

1 ROBBINS ARROYO LLP
2 BRIAN J. ROBBINS (SBN: 190264)
3 brobbins@robbinsarroyo.com
4 DIANE E. RICHARD (SBN: 204897)
5 drichard@robbinsarroyo.com
6 600 B Street, Suite 1900
7 San Diego, CA 92101
8 Telephone: (619) 525-3990
9 Facsimile: (619) 525-3991

6 DENTE LAW, P.C.
7 MATTHEW S. DENTE (SBN: 241547)
8 matt@dentelaw.com
9 600 B Street, Suite 1900
10 San Diego, CA 92101
11 Telephone: (619) 550-3475
12 Facsimile: (619) 342-9668

10 Attorneys for Plaintiff Sergio Peralta
11 And for the Class

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 SERGIO PERALTA, individually and
15 on behalf of other members of the public
16 similarly situated,

16 Plaintiff,

17 v.

18 LQ MANAGEMENT L.L.C. d/b/a
19 HVM/LQ MANAGEMENT L.L.C., and
20 HVM/LQ MANAGEMENT L.L.C.,

20 Defendants.

CASE NO. 3:14-CV-01027-DMS-JLB
CLASS ACTION

Honorable Judge: Dana M. Sabraw
Courtroom: 13A
Hearing Date: November 6, 2015
Hearing Time: 1:30 pm

REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Action Filed: January 28, 2014
Action Removed: April 23, 2014

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I. INTRODUCTION

On July 23, 2015, this Court preliminarily approved the class action Settlement¹ with Defendant LQ MANAGEMENT L.L.C. d/b/a HVM/LQ MANAGEMENT L.L.C. ("Defendant" or "La Quinta") as fair, reasonable and adequate. As detailed in Plaintiff's *Renewed* Unopposed Motion Preliminary Approval of Class Action Settlement (Doc. No. 31), Class Counsel (Robbins Arroyo, LLP, and Dente Law P.C.), achieved excellent results, through significant efforts and hard-fought negotiations, for the approximate 1,500 Non-Exempt and Pay Stub Putative Class Members including securing a non-reversionary, non-claims-made, all cash \$900,000 settlement. In addition to the achieved monetary recovery, the prosecution of this action also resulted in prospective relief in the form of La Quinta making substantial wage statement modifications, permitting La Quinta employees to readily determine important information concerning their wages and hours from the face of their pay stubs. Through this Motion, Class Counsel now moves for, in connection with the Settlement: (i) reimbursement of costs up to \$17,000²; and (ii) an award of attorneys' fees in the amount of \$270,000 (which is equivalent to 30% of the \$900,000 common fund).³

¹ Unless otherwise noted, all capitalized terms shall have the same definition as set forth in the Stipulation for Class Action Settlement ("Settlement") dated February 24, 2015]. A true and correct copy of the Settlement is attached as Exhibit 1 to Declaration of Diane E. Richard in Support of Plaintiff's *Renewed* Unopposed Motion for Preliminary Approval of Class Action Settlement filed June 17, 2015 (Doc. No. 31-2)

² Pursuant to paragraph 9.1 of the Settlement, Class Counsel may seek reimbursement of expenses up to \$17,000. Any costs incurred above the \$13,645.62 already incurred will be included with Plaintiff's Motion for Final Approval of the Settlement which will be filed on or before October 9, 2015, pursuant to the Court's Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") entered on July 23, 2015. (Document No. 35).

³ The percentage-of-recovery is actually less than 30% considering that: (i) as part of the Settlement, La Quinta is required to pay, in addition to the \$900,000 fund, employer-side payroll taxes; and (ii) a conservative valuation of the prospective relief (in the form of modified wage statements) is \$1,000,000 which is based on the value that the California legislature has seemingly provided for compliant pay stubs. See California Labor Code section 226(e) (\$100 per paystub, up to \$4,000, for each non-compliant paystubs); see Declaration of Diane E. Richard in Support of Plaintiff's Motion for Attorneys' Fees and Costs filed concurrently herewith ("Richard Decl." or "Richard Declaration"), ¶32.

1 Putative Class Members have responded very well to the proposed Settlement.
2 Phoenix Settlement Administrators ("Phoenix") mailed the Court-approved Notice Packet
3 to Putative Class Members on August 10, 2015. Among other items, the Notice Packet
4 informed Putative Class Members that Class Counsel would seek attorneys' fees and
5 costs in the maximum amount of \$270,000 and \$17,000 respectively. As of the filing
6 date of this Motion, there have been no objections to the Settlement and no requests for
7 exclusion. Moreover, Class Counsel has received very positive reaction to the Settlement
8 when fielding inquiry calls from Putative Class Members.

