discovery in this litigation, Class Counsel served multiple sets
19 of written interrogatories and requests for production of documents. On or about
20 February 13, 2013, Plaintiff served its first set of written discovery. (Blakely Decl.
21 ¶9) After significant meet and confer efforts, the Parties agreed to stipulate to the
22 filing of Plaintiffs' First Amended Complaint. (Blakely Decl. ¶10) Plaintiffs' First
23 Amended Complaint alleged that Plaintiffs and other similarly situated employees
24 were paid a flat or piece rate for each twenty-four (24) hour Live-In shifts worked
25 and resulted in members of the class earning less than the legal minimum wage.
26 Plaintiffs' First Amended Complaint and subsequent discovery focused on a class
27 comprised of Home Health Aides who worked twenty-four (24) hour Live-In shifts
28 for Defendant and were paid a flat or daily rate of pay. (Blakely Decl. ¶10)

1 As the Parties could not come to an agreement on certain discovery issues,
2 including the production of class contact information, Class Counsel moved to file
3 a filed a Joint Motion to Compel Further Discovery Responses. (See Docket No.
4 23) In its Motion, Plaintiff Casadine specifically sought class contact information
5 for putative class members which would enable Plaintiff to speak to putative class
6 members and further investigate Defendant's practices and policies. (Blakely
7 Decl. ¶11-12) Class Counsel successfully argued this Discovery Motion and the
8 Court ordered supplemental responses to be provided. (See Docket No. 31)

9 In August 2013, Plaintiff Kurt Casadine was produced for his deposition.
10 Plaintiff Casadine was produced for a second day of deposition in September 2013
11 (Blakely Decl. ¶13; Declaration of Kurt Casadine, "Casadine Decl." ¶12)

12 In September 2013, Plaintiff served further written discovery seeking
13 information and documents specific to Caregivers, Certified Home Health Aides,
14 and Patient Care Assistants who worked twenty-four (24) hour Live-In shifts and
15 were paid a flat or daily rate of pay. (Blakely Decl. ¶15) In November 2013,
16 Defendant produced class contact information as ordered by the Court. Plaintiff's
17 counsel prepared and delivered a class contact letter, and began to speak directly
18 with putative class members regarding the alleged wage and hour violations and
19 Defendant's policies and practices. Beginning in November 2013, Plaintiff's
20 counsel spent countless hours contacting and speaking to dozens of putative class
21 members to investigate Plaintiff's allegations and obtained a significant amount of
22 information pertaining to Defendant's policies and procedures. (Blakely Decl.
23 ¶17) Discussions with putative class members yielded critical information in
24 support of Plaintiff's class certification efforts.

25 Class Counsel took numerous depositions in this matter. Class Counsel took
26 the deposition of Defendant pursuant to FRCP 30(b)(6) on January 15, 2014 in
27 Sacramento, California; on February 27, 2014 in Sacramento, California; and on
28 April 27, 2014 in Mountain View, California. Class Counsel also took the

1 depositions of percipient witnesses. (Blakely Decl. ¶19, 21, 24)

2 Class Counsel requested and obtained a sampling of time records and
3 corresponding payroll records for putative class members who worked twenty-four
4 (24) hour Live-In shifts and were paid a flat or daily rate of pay. Upon receipt of
5 the pay and time records, Plaintiff's counsel spent considerable time analyzing
6 Defendant's records in preparation for Plaintiff's Motion for Class Certification.
7 (Blakely Decl. ¶25)

8 After significant class certification discovery, Class Counsel prepared
9 Plaintiff's Motion for Class Certification. This was a substantial undertaking
10 which required extensive legal research, a thorough review of over three thousand
11 (3,000) pages of documents produced by Defendant, a review of the voluminous
12 deposition testimony, and speaking to numerous class members and securing
13 signed declarations in support of Plaintiff's Motion for Class Certification.
14 (Blakely Decl. ¶27, 28) Class Counsel devoted a substantial amount of time and
15 resources to Plaintiff's Motion for Class Certification.

16 Following the hearing on Plaintiff's Motion for Class Certification, Class
17 Counsel prepared a Supplemental Brief Regarding Certification as to Plaintiff's
18 Third Cause of Action for Knowing and Intentional Failure to Comply with
19 Itemized Wage Statement Provision. (See Docket No. 72) Similarly, this required
20 significant legal research, a review of relevant documentation and securing signed
21 declarations from putative class members. (Blakely Decl. ¶30)

22 Following Defendant's filing of its Opposition to Plaintiff's Supplemental
23 Briefing, the Parties entered into settlement discussions and requested that the
24 Court stay any ruling as to Plaintiff's Supplemental Class Certification Briefing.
25 (See Docket No. 76, 77) During this time, Defendant provided Plaintiff with
26 further information under the mediation privilege. The Parties reached a tentative
27 settlement in April 2015, however, Class Counsel and Defendant's counsel spent
28 considerable time over the next month working towards finalizing the terms of a

