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CORAL MCQUEEN and
FELICIA TREVINO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CORAL MCQUEEN and FELICIA TREVINO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

ODD FELLOWS HOME OF CALIFORNIA, a California corporation, and DOES 1-100,

Defendants.

Case No. C-26-64176

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND ENHANCEMENT PAYMENT

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Assigned to the Honorable Diane M. Price

Date: November 19, 2015
Time: 8:30 a.m.
Place: Dept. F

TO EACH PARTY AND TO EACH PARTY'S ATTORNEY OF RECORD: NOTICE IS HEREBY GIVEN that, on November 19, 2015, at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department F of the above-entitled Court located at 1111 Third Street, 3rd Floor, Napa, California, 94559, Plaintiffs Coral McQueen and Felicia Trevino ("Plaintiffs") will move for an order awarding attorneys' fees of $243,200, reimbursement of costs in the amount of $9,687.28, and an enhancement payment to the named Plaintiffs in the amount of $5,000 each. The Motion will be based upon this Notice of Motion, the Declaration of David S. Harris (Class Counsel) and the exhibits and declarations attached thereto, the Memorandum of Points and Authorities in Support of Motion for Award of Attorneys' Fees, Reimbursement of Costs, and Enhancement Payment, the complete records and files of this action, and the oral argument of counsel.

DATED: September 15, 2015

NORTH BAY LAW GROUP
LAW OFFICES OF JAMES D. RUSH

David S. Harris
James D. Rush
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

In connection with the $729,700.00 settlement generated by counsel for Plaintiffs Coral McQueen and Felicia Trevino ("Plaintiffs") in this case, this Court should approve Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Costs and Enhancement Payment by granting this application for an award of (1) $243,200.00 in attorneys' fees, (2) $9,687.28 for reimbursement of costs, and (3) $5,000.00 enhancement payments to each of the named Plaintiffs. Plaintiffs' counsel secured a settlement on behalf of a class of employees who were not provided with proper rest and meal breaks, were not paid proper overtime wages for hours worked in excess of eight in a day and were not provided with adequate pay statements. For their services in generating a settlement fund for the benefit of a Class comprised of hourly employees, Plaintiffs' Counsel seeks a fee of $243,200.00 from the settlement amount and reimbursement of $9,687.28 for litigation costs incurred. This award will compensate fairly Plaintiffs' counsel for work already performed in the case and for all of the work remaining to be performed in the case, including preparation of the final-approval motion and efforts to ensure that the settlement is fairly administered and implemented.

Defendant Odd Fellows Home of California ("Defendant" or "Odd Fellows") called upon experienced defense firm, Gordon & Rees LLP (Decl. of David S. Harris in Support of Mot. for Award of Attorneys' Fees, Reimbursement of Costs and Enhancement Award ("Harris Decl.") ¶ 12.) Nevertheless, Plaintiffs achieved an outstanding result with a $729,700 settlement, which will pay damages to participating Class Members on account of unpaid wages and penalties for alleged violations of the California Labor Code.

The public policy of California recognizes the extreme importance of deterring the type of misconduct Plaintiffs have 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 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). 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).

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 Plaintiffs' request for an award of attorneys' fees, reimbursement of costs and enhancement awards. Plaintiffs' Counsel respectfully requests that the Court award them $243,200 in attorneys' fees and $9,687.28 for reimbursement of reasonable costs incurred in the prosecution of this case. 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 Harris Declaration filed herewith.

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

On May 23, 2014, the action was commenced in the Napa County Superior Court as a putative class action on behalf of Plaintiffs and all others similarly situated for alleged violations of the California Labor Code. (See generally May 23, 2014, Compl.) On July 23, 2014, Plaintiffs filed a First

Amended Complaint adding a cause of action under the Labor Code Private Attorneys General Act ("PAGA"), California Labor Code section 2699. (See July 23, 2014, First Am. Compl.)