9 Based on the calculations provided by Phoenix in conjunction with the Notice
10 Packet, the highest pre-tax award is estimated at \$1,160, while the average pre-tax award
11 is estimated at \$381 for all Putative Class Members and \$416 for Non-Exempt Class
12 Members. This is a great result for Putative Class Members. However, in order to
13 achieve this highly successful resolution, Class Counsel's expertise and experience was
14 required in every aspect of the litigation and settlement of the action. Class Counsel has
15 been very industrious and has proactively created division of work amongst themselves to
16 ensure that work has not been duplicated.⁴ Given the complexities of the case and the
17 vigorous defense, Class Counsel's lodestar to date is \$221,488.75 representing 506.30
18 hours of work.⁵ The work of Class Counsel and the necessity of the billed time are
19 outlined in detail in the declarations of Diane E. Richard and Matthew S. Dente filed in
20 support of both preliminary approval and this Motion. Together, with the analysis of all
21 the factors governing attorney fee awards, Class Counsel believe that the effort and result
22 justify the \$270,000 fee award sought herein (which represents 30% of the common fund
23 and less than a modest 1.16 multiplier on Class Counsel's estimated final lodestar of
24

25 ⁴ A description of these efforts are detailed in the Richard Declaration at ¶42.

26 ⁵ The number of hours and amount of lodestar listed reflects the time and lodestar after
27 Class Counsel exercised discretion and removed charges for certain time and billing
28 entries representing the removal of 31 hours, thereby decreasing the lodestar by
\$7,202.50. See Richard Decl., ¶39.

1 approximately \$233,488.75⁶. In summary, the request for fees and costs is fair,
 2 reasonable, and appropriate because:

- 3 • Class Counsel obtained an excellent monetary and non-monetary
 4 result for the Class in the face of the legal uncertainties and defenses
 5 raised in the Lawsuit;
- 6 • the requested fees and costs were negotiated at arm's length and with
 7 the blessing of a neutral and highly respected employment mediator
 8 Mark S. Rudy;
- 9 • the requested fees and costs were fully disclosed in the Court-
 10 approved Notice Packet;
- 11 • Ninth Circuit courts have approved attorneys' fees awards of thirty
 12 percent and more to be reasonable in common fund settlements such
 13 as this; and
- 14 • the requested costs constitute the actual out-of-pocket expenses
 15 incurred as result of the highly successful initiation, prosecution, and
 16 settlement of the matter, including the costs of mediation.

17 This Motion is being filed in conformance with the Court's July 23, 2015, Order
 18 Granting Motion for Preliminary Approval of Class Action Settlement ("Preliminary
 19 Approval Order") in order to ensure that all Putative Class Members have the opportunity
 20 to review the basis for Class Counsel's claim for attorneys' fees and costs during the time
 21 period in which they may object to the Settlement as required by the Ninth Circuit Court
 22 of Appeals in *In re Mercury Interactive Corporation Securities Litigation*, 618 F.3d 988,
 23 995 (9th Cir. 2010).⁷

24 ⁶ After the filing of this Motion, Class Counsel will be continuing to provide oversight to
 25 the settlement administration process, fielding Putative Class Member calls, and moving
 26 for final approval of the Settlement. For purposes of providing an estimated "final"
 27 lodestar, Class Counsel has estimated that there will be another \$12,000 added to lodestar
 to the current \$221,288.75 lodestar, thus arriving at \$233,488.75. In conjunction with
 moving for final approval, Plaintiff will provide the Court with an updated lodestar.

28 ⁷ Here, as throughout, all emphasis is added and citations and footnotes are omitted
 unless otherwise noted.

II. LITIGATION, SETTLEMENT, AND PRELIMINARY APPROVAL HISTORY

A. Class Counsel Industriosly Litigated and Settled Complex Legal Issues in This Case on Behalf of the Class

As heavily detailed in Plaintiff's *Renewed* Unopposed Motion for Preliminary Approval of Class Action Settlement and in the accompanying Richard Declaration and Dente Declaration,⁸ Class Counsel has exerted substantial effort litigating and settling this action on behalf of an approximate 1,500 member Class. Given La Quinta's vigorous defense in this case and excellent representation, the achievement of the monetary results and considerable changes to wage statements resulted from Class Counsel's expertise, experience⁹, and industrious work. See, generally Richard Decl; Dente Decl. Class Counsel's work includes:

- (i) pre-filing legal and factual investigation and research (Richard Decl. ¶9; Dente Decl. ¶7);
- (ii) preparation of notice letter under the PAGA, an original complaint, First Amended Complaint, and Second Amended Complaint (Richard Decl. ¶¶6-10; Dente Decl. ¶7);
- (iii) the drafting of a remand motion (including analysis and research concerning same) resulting in La Quinta providing the necessary evidence, in its opposition papers, to support removal jurisdiction (Richard Decl. ¶13; Dente Decl. ¶7);
- (iv) significant and time consuming albeit very successful meet and confer sessions with La Quinta's counsel, ultimately resulting in, among other things:

⁸ "Dente Declaration" or "Dente Decl." refers to the Declaration of Matthew S. Dente in Support of Plaintiff's Motion for Attorneys' Fees and Costs filed concurrently herewith.