1 written settlement agreement. (Blakely Decl. ¶31) These negotiations proved to be
2 difficult, and involved many detailed and lengthy discussions regarding numerous
3 provisions of the settlement agreement. On or about May 7, 2015, through
4 extensive meet and confer efforts between Class Counsel and Defendant’s counsel,
5 the Parties executed a formal Stipulation and Settlement Agreement in this matter.
6 (Blakely Decl. ¶31)

7 Thereafter, Class Counsel prepared Plaintiff’s Motion for Preliminary
8 Approval and accompanying documents, including the Class Notice and Claim
9 Form. On or about May 22, 2015, Class Counsel appeared at the hearing for
10 Plaintiff’s Motion for Preliminary Approval. This Court granted Plaintiff’s Motion
11 and ordered notice to be sent to class members. (Blakely Decl. ¶32)

12 Following Preliminary Approval, Class Counsel has worked with
13 Defendant’s counsel and Phoenix Settlement Administrators to ensure
14 dissemination of the Notice to the class. (Blakely Decl. ¶34) These efforts
15 included review of the notice packet, fielding inquiries from Phoenix Settlement
16 Administrators regarding the notice procedures, and supervision and monitoring of
17 the on-going claims process. This work continues at the time of this filing.
18 (Blakely Decl. ¶37)

19 **III. CLASS COUNSEL’S TIME AND EXPENSES**

20 Plaintiffs’ counsel expended significant time and out-of-pocket litigation
21 expenses in securing the Settlement for class members. The lodestar of Plaintiffs’
22 counsel, to date, equals \$423,328.50.² The reasonable litigation expenses incurred
23 to date equals \$21,907.51.

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25
26 ² A complete lodestar analysis and detailed billing history is attached to the Declarations of Sean
27 M. Blakely, Kevin Mahoney and Jose Garay. The total expenses incurred by Class Counsel is
28 attached to the Declaration of Kevin Mahoney as Exhibit “B.” These amounts will increase given
the future work still needed to complete the Settlement Process and obtain final approval. In
addition, should a Class Member file an objection, Class Counsel will have to spend significant
additional time addressing those issues.

1 **IV. VALUE OF THE SETTLEMENT**

2 The Settlement agreement confers substantial benefit to the class. The
3 Settlement creates a \$630,000.00 settlement fund to pay Class members’ claims,
4 attorneys’ fees, costs, any service enhancement awards, and administration
5 expenses. Assuming that the full amount of the requested attorneys fees and costs
6 are ordered as set forth in the Settlement agreement, the total Net Settlement
7 Amount is approximately \$373,500.00. As there are 371 class members, the
8 approximate distribution to class members is \$1,006.74. (Blakely Decl. ¶32)

9 While the claims period has not yet closed, there has been a strong response
10 rate from class members. Significantly, to date, there have been no opt-outs and
11 Class Counsel is unaware of any objections to the proposed settlement. (Blakely
12 Decl. ¶36)

13 **V. THE REQUESTED ATTORNEYS’ FEES AND SERVICE**
14 **ENHANCEMENT AWARDS ARE REASONABLE AND**
15 **APPROPRIATE**

16 Federal Rule of Civil Procedure 23(h) provides that, “[i]n a certified class
17 action, the court may award reasonable attorney’s fees and non taxable costs that
18 are authorized by law or the parties’ agreement. Fed. R. Civ. Proc. 23(h).

19 The Settlement agreement anticipates Class Counsel moving for an award of
20 up to \$210,000.00 in attorneys’ fees and Defendant has agreed not to oppose Class
21 Counsel’s application for fees up to that full amount. (Settlement Agreement at
22 section 2.11.1) As shown below, the requested fee award is reasonable under both
23 the lodestar method and percentage-of-the-fund method for approving attorneys’
24 fees.

25 As shown herein, \$423,328.50 represents Class Counsel’s base lodestar; the
26 costs incurred by counsel and sought here, a total of \$21,907.51, are relatively
27 modest and reasonable given the scope and length of this case. The amount of
28 attorney fees requested by Class Counsel is a fractional multiplier of 0.49.

1 **A. Methods of Determining an Appropriate Fee.**

2 California state and federal courts have recognized that an appropriate
3 method for determining an award of attorneys' fees is based on a percentage of the
4 total value of benefits to Class Members by the settlement, not the amount claimed.
5 Serrano v. Priest, 20 Cal.3d 25 (1977) , 34;[Serrano III]); Boeing Co. v. Van
6 Gemert, 444 U.S. 472 (1980) at 478; Vincent v. Hughes Air West, Inc. 557 F.2d
7 759 (9th Cir. 1977). The purpose of this equitable doctrine is to avoid unjust
8 enrichment of counsel and to "spread litigation costs proportionally among all the
9 beneficiaries so that the active beneficiary does not bear the entire burden alone."
10 Vincent v. Hughes Air West, Inc., supra, 557 F.2d at 769.

