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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MIGUEL ANGEL SERRANO
CASTILLO, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SHERATON OPERATING
CORPORATION, a Delaware
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 2:17-cv-07091-FMO (ASx)

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
ATTORNEYS' FEES AND COSTS
AND REPRESENTATIVE
ENHANCEMENT; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: August 22, 2019
Time: 10:00 a.m.
Courtroom: 6D
Judge: Hon. Fernando M. Olguin

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 10:00 a.m., on August 22, 2019, or as soon thereafter as the matter can be heard in Courtroom 6D of the United States District Court, Central District of California, located at 350 W. 1st Street, 6th Floor, Los Angeles, CA 90012, before the Honorable Fernando M. Olguin, Plaintiff MIGUEL ANGEL SERRANO CASTILLO will and hereby do move this Court for an Order granting Class Counsels' application for attorneys' fees in the amount of \$400,000.00 (approximately 26.06% of the gross settlement amount), reimbursement of costs in the amount of \$16,222.25 and Class Representative Enhancement of \$7,500.00.

This motion will be based on this Notice, the attached Memorandum of Points and Authorities, the accompanying Declarations of Edward W. Choi, Larry W. Lee, David J. Lee, and Plaintiff Miguel Angel Serrano Castillo, and the pleadings and papers filed herein.

Dated: May 17, 2019

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

By: /s/ Edward W. Choi

Edward W. Choi, Esq.

Attorney for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this motion, Plaintiff MIGUEL ANGEL SERRANO CASTILLO (“Plaintiff”) and his attorneys seek an order approving Class Counsels’ application for attorneys’ fees in the amount of \$400,000.00 (approximately 26.06% of the gross settlement amount of \$1,535,129.00) and reimbursement of costs in the amount of \$16,222.25. Plaintiff also seeks his Class Representative Enhancement of \$7,500.00. This request was set forth in the Notice of Class Action Settlement mailed to all class members. As set forth in the Settlement Agreement of the parties, Defendant SHERATON OPERATING CORPORATION (“Defendant”) (Defendant and Plaintiff are collectively referred to as the “Parties”) have agreed to not object to the requests sought herein.

The amended preliminarily approved settlement requires that Defendant pay the entire settlement amount of \$1,535,129.00 for resolution of this case. (Dkt No. 38) As will be explained in the Plaintiff’s Motion for Final Approval of Class Action Settlement, this settlement amount is adequate, fair and reasonable. This current motion will focus on Plaintiff’s request for attorneys’ fees and costs along with the Class Representative’s service enhancement request.

Governing Ninth Circuit law, following the clear instruction of the United States Supreme Court in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), establishes that percentage awards are to measure against the entire common fund created in the settlement. In *Glass v. UBS Financial Services, Inc.*, 2007 WL 474936, at *16 (N.D. Cal. Jan 26, 2007), citing to the Ninth Circuit authority, the Court noted:

The Ninth Circuit has held, however, that the district court must award fees as a percentage of the entire fund, or pursuant to the lodestar method, not on the basis of the amount of the fund actually claimed by the class.

See also Williams v. MGM-Pathe Communications Co., 129 F.3d 1026, 1027 (9th Cir.1997).

1 Further, in *In Re Wal-Mart Stores, Inc. Wage and Hour Litigation*, 2011 WL
 2 31266, at *3 (N.D. Cal. Jan. 5, 2011), at footnote 5, the Northern District again affirmed
 3 this position:

4 With respect to the amount of the fund created, “attorneys for a
 5 successful class may recover a fee based on the entire common
 6 fund created for the class, even if some class members make no
 7 claims against the fund so that money remains in it that
 8 otherwise would be returned to the defendants.”

9 Pursuant to the common fund approach, although courts in the Ninth Circuit
 10 typically award 25% of the common fund for attorneys’ fees, numerous courts have
 11 awarded 33 1/3% of the common fund in class actions. Indeed, the Central District in
 12 *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1209-10 (C.D. Cal. 2014),
 13 awarded 33 1/3% for attorneys’ fees in connection with a class settlement. Similarly, the
 14 California Supreme Court’s opinion in *Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503
 15 (2016). In *Laffitte*, the Court affirmed an award of attorneys’ fee award of
 16 \$6,333,333.33, based on 33 1/3% of the \$19 million common fund and a 2.13 lodestar
 17 multiplier. Finally, this Court has granted a departure from the Ninth’s Circuit
 18 benchmark in this Court’s ruling in *Spann v. J.C. Penney Corp.*, No.
 19 SACV120215FMOKESX, 2016 WL 5844606, at *11, F. Supp. 3d (C.D. Cal. Sept. 30,
 20 2016).

21 As the Court is well aware, Plaintiff’s counsel has diligently and efficiently
 22 litigated this case and significant risks were assumed by Plaintiff’s counsel in litigating
 23 this case. Further, substantial discovery has been performed including written discovery,
 24 production of documents and all of the payroll data necessary to perform a meaningful
 25 damage analysis. Plaintiff’s counsel’s lodestar cross check also supports the award of the
 26 26.06% percentage fee given that their lodestar cross check is only seeking a 1.83
 27 multiplier, which is less than the 2.13 multiplier in *Laffitte*.

28 Moreover, the \$16,222.25 in costs incurred in this case are reasonable, as reflected
 in the Declarations of Plaintiff’s counsel. The actual costs being sought by Plaintiff’s
 counsel is far less than the \$25,000.00 that was allotted for costs. To date, none of the

1 class members have objected to the costs being sought and the cost request is less than
2 the amount that was anticipated. Further, the law expressly permits the recovery of
3 litigation costs.

4 Finally, Plaintiff's enhancement is also justified given the duration of the litigation
5 and his availability throughout the litigation to cooperate in producing documents,
6 reviewing documents, and being available both in person and phone call to offer crucial
7 information regarding this lawsuit.