⁹ Class Counsel's experience is detailed at paragraphs 2-5 in the Richard Decl. and Exhibit 4 thereto; and at paragraphs 3-6 in the Dente Decl.

- (a) avoidance of a Rule 12(b) motion (Richard Decl. ¶¶14-16; Dente Decl. ¶7);
- (b) admissions by La Quinta regarding its wage statement and wage and hour practices (Richard Decl. ¶¶10, 19; Dente Decl. ¶7);
- (c) substantial modifications by La Quinta to its wage statements (Richard Decl. ¶¶11, 14; Exh. 1 & 2 thereto; Dente Decl. ¶7);
- (d) a Court-ordered joint discovery plan, Initial Disclosures, and stipulated protective order (Richard Decl. ¶21; Dente Decl. ¶7); and
- (e) the exchange of voluminous discovery (Richard Decl. ¶22; Dente Decl. ¶7);
- (v) the review and analysis of more than 24,800 pages of documents (Richard Decl. ¶22; Dente Decl. ¶7);
- (vi) preparation for and participation in the Court-ordered Early Neutral Evaluation Conference ("ENE") (Richard Decl. ¶21; Dente Decl. ¶7);
- (vii) extensive factual and legal analysis of the claims, defenses and class-wide damage calculations after the exchange of significant discovery (Richard Decl. ¶¶23,38; Dente Decl. ¶7);
- (viii) preparation for (including the submission of a an extensive 123 page brief with exhibits) and participation in the January 2015 mediation session with employment mediator Mark Rudy, culminating in the instant Settlement (Richard Decl. ¶¶20, 22, 24; Dente Decl. ¶7);
- (ix) significant effort negotiating and preparing the numerous important details ultimately contained in the preliminarily

1 approved Settlement and the Court-approved Notice Packet
 2 including a narrow release of claims (Richard Decl. ¶¶25-34;
 3 Dente Decl. ¶7);

4 (x) obtaining preliminary approval of the Settlement which
 5 included substantial effort coordinating and negotiating with La
 6 Quinta's counsel and Phoenix for information required for
 7 preliminary approval (Richard Decl. ¶¶36-36; Dente Decl. ¶7);
 8 and

9 (xi) overseeing the settlement administration process including the
 10 distribution of the Notice Packet by Phoenix, and fielding
 11 inquiries from Class Members (Richard Decl. ¶36; Dente
 12 Decl. ¶7).

13 Based on Class Counsel's experience in wage and hour class actions, all of this
 14 work was necessary for the successful prosecution and ultimate fair, reasonable and
 15 adequate settlement of the action. Moreover, Class Counsel has been extremely diligent
 16 and proactive in allocating work amongst their firms and not duplicating work. Richard
 17 Decl. ¶¶42-43; Dente Decl. ¶7. To date, Class Counsel's lodestar is \$221,488.75,
 18 representing 506.30 hours of work. Richard Decl. ¶41.

19 **B. The Court Granted Preliminary Approval of the Proposed Settlement**

20 On July 23, 2015, the Court issued its Preliminary Approval Order (Doc. No. 35).
 21 In granting preliminary approval to the proposed Settlement, the Court determined, on a
 22 preliminary basis, that when balanced against the cost and uncertainty associated with
 23 further litigation of liability and damages, the proposed Settlement (including attorneys'
 24 fees in the maximum amount of \$270,000 and costs in the maximum amount of \$17,000),
 25 is fair, adequate, and reasonable. (Doc. No. 35, ¶4).
 26
 27
 28

C. Putative Class Members Have Reacted Very Positively to the Proposed Settlement

Phoenix mailed the Court-approved Notice Packet to Putative Class Members on August 10, 2015. Richard Decl. ¶35; Dente Decl. ¶7. Among other items, the Notice Packet informed Putative Class Members of their estimated individual monetary settlement recovery (with the highest individual recovery estimated at \$1,160 and the average estimated at \$381 for all Class Members and \$416 for Non-Exempt Putative Class Members) and that Class Counsel would seek attorneys' fees and costs in the maximum amount of \$270,000 and \$17,000 respectively. Putative Class Members have responded well to the proposed Settlement. As of the filing date of this Motion, there have been no objections to the Settlement and no requests for exclusion. Moreover, Class Counsel has received very positive reaction to the Settlement when fielding inquiry calls from Putative Class Members. Richard Decl. ¶36; Dente Decl. ¶7.

III. CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES AWARD IN CONJUNCTION WITH THE PROSECUTION AND SETTLEMENT OF THE ACTION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A. The Requested Fee is Reasonable Under the Percentage-of-Recovery Method

The U.S. Supreme Court consistently has recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970). The common fund doctrine is a well-recognized exception to the general American rule that a litigant must bear his own attorney's fees. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257-58 (1975). The Ninth Circuit has held that the common fund doctrine applies when: (i) "the class of beneficiaries is sufficiently identifiable; ([ii]) the benefits can be accurately traced[;] and ([iii]) the fee can be shifted with some exactitude to those benefiting." *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989) (hereinafter "*Paul*"). These criteria are "easily met" when "each member of a

1 certified class has an undisputed and mathematically ascertainable claim to part of a
2 lump-sum [settlement] recovered on his behalf." *Id.* at 271 (citing *Van Gemert*, 444 U.S.
3 at 479).