11 In Blum v. Stenson, 465 U.S. 886 (1984) at 900 n. 16, the Supreme Court
12 recognized that under the "common fund doctrine" a reasonable fee may be based
13 "on a percentage of the fund bestowed to the class." Under the "common fund"
14 doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of
15 persons other than himself or his client is entitled to a reasonable attorney's fee
16 from the fund as a whole." Boeing Co. v. Van Gemert, 444 U.S. 472, 478, (1980).

17 In the Ninth Circuit, a district court may ascertain the reasonableness of an
18 award of attorney fees from a common fund by applying either of two methods: (1)
19 the percentage-of-the-benefit method; or (2) the lodestar with multiplier method.
20 Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir.
21 2002); Paul, Johnson, Alston & Hunt v. Gaulty, 886 F.2d 268 (9th Cir. 1989);
22 Florida v. Dune, 915 F2d 542, 545 (9th Cir. 1990).

23 Generally, under the percentage method, a court assesses the amount of the
24 common fund by determining the value of the benefits that the settlement confers
25 upon the class and then awards a percentage of the fund as attorneys' fees. Staton
26 v. Boeing, 327 F.3d 938, 974-975 (9th. Cir. 2003)

27 Under the lodestar method, a court "calculates the fee award by multiplying
28 the number of hours reasonably spent by a reasonable hourly rate and then

1 enhancing the figure, if necessary, to account for the risks associated with the
2 representation.” Gaulty, 886 F.2d at 272.

3 Regardless of which of the two methods is used, the award must be
4 reasonable when considered in light of the circumstances of a particular case. In re
5 Washington Public Power Supply System Sec. Litig., 19 F.3d 1291, 1296 n. 2 (9th
6 Cir. 1994)(“Whether a court applies the lodestar or the percentage method, we
7 require only that fee awards in common fund cases be reasonable under the
8 circumstances”)

9 The Ninth Circuit has identified a number of factors the Court may consider
10 in assessing whether an attorneys’ fee award is reasonable and whether a departure
11 from that figure is warranted, including: (1) the results obtained; (2) the risk of the
12 litigation; (3) the skill required and the quality of work; (4) the contingent nature of
13 the fee; and (5) awards in similar cases. Vizcaino v. Microsoft Corp., 290 F.3d
14 1043, 1047, 1048-1050 (9th Cir. 2002).

15 **1. Percentage-of-the-Fund Method**

16 Under the Percentage-of-the Fund Method, a court will access the amount of
17 the common fund by determining the value of the benefits that the settlement
18 generates for the class and then awards a percentage as attorneys’ fees. Staton v.
19 Boeing, 327 F.3d 938, 974-975 (9th Cir. 2003)

20 In the Ninth Circuit, the typical range for attorneys’ fees is 20% to 33 1/3%
21 of the total settlement fund, with 25% considered to be the benchmark. Powers v.
22 Eichen, 229 F.3d 1249, 1256 (9th Cir. 2000). The percentage may be adjusted
23 upwards to account for special or unusual circumstances. Paul, Johnson, Alston &
24 Hunt v. Gaulty, 886 F.2d 268, 272 (9th Cir. 1989)

25 “However, in most common fund cases, the award exceeds [the 25%]
26 benchmark.” In re Omnivision Techs., Inc. 559 F. Supp. 2d 1036, 1047 (N.D. Cal.
27 2008) citing In re Activision Secs. Litig., 723 F. Supp. 1373, 1377 (N.D. Cal.

1 1989)³ Furthermore, “[t]he benchmark percentage should be adjusted, or replaced
2 by a lodestar calculation, when special circumstances indicate that the percentage
3 recovery would be either too small or too large in light of the hours devoted to the
4 case or other relevant factors.” Six (6) Mexican Workers v. Arizona Citrus
5 Growers, 904 F.2d 1301, 1311 (9th Cir. 1990)

6 In many cases involving funds of less than \$10 million, the percentage
7 awarded can range from 30% to 50%. Van Vranken v. Atlantic Richfield Co., 901
8 F.Supp. 294, 297-98 (N.D. Cal. 1995) Indeed, courts in this circuit have approved
9 percentages of 30% or higher. See e.g. In re Pacific Enterprises Securities City and
10 County of San Francisco Litigation, 47 F.3d 373, 378-79 (9th Cir. 1994)(approving
11 attorneys’ fees of 33 1/3%); Williams v. MGM-Pathe Communications Co., 129
12 F.3d 1026, 1027 (9th Cir. 1997) (approving award of 33 1/3%).