On May 29, 2015, the parties participated in an all-day mediation with experienced mediator, Mr. Jeffrey Krivis, in downtown San Francisco. (Harris Decl. ¶ 12.) Prior to mediation, the parties engaged in substantial investigation and informal discovery in connection with this action. (Harris Decl. ¶ 12.) Defendant provided extensive documents and thousands of pages of documentation and putative class data to Plaintiffs and their counsel to review and analyze. (Harris Decl. ¶ 12.) This information included summary employment data for the entire putative class, Defendant's policies and documents relevant to the issues and claims in the instant litigation, and a statistically-significant sampling of full payroll and hourly employee punch data for the putative class. (Harris Decl. ¶ 12.) Counsel for each side interviewed numerous witnesses, and Defendant obtained numerous declarations from employee witnesses. (Harris Decl. ¶ 12.) Plaintiffs' counsel and its staff spent a hundreds of hours reviewing the payroll information and hourly employee punch data that was provided by Defendant in order to analyze the claims and prepare for mediation. (Harris Decl. ¶ 12.) Given the reasonable arguments that could be made by both sides, the case was ultimately resolved after extensive settlement negotiations and with the active assistance of Mediator Krivis.

Settlement is an extremely attractive option for both Plaintiffs and Defendant, given the reasonable arguments that can be made by both sides. Plaintiffs contend that Defendant violated the California Labor Code by failing to provide Class Members with proper and timely overtime wages. Further, Plaintiff contends that Defendant failed to properly provide the ten-minute rest periods and thirty-minute meal periods mandated by sections 226.7 and 512 of the California Labor Code. Accordingly, Plaintiffs contend that Defendant's employees are entitled to "one additional hour of pay at [their] regular rate of compensation for each work day that [a] meal or rest period [w]as not provided." Cal. Lab. Code § 226.7(b). In addition, Plaintiffs contend that Defendant willfully failed to pay in a timely fashion those Class Members whose employment with Defendant had been terminated. Accordingly, Plaintiff contends that those employees are entitled to the "waiting time penalties" specified by section 203 of the California Labor Code. Finally, Plaintiffs also contend that Defendant failed to issue pay stubs that contain all of the information required by the California Labor Code.

Defendant vigorously disputes all of Plaintiffs' contentions.

Settlement is an attractive option with respect to Plaintiffs' unpaid-overtime and meal-and-rest-break claims. Based on a review of materials produced by Defendant and on discussions with Defendant's counsel, Plaintiffs' counsel acknowledges that some may argue that any unpaid overtime and the number of meal and/or rest breaks missed by any given Class Member may require a rather individualized inquiry, with a result that class certification might be denied on this claim. Furthermore, Defendant argues that there is no common policy or procedure to support a claim for the failure to provide rest and meal breaks. Indeed, Defendant argues that it's only common policy regarding meal and rest breaks is that non-exempt, hourly employees are permitted to take them, which policy Defendant contends is articulated in its written break policy. Defendant argues that, in light of its purported compliant written break policy, Plaintiffs would be unable to secure class certification for the meal and rest break claims. S*ee* Washington v. Joe's Crab Shack, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (denying certification of rest break claims where written policy was fully compliant with the law and individualized inquiries would be required to determine whether and when rest breaks were missed).

Defendant also argues that, due to the nature of Defendant's business, there are disparate break practices resulting from a variety of factors, including the facility where the employee worked, the job title, nature of the work, location within the facilities, management styles and/or employee preferences. Defendant argues that, when faced with similar facts, courts have denied class certification because employees' breaks, in practice, are not uniform. See, e.g., Hughes v. WinCo Foods, 2012 WL 34483 at *5–6 (C.D. Cal. Jan. 4, 2012) ("[T]he decision-making with respect to when employees may take meal and rest breaks is diverse. It varies from store to store, and from department-to-department within the same store. There is simply no manner in which the timing of such breaks can be proven reliably with evidence of 'a single stroke.'"). Defendant argues that Plaintiffs cannot meet their burden to certify the class action because a highly individualized inquiry would have to be made to determine whether a particular missed break was the personal choice of the employee, or was somehow mandated by Defendant. Under Brinker Restaurant Corp. v. Superior Court, 53 Cal. 4th 1004, 1040–41 (2012), the key inquiry is whether the non-exempt employee had a reasonable opportunity to take an uninterrupted break. This inquiry, Defendant contends, will necessarily involve an evaluation of the individual facts

and details of each job assignment worked by each non-exempt employee, whether breaks were taken in accordance with Defendant's policy, and, if not, why they were not taken. In light of the reasonable arguments that can be made by both sides, compromise of the overtime, meal and rest break claims is appropriate.