4 Under the three factors set forth in *Paul*, the common fund doctrine applies here.
5 First, the class of beneficiaries is identifiable. Defendants identified each of the Putative
6 Class Members by examining its business records mandated by law to be maintained.
7 Second, the benefits consist of monetary payments to the Class Members and, therefore,
8 can be easily and accurately traced. Third, the fee can be shifted with exactitude because
9 Class Counsel are claiming a specific, lump-sum percentage of the total settlement
10 amount to be paid to Class Members.

11 Under the common fund doctrine, courts typically award attorney's fees based on a
12 percentage of the total settlement. The Ninth Circuit has established that an attorneys' fee
13 award of twenty-five percent of the common fund is the "benchmark" award that should
14 be given in common fund cases such as this one. *See, e.g., Six Mexican Workers v.*
15 *Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Hanlon v. Chrysler Corp.*,
16 150 F.3d 1011, 1029 (9th Cir. 1998); *Glass v. UBS Fin. Serv., Inc.*, 331 F. App'x 452,
17 456-57 (9th Cir. 2009); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027
18 (9th Cir. 1997). Every United States Supreme Court case that has considered the award
19 of attorney's fees under the common fund doctrine has determined those fees as a
20 percentage of the recovery. *See, e.g., Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d
21 768, 773 (11th Cir. 1991) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)) (noting
22 that the percentage of recovery method is the appropriate method to award attorney's fees
23 in common fund cases); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 n.2 (1939);
24 *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 128 (1885); *Internal Improvement*
25 *Fund Trs. v. Greenough*, 105 U.S. 527, 532 (1881). The twenty-five percent benchmark
26 may be adjusted upward or downward depending on the circumstances presented by the
27 particular case. Indeed, the Ninth Circuit and district courts therein have routinely
28 permitted recovery in the amount of 30%, 33.33%, 40% and even up to 50% of the

1 common fund. *See, e.g., In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal.
2 1989) (listing Ninth Circuit cases).

3 In the Ninth Circuit, district courts have the discretion to use either the percentage
4 of the fund or the lodestar method to calculate attorney's fees. *Williams*, 129 F.3d at
5 1027. Yet the Ninth Circuit has recognized a "ground swell of support for mandating a
6 percentage-of-the-fund approach in common fund cases." *Florida v. Dunne*, 915 F.2d
7 542, 545 (9th Cir. 1990); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th
8 Cir. 1995) (affirming attorney's fee of 33% of the recovery); *Morris*, 54 F. App'x at 663
9 (affirming fee award of 33% of the recovery). District courts in California have held that
10 the percentage of the fund method is far preferable to the lodestar method because: (i) it
11 aligns the interests of Class Counsel and the class; (ii) it encourages efficient resolution
12 of the litigation by providing an incentive for early, yet reasonable, settlement; and (iii) it
13 reduces the demands on judicial resources. *In re Oracle Sec. Litig.*, 131 F.R.D 688, 689
14 (N.D. Cal. 1990), *modified*, 132 F.R.D. 538 (N.D. Cal. 1990); *In re Activision Sec. Litig.*,
15 723 F. Supp. 1373, 1378-79 (N.D. Cal. 1989).

16 In this case, given La Quinta's vigorous defense and excellent representation, the
17 achievement of the monetary results and considerable changes to wage statements
18 resulted from Class Counsel's expertise, experience, and industrious work. *See, generally*
19 Richard Decl. and Dente Decl. These results could not have been achieved without Class
20 Counsel's substantial work in the case. And, in fact, even though the action settled prior
21 to class certification, this was solely the result of Class Counsel's industrious efforts
22 which included negotiating the production of and analyzing significant amounts of
23 discovery (including more than 24,800 pages of documents) and engaging in much other
24 substantive work (including a remand motion that successfully resulted in La Quinta
25 providing the necessary information for proper removal to this Court¹⁰; and substantial
26 efforts that led to the avoidance of a Rule 12(b) motion by La Quinta).

27
28 ¹⁰ For Plaintiff's remand motion, Class Counsel researched and briefed the then
undecided issue of whether the \$5,000,000 amount in controversy requirement under the

Courts "have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount. *In re Bluetooth Headset Productions Liab. Lit.*, 654 F. 3d 935, 941 (9th Cir. 2011). Class Counsel respectfully submit that the proposed attorneys' fees are justified under the factors identified in *Vizcaino v. Microsoft Corporation*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). In *Vizcaino*, the court discussed five factors that are relevant in determining whether proposed attorneys' fees in a common fund case are reasonable: (i) the results achieved; (ii) the risk of litigation; (iii) the skill required and the quality of work; (iv) the contingent nature of the fee and the financial burden carried by the plaintiff; and (v) awards made in similar cases. *Id.* Applying the *Vizcaino* analysis to this case, Class Counsel's 30% requested fee is fair, reasonable, and justified.