13 Furthermore, Courts within the Ninth Circuit have routinely approved of
14 awards in the 30-33 1/3% range for wage and hour class action cases. See Barbosa
15 v. Cargill Meat Solutions Corp., 297 F.R.D. 431 (E.D. Cal. July 2, 2013)(citing to
16 nine cases where courts awarded 30-33 1/3% in wage and hour class action cases);
17 Singer v. Becton Dickinson and Co., 2010 WL 2196104, *8 (S.D. Cal. June 1,
18 2010)(awarding 33 1/3% attorneys’ fee award in wage and hour class action);
19 Romero v. Producers Dairy Farms, Inc., 2007 WL 3492841 (E.D. Cal. Nov. 14,
20 2007)(approving attorneys’ fee award of 33 1/3% in wage and hour class action);
21 Adoma v. University of Phoenix, Inc., 913 F.Supp.2d 964 (E.D. Cal. Dec. 20,
22 2012)(awarding 33 1/3% in wage and hour class action settlement).

23 **2. The Lodestar Method**

24 Under the lodestar method, a court “calculates the fee award by multiplying
25 the number of hours reasonably spent by a reasonable hourly rate and then
26 enhancing that figure, if necessary, to account for the risks associated with the
27

28 ³ “This court’s review of recent reported cases discloses that nearly all common fund awards range around 30%.” Activision, supra, 723 F. Supp. at 1377-78.

1 representation. Paul, Johnson, Alston & Hunt v. Graulity, 886 F.2d 268, 272 (9th
2 Cir. 1989). The lodestar method gives a measure of counsel’s time and investment
3 in the case and may provide “a check of the reasonableness of [a] percentage award
4 . . . the lodestar calculation can be helpful in suggesting a higher percentage when
5 the litigation has been protracted.” Vizcaino v. Microsoft Corp., 290 F. 3d 1043,
6 1050-1051 (9th Cir. 2002).

7 **B. Class Counsel’s Fee Request is Reasonable Under the Percentage**
8 **Method**

9 1. Class Counsel Obtained an Exceptional Result For the Class

10 “The overall result and benefit to the class from the litigation is the most
11 critical factor in granting a fee award.” In re Omnivision Techs., Inc., 559 F. Supp.
12 2d 1036, 1046 (N.D. Cal. 2008). As described above, Class Counsel has pursued
13 this litigation and invested significant time and resources despite the numerous
14 hurdles it faced. At all times throughout this litigation, Defendant was represented
15 by highly competent counsel and vigorously argued against Plaintiff’s claims and
16 the availability of class certification.

17 Certification was hotly contested and it initially appeared that Plaintiff
18 would not be able to certify its claim for failure to pay minimum wages. Class
19 Counsel diligently worked through difficult moments in this litigation and
20 ultimately obtained a significant settlement for the class.⁴

21 The proposed settlement calls for Defendant to pay a Maximum Settlement
22 Amount of \$630,000.00. After deducting the proposed attorneys’ fees, litigation
23 costs, service enhancement awards, and payment to the LWDA, the Net Settlement
24 Amount is approximately \$373,500.00. As there are approximately 371 class
25 members, the average net distribution to individual class members is

26 ⁴ At the hearing on Plaintiff’s Motion for Preliminary Approval, the Court recognized Class
27 Counsel’s persistence in this litigation, “The Court: Well, part of the claims looked like they
28 were going down the tubes. So, I will credit plaintiff’s counsel for resuscitating the case and
obtaining a very good settlement.” (Transcript of Proceedings, Plaintiffs’ Motion for
Preliminary Approval of Class Action Settlement, May 22, 2015, page 14, lines 7-10)

1 approximately \$1,006.74. (Blakely Decl. ¶32)

2 Class Members will obtain real money as a result of the proposed settlement.
3 Exceptional results are a relevant circumstance in determining an attorneys' fee
4 award. Vizcaino, 290 F. 3d 1043, 1048. Class Counsel was able to obtain this
5 settlement as a result of their considerable experience in prosecuting similar wage
6 and hour class actions. (See Mahoney Decl. ¶38-41; Blakely Decl. ¶38-40) To
7 date, there have been no opt-outs of the settlement and Class Counsel is unaware of
8 any objections to the settlement. (Blakely Decl. ¶36) The excellent result obtained
9 for the class in this case supports the requested attorneys' fee award.

10 2. The Litigation Was Complex and a Risky Undertaking for
11 Class Counsel

12 Throughout this litigation, Class Counsel prosecuted complex claims for
13 wage and hour violations and undertook significant risk in proceeding through
14 class certification. Plaintiffs' claims for failure to pay all wages and inaccurate
15 wage statements were heavily contested and were governed by complex federal
16 regulations and California precedent concerning compensation for twenty-four (24)
17 hour work shifts. Furthermore, Class Counsel engaged in numerous procedural
18 disputes, and ultimately filed multiple motions to compel further discovery as well
19 as extensions of time to file its Motion for Class Certification. (Docket No. 23, 25,
20 37, 44, 52)

21 As this Court is aware, Plaintiff's initial certification efforts were met with
22 strong opposition, and it seemed unlikely Plaintiff would be able to certify its
23 claim for unpaid minimum wages. The recent decision in Mendiola v. CPS
24 Security Solutions, Inc., et al. No. S212704 (Cal. January 8, 2015) altered the
25 analysis of Plaintiff's minimum wage claim; however, the holding has not yet been
26 extended or applied to any other Industrial Welfare Commission ("IWC") Wage
27 Orders or industries. The Court in Mendiola explicitly stated, "We express no
28 opinion as what may be required in other circumstances regulated by other wage

1 orders.” Id. While Class Counsel was confident that it would obtain class
2 certification following the Mendiola decision, the Supreme Court of California
3 explicitly limited its holding to security guards and IWC Wage Order 4. It is
4 entirely possible that the Mendiola decision would not be extended to the facts of
5 this instant case, possibly resulting in a zero recovery for class members.