Settlement is also an attractive option with respect to Plaintiff's section-203 claim. For example, Defendant contends that no damages are owed for the alleged "untimely" payment of wages because its behavior was not "willful," which is a requirement under section 203. See Cal. Lab. Code § 203(a). Defendant could likewise assert that section 203, as with all penalty statutes, is strongly disfavored and must be narrowly construed. See Hale v. Morgan, 22 Cal. 3d 388, 405 (1978). The same could be said with respect to Plaintiff's pay-stub claim under section 226 of the Labor Code. With respect to Plaintiff's pay-stub claim, Plaintiffs' counsel is aware that Defendant has arguable defenses with respect to whether such violations merit awarding employees statutory amount, namely, that such violations are purely technical in nature, that Defendant substantially complied with section 226, that none of Defendant's employees was actually injured by Defendant's alleged violation, and that Defendant's alleged violation was neither knowing nor intentional. Cf., e.g., Milligan v. American Airlines, 327 Fed. Appx. 694 (9th Cir 2009).

Furthermore, it is far from settled whether the failure to pay overtime wages or wages on account of foregone meal and rest breaks results in continuing-wages liability. See Hon. Ming W. Chin, et al., California Practice Guide: Employment Litigation ¶ 11:1464.1 (The Rutter Group 2008) ("Employers may argue that because 'wages' and overtime pay have different sources, Lab. C. § 203's waiting time penalties for 'wages' do *not* apply to overtime pay [See Earley v. Sup. Ct. (Washington Mut. Bank, F.A.) (2000) 79 CA4th 1420, 1430, 95 CR2d 57, 63—'An employee's right to wages and overtime compensation clearly have different sources'; see also Wilcox v. Birtwhistle (1999) 21 C4th 973, 979, 90 CR2d 260, 264—words and phrases given a particular meaning in one part of a statute must be given same meaning in other parts of the statute; Mamika v. Barca (1998) 68 CA4th 487, 493, 80 CR2d 175, 178—penalty of continued 'wages' for late payment is computed by reference to daily straight-time pay (not overtime)].") (emphasis in original). Cf. Barnhill v. Robert Saunders & Co., 125 Cal. App. 3d 1, 7 (1981) (explaining that liability under section 203 is improper where an employer had deducted a set off

from an employee's final paycheck at a time when the law governing the propriety of setoffs from employees' paychecks was unclear). Insofar as it does not result in continuing-wages liability, the extent of Defendant's liability may be reduced.

Furthermore, as a class action, this case presents a clear risk of lengthy and expensive litigation. It would likely be another one to two years before this case went to trial so that, *inter alia*, the parties could properly complete class discovery, Plaintiffs could file a motion for certification, and the parties could file cross-motions for summary judgment. That said, the parties have, in fact, conducted extensive discovery and analysis of the claims. Defendant has provided Plaintiffs with relevant information regarding the employment records of Plaintiffs and a statistically-significant sample of the entire Class. 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, 85 Cal. App. 4th 1135, 1150 (2000). "In the context of class action settlements, '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 more than sufficient investigation and discovery conducted to permit counsel to enter into the Settlement.

For all of the foregoing reasons, the parties decided to settle. Plaintiffs filed the Motion for Conditional Certification of Settlement Class and Preliminary Approval of Class-Action Settlement on July 29, 2015. On August 21, 2105, this Court granted preliminary approval. (See generally Preliminary Approval Order.)

III. Argument.

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

Here, Class Counsel has secured a common fund of $729,200 for Plaintiffs and the Class. "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, 90 S. Ct. 616, 626–28 (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 the 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, Plaintiffs' counsel is entitled to an award of reasonable fees. Keeping in mind the fact that the struggle to secure a recovery for Plaintiffs 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, as it is nearly equal to the requested award of attorneys' fees.