1. The Results Achieved

The excellent results achieved in the Settlement support Class Counsel's request for attorneys' fees. Here, Class Counsel negotiated a non-reversionary, non-claims made, all cash settlement of \$900,000 for the Class. As a part of the Settlement, the State of California will receive \$12,000 for education and enforcement of labor laws. These are significant monetary benefits for the Putative Class, as well as the State of California, and support the requested fee award. Moreover, this litigation resulted in La Quinta making substantial modifications to the form of itemized wage statements which has the impact of permitting employees to be able to readily identify from their pay stubs important information regarding their wages and hours that was previously omitted. A description of these changes is detailed in the Richard Declaration at ¶¶11, 14. The back-up support for the changes implemented is attached to the Richard Declaration as Exhibits 1 and 2.

2. The Risks of Litigation

Class action lawsuits carry a tremendous amount of risk both on certification and liability. From the outset of this litigation, La Quinta denied each of Plaintiff's Class Action Fairness Act (CAFA) can properly include any or some of the claimed penalties under PAGA. *See* Richard Decl. ¶13.

1 allegations and offered legal and factual grounds in defense of this action. Specifically,
2 La Quinta vigorously contested liability and claimed that: (i) the form and content of La
3 Quinta's wage statements issued prior to February 22, 2014, did not violate California
4 Labor Code §226(a) and the "Records" section of the IWC Wage Order and any
5 inaccuracies were not done knowingly and intentionally; (ii) the form and content of La
6 Quinta's wage statements issued after February 21, 2014, have been modified in
7 compliance with the law and do not violate California Labor Code §226(a) and the
8 "Records" section of the IWC Wage Order, but even if these wage statements were not in
9 full compliance with the law because they do not identify certain information for
10 adjustments (such as "hours worked" for "Bonus OT adjustments," and "rate of pay" and
11 "hours worked" for overtime adjustments made for "Here for You" incentive payments),
12 these adjustments occurred so infrequently (e.g., quarterly) that there would be minimal
13 wage statements at issue; (iii) any omission of information from the wage statements
14 resulted in no injury and therefore no recovery under California Labor Code §226; (iv)
15 incentive pay and other forms of non-base pay are not required to be paid as part of meal
16 and rest break premium payments under Labor Code §226.7 and if it were required, the
17 amount of damages was *de minimis*; (v) it has authorized and permitted rest breaks to
18 non-exempt employees; (vi) it provided meal periods in compliance with the California
19 Labor Code and IWC Wage Order to all non-exempt employees, the on-duty meal
20 periods provided to FDSRs and Night Auditors were permitted due to the nature of the
21 work these employees performed and their written consent to take their meal periods on-
22 duty, and it has already compensated its non-exempt employees for any possible meal
23 period violations by paying them an additional hour of pay on those occasions where a
24 meal period was not taken; (vii) penalties should be limited to the lower, initial violations
25 penalties because no citation had been issued against La Quinta; (viii) La Quinta is not
26 subject to civil penalties under PAGA or that any such penalties should be significantly
27 reduced due to lack of injury; and, (ix) any omission of information on wage statements
28 for exempt employees was substantially less than that for non-exempt employees as a

1 result of minimal amount of information required to be included on exempt employees'
2 wage statements. Additionally, La Quinta strongly contested the propriety of class
3 treatment of the putative class claims at issue, especially the meal and rest break claims,
4 and the injury component for the wage statement claims. La Quinta furthermore
5 challenged Plaintiff's position that the enforcement action claims under PAGA for civil
6 penalties are not subject to Federal Rule of Civil Procedure 23 certification and/or
7 manageability standards. Plaintiff and Class Counsel extensively evaluated, factually and
8 legally, each of these purported defenses. Considering the defenses available to La
9 Quinta, the fact that Class Counsel were able to obtain the \$900,000 Settlement for the
10 Class, as well as the State of California, is an outstanding achievement. Richard Decl.
11 ¶¶32-34; Dente Decl. ¶7.