6 The risks of litigation Class Counsel faced in this case were great and Class
7 Counsel was fully aware that should Plaintiff be denied certification, Class
8 Counsel would take a net loss on this case after years of hard fought litigation. If
9 Plaintiff was unable to certify a class, this case would be effectively over, and the
10 Class and its counsel would gain nothing from continued litigation.

11 3. Class Counsel Exhibited Great Skill In the Prosecution of This
12 Matter

13 Class Counsel has prosecuted this matter since its inception in October 2012
14 and has expended approximately 888 hours on this case. Class Counsel engaged in
15 substantial discovery for over fifteen (15) months, fought discovery and procedural
16 battles, fully briefed class certification, conducted extensive settlement
17 negotiations, obtained preliminary approval, and are now assisting in the efficient
18 administration of the claims process. Class Counsel was able to obtain a beneficial
19 settlement due to Class Counsel’s experience in prosecuting wage and hour class
20 actions. (Mahoney Decl. ¶38-41; Blakely Decl. ¶38-40) At all times throughout
21 this litigation, Defendant was represented by extremely skilled attorneys, who
22 challenged Plaintiffs at every turn in this litigation. ⁵

23 Class Counsel’s efforts over the course of nearly three years, coupled with
24 Class Counsel’s skillful work in negotiating a settlement which provides great
25 monetary value to class members, weighs heavily in favor of awarding the
26 requested fee.

27 ⁵ See In re Equity Funding Corp. of America Securities Litigation, 438 F. Supp. 1303, 1337
28 (C.D. Cal. Sept. 29, 1977)(“[p]laintiff’s attorneys in this class action have been up against
established and skillful defense lawyers, and should be compensated accordingly.”)

1 Furthermore, Class Counsel has devoted considerable time and financial
2 resources to the prosecution of this matter notwithstanding the fact that Class
3 Counsel operates boutique law firms with a small number of attorneys. (Mahoney
4 Decl. ¶40)

5 4. The Contingent Nature of the Fee

6 Class Counsel took on this case on a contingent basis and aggressively
7 litigated it for over two years. (Mahoney Decl. ¶6; Blakely Decl. ¶6) Litigating a
8 case on a contingent basis presents considerable risk. Barbosa v. Cargill Meat
9 Solutions Corp., 297 F.R.D. 431, 450 (E.D. Cal. July 2, 2013); In re Sumitomo
10 Copper Litig., 74 F. Supp. 2d 393, 396-398 (S.D.N.Y. 1999). “Courts consistently
11 recognize that the risk of non-payment or reimbursement of expenses is a factor in
12 determining the appropriateness of counsel’s fee award.” In re Heritage Bond
13 Litig., 2005 U.S. Dist. LEXIS 13555, *68 (C.D. Cal. June 10, 2005)

14 Courts have recognized that the public interest is served by rewarding
15 attorneys who assume representation on a contingent basis with an enhanced fee to
16 compensate them for the risk that they might be paid nothing for their work. In re
17 Washington Public Power Supply Sec. Litig., 19 F. 3d 1291, 1299 (9th Cir. 1994);
18 Vizcaino, 290 F. 3d at 1050.

19 Here, Class Counsel’s prosecution of this case on a contingency basis
20 presented a great amount of risk, and therefore supports an award of 33 1/3% of
21 the common fund.

22 5. Class Counsel’s Request Is In Line With Awards Made in
23 Similar Cases

24 As shown above, courts in this circuit have approved percentages of 30% or
25 higher. See e.g. In re Pacific Enterprises Securities City and County of San
26 Francisco Litigation, 47 F.3d 373, 378-79 (9th Cir. 1994)(approving attorneys’ fees
27 of 33 1/3%); Williams v. MGM-Pathé Communications Co., 129 F.3d 1026, 1027
28 (9th Cir. 1997) (approving award of 33 1/3%). Class Counsel’s request in this case

1 falls in line with awards made in similar wage and hour class actions. See Cicero
2 v. DirecTV, Inc., 2010 U.S. Dist. LEXIS 86920, *7 (C.D. Cal. July 27, 2010) (“[a]
3 review of California cases in other districts reveals that courts usually award
4 attorneys’ fees in the 30-40% range in wage and hour class actions that result in
5 recovery of a common fund under \$10 million.”⁶

6 **C. Class Counsel’s Fee Request Is Also Reasonable Under the**
7 **Lodestar Method**