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.

D. The Total Lodestar Dollar Amount Is Reasonable.

Defendant was entitled to and did retain able and experienced counsel—Gordon & Rees LLP. Work on this case began in March 2014 and will continue into 2016. The total hours and expenses incurred is reasonable for a case of this nature. The total lodestar in this case is $226,750.50 for approximately 562.3 hours of work through the date Class Members were mailed the Notice and Claim Forms.[1] (Harris Decl. ¶ 7.) Class Counsel requests attorneys' fees of $243,200.00, which is only 1.068 times the lodestar. (Harris Decl. ¶ 7.) The lodestar, however, does not include the time that will be

[1] The mixed hourly rate is $403.25. (Harris Decl. ¶ 7.)

spent in securing final approval, responding to client and Class Member inquiries, and concluding administration of this case. (Harris Decl. ¶ 7.) Thus, by the time the entire class notice process has been completed, and the Court hears the motion for final approval, the amount Class Counsel is requesting for attorneys' fees will end up being *less* than the total lodestar.

In assessing reasonableness, courts often refer to the "Laffey" matrix, "[a] widely recognized compilation of attorney . . . rate data" for the District of Columbia, "so named because of the case that generated the index," Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354 (D.D.C. 1983). In re Chiron Sec. Litig., 2007 WL 4249902 at *6 (N.D. Cal. filed Nov. 30, 2007). Adjusting those rates for cost-of-living differences between the Washington, D.C. and Los Angeles areas, the In re Chiron court concluded that reasonable rates for a Los Angeles attorney with twenty-plus years of experience is $460.24, eleven to nineteen years of experience is $407.94, eight to ten years of experience is $329.49, and four to seven years of experience is $266.73. Id. at *6–7. Of course, more than seven years have passed since the In re Chiron decision, and, as noted above, when setting rates, courts should use attorneys' current rates. In addition, since the time that In re Chiron was decided, an "adjusted" Laffey matrix has been published "using a methodology advocated by economist Dr. Michael Kavanaugh" that "has been used by the United States District Court for the District of Columbia to determine the amount of a reasonable fee." Bywaters v. United States, 670 F.3d 1221, 1226 n.4 (Fed. Cir. 2012). As explained by the Federal Circuit, the adjusted Laffey matrix "more accurately reflects the prevailing rates for legal services." Id. See also, e.g., Hash v. United States, 2012 WL 1252624 at *22 (D. Idaho filed Apr. 13, 2012) (agreeing that the "adjusted" Laffey matrix "is the most accurate representation of rates for legal services . . . giv[ing] weight to the Federal Circuit's recent statement implying acceptance of the use of the Updated Laffey Matrix") (citing Bywaters, 670 F.3d at 1226 n.4).

A copy of the current, adjusted Laffey matrix is attached as **Exhibit 3** to the Declaration of David Harris filed herewith. The adjusted Laffey matrix for June 1, 2013, to May 31, 2014, lists the following relevant rates for attorneys in the Washington, D.C. area:

Table 2: Laffey Matrix	
Experience	***Rate***
11-19	$640

8-10	$567

(Harris Decl., Ex. 3.) Because "[t]hese figures are . . . tailored for the District of Columbia, which has a lower cost of living than . . . Los Angeles[,] . . . some [further] adjustment" is appropriate. In re Chiron, 2007 WL 4249902 at *6. The In re Chiron court made this adjustment "us[ing] the federal locality pay differentials based on federally compiled cost of living data." Id. Copies of that same data—updated, of course, to 2013—are also attached to the Declaration of David Harris filed herewith, as **Exhibit 4**, reflecting the information for both Los Angeles and the even higher numbers for San Francisco, California. According to these data, the Washington, D.C. area has a +24.22% locality pay differential, while the San Francisco area has a +35.15% locality pay differential. (Harris Decl., Ex. 4 pp. 1-2.) These differentials suggest that the figures in table 2 above must be adjusted, upward. Applying these rates, in turn, to Class Counsel's hours leads to a far-greater lodestar than the current $226,750.50 figure suggested by the hourly rates reflected in the detailed bills from the North Bay Law Group and the Law Office of James D. Rush. (Harris Decl. Exs. 1 & 2.) In other words, applying the Laffey matrix would *increase* Class Counsel's lodestar, since the rates of David Harris and James Rush would dramatically increase. Judged from this perspective, Class Counsel's present fee request is even more reasonable and should be approved.