12 **3. The Skill Required and the Quality of the Work**

13 Practice in the narrow area of wage-and-hour class litigation requires knowledge
14 and skill of the constantly evolving substantive law as well as the procedural
15 requirements of class action litigation. The issues presented in this case, required more
16 than just a general appreciation of wage-and-hour law and class action procedure.
17 including: (i) what constitutes an injury for purposes of imposition for wage statement
18 violations; (ii) what is required to impose a "subsequent" violation penalty and does
19 being sued a second time for a violation constitute a "subsequent" violation; (iii) does the
20 nature of the FDSR and Night Auditor position permit on-duty meal periods for these
21 positions; and, (iv) whether incentive pay is required to be included in the regular rate of
22 compensation calculation for meal and rest break premium pay. Considering La Quinta's
23 asserted defenses, there was a prospect that the Classes may not have obtained
24 certification or, even with certification, would have not been able to recover full penalties
25 and damages. Class Counsel's ability to obtain a favorable settlement in the face of this
26 opposition reflects both Class Counsels' skill set as well as the superior quality of Class
27 Counsel's work, and supports the requested fee award. Richard Decl. ¶38; Dente
28 Decl. ¶7.

Further, this action involved matters that required significant expenditure of Class Counsel's time such as: (i) extensive pre-litigation investigation; (ii) extensive and detailed legal and factual research into the substantive law and factual support for the causes of action and defenses at issue, including numerous meet and confer meetings with La Quinta's counsel; (iii) developing and executing litigation strategies including preparing three complaints, a PAGA exhaustion letter, a motion to remand, three joint motions, Initial Disclosures, a draft protective order, a joint discovery plan, an ENE statement, and participating in an ENE and case management conference; (iv) developing and executing mediation and settlement strategies; (v) negotiating all the terms and conditions of the Settlement and the exhibits to the Stipulation; and (vi) detailed and extensive analysis of the data and information exchanged between the Parties in order to assure that the Settlement's terms are based upon objective evidence that has been thoroughly considered in the context of the risks, expenses, and benefits of continuing to litigate the Lawsuit. Richard Decl. ¶38; Dente Decl. ¶7. All of this work was necessary to the action. In fact, Class Counsel was obligated to engage in significant substantive work required by the Court including: (i) engaging in meet and confer sessions with La Quinta's counsel on its anticipated Rule 12(b) motion; (ii) preparing for and participating in the ENE; (iii) preparing Initial Disclosures; (iv) preparing a joint discovery plan; and, (v) preparing a stipulated protective order.¹¹ This factor supports the requested fee award.

4. The Contingent Nature of the Fee

From the outset of the case to the present, prosecution of this action has involved significant financial risk for Class Counsel. Richard Decl. ¶¶37-38; Dente Decl. ¶¶8-9. Class Counsel undertook this matter solely on a contingent basis with no guarantee of

¹¹ Recognizing that the action could possibly settle at the mediation and the desire to save resources, Class Counsel and La Quinta's counsel requested Magistrate Burkhardt to continue the deadlines for work on item numbers (iii)-(v). Counsel's request was denied and thus counsel was Court-ordered to engage in this work. There is no doubt therefore that Class Counsel's efforts were necessary in this action. Richard Decl. ¶21; Dente Decl. ¶7.

1 recovery. *Id.* Class Counsel placed their own resources at risk to prosecute this action
 2 with no guarantee of success. *Id.* The risks of this case are apparent in that class
 3 certification would have been a hard-fought issue, especially considering the uncertainty
 4 regarding certification of cases such as this. Moreover, even if class certification were
 5 granted over Defendants' opposition, there was no assurance that Plaintiff would succeed
 6 at trial. For example, there was a possibility that liability would not be found, or even if
 7 liability were found that penalties would be significantly reduced. Because of these risks,
 8 as well as the obligation of attorneys to advance litigation costs, attorneys who work on a
 9 contingency basis are often paid "a premium over their normal hourly rates for winning
 10 contingency cases." Richard Posner, *Economic Analysis of Law*, Section 21.9, at 534-35
 11 (3d ed. 1986). Despite such challenges and risks, Class Counsel were able to persuade
 12 Defendants that it faced significant liability exposure such that it was willing to pay
 13 \$900,000 to settle this matter. *Id.*

14 **5. Awards Made in Similar Cases**

15 Class Counsel's request for an award of attorneys' fees equal to 30% of the
 16 Settlement Fund Amount obtained here is directly in line with the Ninth Circuit's
 17 established benchmark award for common fund cases. *See, e.g., Six Mexican Workers*,
 18 904 F.2d at 1311; *Hanlon*, 150 F.3d at 1029; *Glass*, 331 F. App'x at 456-57; *Williams*,
 19 129 F.3d at 1027. The reasonableness of Class Counsel's requested fee amount is
 20 supported by the existence of circumstances and authority that justified a significant
 21 upward departure from the 25% benchmark. *See e.g.,* Richard Decl. ¶15; *see also Craft v.*
 22 *Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1126-27 (C.D. Cal. 2008) (holding
 23 attorneys' fees for common fund settlements below \$10,000,000 are often *more* than the
 24 25% benchmark; more particularly, a review of California cases in other districts reveals
 25 that courts usually award attorneys' fees in the 30-40% range in wage and hours class
 26 actions that result in recovery of a common fund under \$10 million). Accordingly, the
 27 requested fee award is well within the range of reasonableness given that Class Counsels'
 28 30% fee request is much lower than attorneys' fees commonly awarded in other common