8 1. Class Counsel’s Lodestar is Reasonable

9 Class Counsel’s fee request represents a lodestar of \$423,328.50 multiplied
10 by a factor of 0.49.⁷ “Calculation of the lodestar, which measures the lawyers’
11 investment of time in the litigation, provides a check on the reasonableness of the
12 percentage award.” Vizcaino v. Microsoft Corp., 290 F. 3d 1043, 1050 (9th Cir.
13 2002). A court may presume that the lodestar “provides an accurate measure of
14 reasonable attorneys’ fees.” Harris v. Marhoefer, 24 F. 3d 16, 18 (9th Cir. 1994)

15 The excellent results obtained for the class, the complexities of the legal
16 issues involved, and the substantial work performed by class counsel justify this
17 base lodestar.

18 Furthermore, the contingent nature of the Class Counsel’s representation
19 supports the application of a higher, positive multiplier, as opposed to the fractional
20 multiplier employer here. See In re Wash. Pub. Power Supply Sys. Sec. Litig., 19
21 F.3d 1291, 1299-1300 (9th Cir. 1994) (“It is an established practice in the private
22 legal market to reward attorneys for taking the risk of non-payment by paying them
23 a premium over their normally hourly rates for winning contingency fee cases . .
24 .[i]f this ‘bonus’ methodology did not exist, very few lawyers could take on the
25 representation of a class client given the investment of substantial time, effort and
26

27 ⁶ See also Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482 (E.D. Cal. March 9, 2010),
citing five cases in which fee awards in wage and hour class actions were 30% - 33.3 %.

28 ⁷ The 0.49 fractional multiplier is calculated as follows: \$210,000.00 (total fees requested)
divided by \$423,328.50 (total lodestar) = 0.49.

1 money, especially in light of the risks recovering nothing.” Citing Behrens v.
2 Wometco Enter, Inc. 118 F.R.D. 534, 548 (S.D. Fla. 1988), aff’d 899 F.2d 21 (11th
3 Cir. 1990))

4 The risk multiplier should be higher, where as here, there is significant risk
5 of non-payment to class counsel litigating the case on a contingent basis. Edmonds
6 v. United States, 658 F. Supp. 1126, 1148 (D.S.C. 1987) The Ninth Circuit
7 supports an award of a risk multiplier to account for the risk of non-payment
8 “when (1) attorneys take a case with the expectation that they will receive a risk
9 enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3)
10 there is evidence that the case was risky. In re Washington Public Power Supply
11 Sec. Litig., 19 F.3d 1291, 1301-02 (9th Cir. 1994)

12 In this case, as shown above, Defendant challenged Plaintiff’s claims and the
13 availability of class certification at every turn. Class Counsel persisted through
14 discovery motions, extensive discovery and law and motion work to obtain the
15 negotiated settlement. Additionally, the contested issues were complex and
16 required skillful lawyering.

17 Class Counsel has expended significant professional time and out-of-pocket
18 expenses litigating this case and securing the proposed settlement for the class.
19 Moreover, Class Counsel continues its work on this matter by ensuring an efficient
20 claims administration process. Further work will be completed in the preparation
21 of Plaintiff’s Motion for Final Approval and the complete overall administration of
22 the settlement, all which supports the requested attorneys’ fee award.

23 2. Class Counsel’s Hours Spent On This Matter Is Reasonable

24 The hours worked by Class Counsel are documented in the concurrently
25 filed Declarations of Kevin Mahoney, Sean M. Blakely and Jose Garay. The
26 lodestar does not include all hours worked as Class Counsel exercised billing
27 judgment regarding its hours worked. In this case, Class Counsel expended a total
28 of 888 hours on this matter. (Mahoney Decl. ¶4; Blakely Decl. ¶4; Garay Decl. ¶7)

1 As shown above, Class Counsel conducted extensive discovery, including
2 numerous depositions, as well as document review and numerous conversations
3 with putative class members. Settlement negotiations proved arduous and occurred
4 over multiple weeks. Class Counsel continues its work on this case in ensuring an
5 efficient claims administration process.

6 3. Class Counsel's Hourly Rates Are Reasonable

7 Class Counsel specializes in wage and hour class action and are well
8 qualified and competent in this field. (Mahoney Decl. ¶38-42; Blakely Decl. ¶38-
9 41; Garay Decl. ¶3-5) Courts “must determine a reasonable hourly rate
10 considering the experience, skill, and reputation of the attorney requesting fees.”
11 Chalmers v. City of Los Angeles, 796 F. 2d 1205, 1210 (9th Cir. 1986) The
12 reasonable rate is derived from the reasonable market value of their services in the
13 community. Blum v. Stenson, 465 U.S. 886, 895, n. 11. (1984). The relevant
14 community is that in which the district court sits. Schwartz v. Sec'y of Health and
15 Human Serv., 73 F.3d 895, 906 (9th Cir. 1995) “Courts may find hourly rates
16 reasonable based on evidence of other courts approving similar rates or other
17 attorneys engaged in similar litigation charging similar rates.” Parkinson v.
18 Hyundai Motor America, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. Sept. 14, 2010);
19 Ackerman v. Western Electric Co., 860 F. 2d 1514 (9th Cir. 1988)