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 actual lodestar is $226,750.50 for 562.3 hours performed through completion of the mailing of Class Notice and Claim Forms. Class Counsel seeks $243,200 in attorneys' fees, or 33.33 percent of the settlement fund. Consequently, Class Counsel seeks payment of a mere 1.068 times the lodestar. This is on the extremely low 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 consumer 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 Harris Declaration filed and served herewith sets out such litigation-related costs and expenses in detail. (Harris Decl., Exs. 1-2.) The costs and expenses in the amount of $9,687.28, as set forth in the Harris Declaration, should be included in the award. (Harris Decl., ¶ 8, Exs. 1-2.)

G. Plaintiffs' 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 Plaintiffs and the Class are entitled to recover the reasonable attorneys' fees and costs pursuant to the foregoing provisions of state law.

H. Plaintiffs' Enhancement Awards.

On August 21, 2015, this Court appointed Plaintiffs Coral McQueen and Felicia Trevino as the Class Representatives. (Preliminary Approval Order ¶ 3.) The Settlement provides: "McQueen and Trevino will each receive a Class Representative Enhancement award of up to Five Thousand Dollars ($5,000) for their time and effort in prosecuting this case on behalf of the class and for assuming the risk of paying for Odd Fellows Home of California's costs in the event of an unsuccessful outcome. The Class Representative Enhancement is in addition to McQueen's and Trevino's share they will receive as a member of the settlement class." (Settlement at 13:7-13.) Here, Plaintiffs request an enhancement award in the amount of $5,000 for each of the Plaintiffs. Plaintiffs' proposed "enhancement" payments are entirely reasonable as Plaintiffs are entitled to this additional amount for the services they have rendered as Class Representatives. 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 an important role. Here, Plaintiffs asserted claims which 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 or her 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). In light of Plaintiffs' willingness to come forward with this action on behalf of a Class of current and former employees, enhancement awards of $5,000 for each Plaintiff represent a reasonable amount. See, e.g., Cook, 142 F.3d at 1016 (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 incentive award of $20,000 apiece to two class representatives).

In furtherance of this action, Plaintiffs were willing to come forward with the litigation on behalf of the absent Class of former and current employees, Plaintiffs informed counsel of their employment issues, and provided counsel with facts, documents, details, and decision-making, which eventually culminated into the Settlement. Attached as **Exhibits 5 and 6** to the Harris Declaration are Declarations from Plaintiffs Coral McQueen and Felicia Trevino, detailing their efforts and participation in the litigation of this case. As a result of the Plaintiffs' collective efforts, claimants will receive significant payment for unpaid wages and damages under the Labor Code.

IV. Conclusion.

It is respectfully requested that this Court award Plaintiffs (1) attorneys' fees in the amount of $243,200.00, (2) reimbursement of costs in the amount of $9,687.28, and (3) an enhancement award to the named Plaintiffs in the amount of $5,000.00 each.

DATED: September 15, 2015

NORTH BAY LAW GROUP

David S. Harris
Attorneys for Plaintiffs

PROOF OF SERVICE

I am an attorney for Plaintiff herein, over the age of eighteen years, and not a party to the within action. My business address is North Bay Law Group, 116 E. Blithedale Avenue, Suite 2, Mill Valley, California 94941.

On September 15, 2015, I served the within document(s):

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND ENHANCEMENT PAYMENT

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under that practice, the document(s) would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

Mark Posard
GORDON & REES LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

I declare under penalty of perjury that the above is true and correct.

Executed on September 15, at Mill Valley, California.

David S. Harris