fund settlements. *See, e.g., Pac. Enters.*, 47 F.3d at 378-79 (affirming attorney's fee of 33% of the recovery); *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003) (affirming fee award of 33% of the recovery); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five recent wage and hour class actions where federal district courts approved attorney fee awards ranging from 30 to 33%); *Martin v. AmeriPride Servs., Inc.*, No. 08CV440-MMA (JMA), 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) (noting that "courts may award attorneys' fees in the 30–40% range in wage and hour class actions that result in recovery of a common fund under \$10 million"); *Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding that award was similar to awards in three other wage and hour class action cases where fees ranged from 33.3% to 40%); *De Stefan v. Frito-Lay, Inc.*, No. SA CV10-0112-DOC (MLGx), slip op. (C.D. Cal. Oct. 29, 2012) (awarding 33% fee on a \$2 million wage and hour class action); *Ingalls v. Hallmark Mktg. Retail, Inc.*, No. CV08-04342 VBF(Ex), slip op. (C.D. Cal. Oct. 16, 2009) (awarding 33.33% fee on a \$5.6 million wage and hour class action); *Birch v. Office Depot, Inc.*, Case No. 06CV1690 DMS (WMC), slip op. (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a \$16 million wage and hour class action); *Rippee v. Boston Mkt. Corp.*, No. 05CV1359 BTM (JMA), slip op. (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a \$3.75 million wage and hour class action). Despite the existence of circumstances and authority justifying a fee award of more than 30%, Class Counsel seeks 30% of the \$900,000 Settlement.

B. The Requested Fee is Reasonable Under the Lodestar/Multiplier Method

The alternative, lodestar approach requires the reviewing court to determine the hours reasonably expended and a reasonable hourly rate. The product of these two factors is the "lodestar" to which a multiplier may be applied in the appropriate circumstances. *See Lindy Bros Builders, Inc. of Philadelphia v. Am. Radiator & Standard*

1 *Sanitary Corp.*, 487 F.2d 11 (3rd Cir. 1973). "Though the lodestar figure is
 2 'presumptively reasonable,' the court may adjust it upward or downward by an
 3 appropriate positive or negative multiplier reflecting a host of 'reasonableness' factors."
 4 *Bluetooth*, 654 F.3d at 941-42. The Ninth Circuit has adopted twelve factors a reviewing
 5 court should consider in assessing a fee request: (1) the time and labor required; (2) the
 6 novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal
 7 service properly; (4) the preclusion of other employment by the attorney due to the
 8 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent;
 9 (7) time limitations imposed by the client or the circumstances; (8) the amount involved
 10 and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10)
 11 the 'undesirability' of the case; (11) the nature and length of the professional relationship
 12 with the client; and (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526
 13 F.2d 67, 70 (9th Cir. 1975). An analysis of the *Kerr* factors¹² demonstrates the
 14 reasonableness of the requested fees in light of Class Counsel's lodestar and justification
 15 for a positive multiplier.

16 **1. The Time and Labor Required**

17 As previously discussed herein and in detail in the Richard and Dente Declarations,
 18 the prosecution and settlement of the action required substantial amounts of time that
 19 have been both necessarily and reasonably expended. Given the complexities of the case,
 20 vigorous defense, and work required to be performed by the Court and to achieve a fair,
 21 reasonable and adequate settlement, Class Counsel's lodestar to date (not including work
 22 on this Motion) is \$221,488.75 representing 506.30 hours of work. Richard Decl. ¶41;
 23 Dente Decl. ¶¶7. This lodestar was arrived at after exercising discretion in reducing or
 24 omitting time. Richard Decl. ¶¶39-41. Class counsel is entitled to compensation for "all
 25 the hours reasonably spent," prosecuting and settling this case. *Ketchum v. Moses*, 24

26
 27 ¹² Many of these factors overlap with the percentage-of-recovery method. Thus, many of
 28 these factors have already been discussed including the second, third, fourth, sixth,
 seventh, eighth, ninth, tenth, eleventh and twelfth factors.

Cal. 1122, 1133 (2001). Based on work performed to date (and including anticipated further work in seeking final approval of the Settlement and overseeing the settlement process), a fee award of \$270,000 is approximated to result in less than a 1.16 positive multiplier. For the reasons discussed herein, a multiplier is fully justified. Richard Decl. ¶¶46; Dente Decl. ¶11.