20 In this case, the hourly billing rate for Kevin Mahoney, principal of
21 Mahoney Law Group, APC, is \$650.00; the hourly billing rate for Sean M.
22 Blakely, an associate at Mahoney Law Group, APC, is \$425.00. These rates have
23 been approved by other Courts. (Mahoney Decl. ¶42; Blakely Decl. ¶41) Class
24 Counsel's hourly billing rates for partners and associates are in line with rates that
25 have been approved by other California Courts.
26
27
28

1 **D. Class Counsel Should Be Reimbursed for Their Out-Of-Pocket**
2 **Expenses**

3 Pursuant to the Parties' Settlement Agreement, Defendant does not oppose
4 Class Counsel's application for reimbursement of litigation costs. (Section 2.11
5 Settlement Agreement) Class Counsel seeks \$21,907.51 in reimbursement for out-
6 of-pocket expenses incurred during this litigation.⁸

7 Under the common fund doctrine, Class Counsel are entitled to
8 reimbursement of all reasonable out-of-pocket litigation expenses and costs in the
9 prosecution of the case. "Expense awards are customary when litigants have
10 created a common settlement fund for the benefit of the class." In re F & M
11 Distribs., Inc. Sec. Litig., No. 95-71778, 1999 U.S. Dist. LEXIS 11090 at *20
12 (E.D. Mich. June 29, 1999); see also In re Immune Response Secs. Litig., 497 F.
13 Supp. 2d 1166, 1177 (S.D. Cal. 2007); Beasley v. Wells Fargo Bank, 235 Cal.
14 App. 3d 1407, 1419-1420 (1991); Barbosa v. Cargill Meat Solutions Corp., 297
15 F.R.D. 431, 454 (E.D. Cal. July 2, 2013)(reasonable costs include travel, mediation
16 fees, photocopying, private investigator to locate missing Class Members, and
17 delivery and mail charges)

18 Class Counsel has reviewed the accounting records and invoices and can
19 attest to the appropriateness and necessity of the costs. (Mahoney Decl. ¶43) The
20 requested expenses and costs are the type routinely billed in similar wage and hour
21 class actions.

22 **E. The Class Representatives Should Receive a Service Enhancement**
23 **Payment For Their Efforts in Helping Secure the Settlement For**
24 **the Entire Class**

25 As provided for in the Settlement Agreement(section 2.11.2), and set forth in
26 the Class Notice, the Class Representatives seek service enhancement payments

27 _____
28 ⁸ A detailed cost summary is attached to the Declaration of Kevin Mahoney and Jose Garay as Exhibit "B."

1 totaling \$12,000.00, with \$10,000.00 requested to Plaintiff Kurt Casadine and
2 \$2,000.00 requested for Plaintiff Alfred Guerrero. These requests are reasonable
3 and are already preliminarily approved by this Court.

4 “Incentive awards are fairly typical in class action cases, and are intended to
5 compensate class representatives for work done on behalf of the class, to make up
6 for financial or reputational risk . . . and, sometimes, to recognize their willingness
7 to act as a private attorney general.” Rodriguez v. West Publishing Corp., 563 F.
8 3d 948, 958-59 (9th Cir. 2009) Service enhancements are common where the class
9 representative’s personal claims alone would never justify the time and effort
10 required to prosecute complex litigation on behalf of the class. See Bogosian v.
11 Gulf Oil Corp., 621 F. Supp. 27, 32 (E.D. Pa. 1985)

12 In assessing the propriety of a service award, a court may consider “the
13 actions the plaintiff has taken to protect the interests of the class, the degree to
14 which the class has benefited from those actions . . .the amount of time and effort
15 the plaintiff expended in pursuing the litigation and reasonabl[e] fear [of]
16 workplace retaliation.” Staton v. Boeing, 327 F.3d 938, 977 (9th Cir. 2003) quoting
17 Cook v. Niedert, 142 F. 3d 1004 (7th Cir. 1998).

18 The service enhancement payment requested here takes into consideration
19 the time, effort and risks incurred by the named Plaintiffs in coming forward to
20 litigate this matter on behalf of all class members. In this case, Plaintiffs have
21 submitted declarations in support of the requested service enhancement award.⁹

22 Courts have found that service awards of \$10,000 to be reasonable. See
23 Espinoza v. Domino’s Pizza, LLC, 2012 U.S. Dist. LEXIS 160641, *10 (C.D. Cal.
24 Nov. 7, 2012); Ingalls v. Hallmark Retail, Inc., 2009 U.S. Dist. LEXIS 131078, *6
25 (C.D. Cal. Oct. 16, 2009); Birch v. Office Depot, Inc., 2007 U.S. Dist. LEXIS
26 102747 (S.D. Cal. Sept. 28, 2007)

27
28 ⁹ See Declarations of Kurt Casadine and Alfred Guerrero filed concurrently herein, hereinafter referred to as “Casadine Decl.” and “Guerrerro Decl.”.

1 In this case, the service enhancements sought are appropriate. Plaintiffs
2 Casadine and Guerrero have expended significant time and energy in the
3 prosecution of this case on behalf of the class. In or about October 2012, Plaintiff
4 Casadine met with Class Counsel and decided to file a class action lawsuit and
5 serve as the named Plaintiff in order to represent other employees who were
6 similarly affected by Defendant's practices. (Casadine Decl. ¶ 7, 8) Plaintiff
7 Casadine made himself available to Class Counsel for the duration of this lawsuit,
8 a time period of nearly three years. (Casadine Decl. ¶ 10-15) Plaintiff Casadine
9 attended many in-person meetings with Class Counsel and provided a wealth of
10 information regarding Defendant's practices and policies. (Casadine Decl. ¶10)
11 Plaintiff Casadine gathered relevant documents from his employment with
12 Defendant and responded to discovery requests. (Casadine Decl. ¶10, 11)
13 Furthermore, Plaintiff Casadine's deposition was taken in this matter over the
14 course of two full days. (Casadine Decl. ¶12) Plaintiff Casadine met with Class
15 Counsel on numerous occasions to prepare for his deposition. (Casadine Decl.
16 ¶12) Additionally, Plaintiff Casadine attended a full day mediation session with
17 Class Counsel in Encino, California. (Casadine Decl. ¶13)

18 Throughout this litigation Plaintiff Casadine was instrumental in assisting
19 Class Counsel in the prosecution of this case. Plaintiff Casadine met with Class
20 Counsel in preparation of the filing of Plaintiff's Motion for Class Certification
21 and submitted two declarations in support of Plaintiff's certification efforts.
22 (Casadine Decl. ¶14, 15) Plaintiff Casadine has admirably served as a class
23 representative in this matter, diligently working with Class Counsel to obtain relief
24 for the class.

25 Similarly, Plaintiff Guerrero has proven crucial to this litigation. Plaintiff
26 Guerrero provided a wealth of information regarding his employment with
27 Defendant and conducted multiple telephonic conference calls with Class Counsel.
28 (Guerrero Decl. ¶9, 10) In or about April 2014, Plaintiff Guerrero submitted a

1 written declaration in support of Plaintiff’s Motion for Class Certification.
2 (Guerrero Decl. ¶9) Furthermore, in or about November 2014, Plaintiff Guerrero
3 had further conversations with Class Counsel regarding Defendant’s wage
4 statements. (Guerrero Decl. ¶10) Plaintiff Guerrero then worked with Class
5 Counsel in submitting a further declaration in support of Plaintiff’s Supplemental
6 Class Certification briefing. (Guerrero Decl. ¶10) During the Parties’ settlement
7 negotiations, Plaintiff Guerrero agreed to become a named representative in this
8 matter and through Class Counsel sent written notice to the Labor Workforce
9 Development Agency (“LWDA”) pursuant to the Labor Code Private Attorneys
10 General Act (“PAGA”). (Guerrero Decl. ¶11)

11 Plaintiffs Casadine and Guerrero have devoted substantial time and energy
12 in representing the settlement class. They were always ready, willing and able to
13 work on behalf of the class and assist Class Counsel at every turn of this litigation.
14 Furthermore, Plaintiffs Casadine and Guerrero took significant risk in serving as
15 named Plaintiffs. There was the very real possibility that other companies would
16 refuse to hire Plaintiffs due to their involvement in this case. (Casadine Decl. ¶18;
17 Guerrero Decl. ¶16) Plaintiffs Casadine and Guerrero also agreed to a much
18 broader release than class members, including agreeing to a general release of all
19 known and unknown claims against Defendant. (Casadine Decl. ¶19; Guerrero
20 Decl. ¶17) Lastly, Plaintiffs faced the risk that they could be held responsible for
21 Defendant’s costs in the event that it prevailed at trial.

22 Based on the foregoing, the requested service enhancement awards are
23 reasonable and the Court should approve the service enhancement payments of
24 \$10,000.00 to Plaintiff Kurt Casadine and \$2,000.00 to Plaintiff Alfred Guerrero.

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26 ///

27 ///

28 ///

VI. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel request that this Court approve payment of \$210,000.00 in attorneys’ fees and reimbursement of litigation costs advanced in this matter of \$21,907.51. Additionally, Plaintiffs and Class Counsel request that the Court award a service enhancement payment of \$10,000.00 to Plaintiff Kurt Casadine and \$2,000.00 to Plaintiff Alfred Guerrero.

Respectfully submitted,

Dated: August 6, 2015

MAHONEY LAW GROUP, APC

/s/ Sean M. Blakely
Kevin Mahoney
Sean M. Blakely

Class Counsel