2. The Customary Fee

Class Counsel is entitled to compensation at hourly rates that reflect the reasonable market value of their services. *See Serrano v. Unruh (Serrano IV)*, 32 Cal. 3d 621, 643 (1982). Reasonable rates are those charged by private attorney of comparable skill, reputation, and experience for similar litigation, as measured by the prevailing rates charged by corporate attorneys of equal caliber. *See Bihun v. AT&T Information Systems*, 13 Cal. App. 4th 976, 997 (1993) (affirming award of \$450 per hour in 1993). Based on the experience of counsel as reflected in appropriate employment law rates, the base hourly rates requested are: \$550 per hour for attorney time¹³; and a rate of \$125-\$240 for paraprofessional time.¹⁴ Richard Decl. ¶¶39 and Exhibit 3 attached thereto; Dente Decl. ¶¶6, 9 and Exhibit 1 thereto. The hourly rates charged by Class Counsel are commensurate with the rates charged by other law firms, is well-within the market rates for similar experience and skill, and have been awarded by both federal and state cases in conjunction with other cases.¹⁵ Richard Decl. ¶¶5, 39; Dente Decl. ¶3-6.

¹³ While some partner time was expended in this case, no partner time at Robbins Arroyo is being billed in this case.

¹⁴ Billing entries have been reviewed to ensure that time billed is for paraprofessional work and not for work such as clerical tasks. Any "clerical" type work is not included in the lodestar, but rather is coded as a "NC" on the bill for a "no-charge" and the amount of time worked but not billed is indicated (e.g. "0.75 NC").

¹⁵ Based on data received from the 2013 NLJ Billing Survey, partner rates at two surveyed defense firms in region where La Quinta's counsel is location – Los Angeles – ranges from \$495 to \$950 per hour while the high for associate rates in 2013 is \$535 per hour. ALM Legal Intelligence, 2013 NJL Billing Summary citing *National Law Journal*, December 2013. Mr. Dente actually previously was employed at one of the surveyed firms – Sheppard, Mullin, Richter & Hampton.

3. Results Obtained

Class Counsel secured a Settlement fund of \$900,000 plus employer-side payroll taxes in addition to this amount. Additionally, through the prosecution of the action, important prospective relief was achieved for the Class through La Quinta's modification to its wage statements. The highest monetary award is estimated to be \$1,160, while the average payment for all Putative Class Members is estimated at \$381, and the average payment for Non-Exempt Class Members is estimated at \$416. Richard Decl. ¶¶32, fn.2; Dente Decl. ¶7. Given the risks of continued litigation, the benefits and results achieved through the prosecution and settlement of the action are great. Richard Decl. ¶¶32, 34; Dente Decl. ¶7. Not only are Putative Class Members receiving on average \$400 without any claims process (and for some Putative Class Members over \$1,100), but each Putative Class Member has, since February 2014, seen the value of modified compliant wage statements – the value of which the California legislature has designated at \$100 per wage statement under California Labor Code section 226(e)(1). Richard Decl. ¶32; Dente Decl. ¶7. As a result of the pay stub modifications, Putative Class Members are now provided with wage statements that display the following: (i) the inclusive dates of the pay period, including both the period start date and the period end date; (ii) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and (iii) the total hours worked (which was modified to list separately these work hours from hours paid but not worked such as sick and vacation days). As a result of these changes, Putative Class Members' paystubs now identify for them important matters such as: (i) what time period are they getting paid for; (ii) what the employees' hourly rate(s) are and the corresponding number of hours are at each rate; and (iii) the number of hours worked (as opposed to the number of hours paid for).

Together, with the analysis of all the factors governing attorney fee awards, Class Counsel believe that the effort and result justify the \$270,000 fee award which represents at most, a very modest 1.16 multiplier.

IV. CLASS COUNSEL'S REQUESTED REPAYMENT OF COSTS IS FAIR AND REASONABLE AND SHOULD BE APPROVED

In the course of this litigation, Class Counsel has incurred out-of-pocket costs totaling \$13,645.62 to date.¹⁶ Richard Decl. ¶45. The Settlement provides that Class Counsel may seek up to \$17,000 in costs. As demonstrated in the Richard Decl., the incurred costs include court fees, mediation fees, copying fees, document management fees, legal research charges, telephone charges, travel expenses, and postage fees. *Id.* The costs incurred by Class Counsel in this matter benefited the Putative Class Members. Furthermore, reimbursement of costs are permitted by statute for the types of claims sought in the Lawsuit and settled, including but not limited to under California Labor Code section 226(e)(1), 1194 and the PAGA. Accordingly, Class Counsel respectfully request that the Court award Class Counsel their costs incurred in litigating this matter.

V. CONCLUSION

For all of the foregoing reasons, the parties respectfully request that this Court award Class Counsels' fees of \$270,000.00 and the reimbursement of actual costs incurred up to \$17,000.

Dated: September 4, 2015

ROBBINS ARROYO LLP
DENTE LAW, P.C.

By: s/ Diane E. Richard

DIANE E. RICHARD, ESQ.
Attorneys for Plaintiff Sergio Peralta
And for The Class
Email: drichard@robbinsarroyo.com

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¹⁶ Any additional costs incurred will be included with Plaintiff's Motion for Final Approval of the Settlement.

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2015, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

s/ Diane E. Richard

DIANE E. RICHARD

Attorneys for Plaintiff Sergio Peralta

And for The Class

Email: drichard@robbinsarroyo.com