8 II. HISTORY OF THE CASE

9 On September 26, 2017, Plaintiff filed a putative class action Complaint in the
10 United State District Court, Central, asserting claims against Defendant for alleged
11 violation of the California Labor Code for failure to provide complete, accurate, or
12 properly formatted wage statements and claims for interest, attorneys' fees and costs.
13 Specifically, Plaintiff alleged that whenever overtime or shift differential wages were
14 paid, the corresponding wage statements failed to show the accurate rates of pay, in
15 violation of Labor Code § 226(a).

16 Thereafter, Plaintiff filed a First Amended Complaint on the same date to correct
17 his inadvertent mistake. Subsequently, the Parties stipulated to a leave for Plaintiff to file
18 a Second Amended Complaint after the expiration of the PAGA notice period. On
19 November 30, 2017, Plaintiff filed his Second Amended Complaint to include a cause of
20 action for PAGA ("Operative Complaint"). The Parties have served their Initial
21 Disclosures, propounded and responded to written discovery and engaged in an extensive
22 meet and confer process regarding discovery. On April 17, 2017, the Parties engaged in a
23 full day mediation with well respected mediator David Rotman and reached the current
24 settlement.

25 On August 16, 2018, Plaintiff's Motion for Preliminary Approval came regularly
26 for hearing. The Court directed Plaintiff and Defendant to submit supplemental briefing
27 on a narrow issue regarding the Rule 23(b)(3) and to include the Plaintiff's counsel's
28 website address on the Class Notice. Plaintiff submitted the same on August 24, 2018

1 (Dkt No. 35)

2 On February 4, 2019, this court approved Plaintiff's Motion for Preliminary
3 Approval. (Dkt No. 36) During the course of compiling the class list and class data for
4 purposes of administering the Class Settlement, Defendant discovered that there were
5 significantly more applicable pay periods/wage statements and class members than
6 originally represented which triggered the escalator clause in the Settlement Agreement.
7 The Parties engaged in an extensive meet and confer process and negotiated an amended
8 settlement increasing the amount of the settlement to ensure that the class members
9 receive the same net per wage statement that they would have received under the
10 previously approved settlement.

11 On April 9, 2019, this court also approved the Amended Order re: Motion for
12 Preliminary Approval. (Dkt No. 38). As the Court can see from the docket, from the
13 time of filing to the instant settlement, this case has been diligently and efficiently
14 litigated by both parties, including motion practice. The Parties have also exchanged data
15 and documents, including the data for the entire class to permit Plaintiff to conduct a
16 damage analysis. Further, the Parties have been engaged in active settlement discussions
17 during the pendency of this action.

18 **III. ATTORNEY FEE AWARDS IN COMMON FUND CASES**

19 **A. The Award Requested**

20 The fee sought relates to all efforts expended by Class Counsel for the complete
21 handling of the class/representative action, including any additional work remaining to be
22 performed by Class Counsel in securing final Court approval of the Settlement, and later
23 following through to ensure that the Settlement is fairly administered and fully
24 implemented.

25 A significant amount of work on the part of Class Counsel went into achieving this
26 resolution. Based upon the factors relating to approval of percentage of the fund fee
27 awards, class counsel submit that the effort and result justify the requested percentage fee
28 requested. As a secondary "cross-check" to the percentage of the common fund award,

1 class counsel are also providing this Court with a time and task chart, which breaks down
2 the tasks and time spent by each firm, so that the Court can conduct a lodestar analysis.

3 Judge Marilyn Patel remarked, in an oft-quoted and prescient ruling, that in
4 essence the task of tracking the tasks was itself a potential morass of its own making and,
5 thus, favored the application of the percentage of the fund approach. *In re Activision*
6 *Securities Litigation*, 723 F. Supp. 1373, 1375 (9th Cir. 1989). Notwithstanding Judge
7 Patel's observation, a time and task chart is offered here because it shows in this case that
8 Plaintiff's counsel lodestar is \$218,620.00 which is a very modest multiplier of 1.83 of
9 the requested common fund. As discussed in more detail below, under either the common
10 fund approach, or lodestar method, Plaintiff's attorneys' fees are reasonable and should
11 be awarded.

12 **B. The Percentage of the Fund Approach**

13 The U.S. Supreme Court consistently has recognized that "a litigant or a lawyer
14 who recovers a common fund for the benefit of persons other than himself or his client is
15 entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van*
16 *Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970). The
17 purpose of this doctrine is largely to avoid unjust enrichment, by spreading the litigation
18 costs proportionally among all the beneficiaries so that the active beneficiary does not
19 bear the entire burden alone. It provides that when a litigant's efforts create or preserve a
20 fund from which others derive benefits, the litigant may require the passive beneficiaries
21 to compensate those who created the fund.

22 Every United States Supreme Court case that has considered the award of
23 attorney's fees under the common fund doctrine has determined those fees as a percentage
24 of the recovery. *See, e.g., Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773
25 (11th Cir. 1991) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)) (noting that the
26 percentage of recovery method is the appropriate method to award attorney's fees in
27 common fund cases); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 n.2 (1939); *Cent.*
28

1 *R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 128 (1885); *Internal Improvement Fund Trs.*
 2 *v. Greenough*, 105 U.S. 527, 532 (1881).

3 Moreover, the Ninth Circuit has recognized a “ground swell of support for
 4 mandating a percentage-of-the-fund approach in common fund cases.” *Florida v. Dunne*,
 5 915 F.2d 542, 545 (9th Cir. 1990); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373,
 6 378-79 (9th Cir. 1995) (affirming attorney's fee of 33% of the recovery). Although the
 7 Ninth Circuit has typically found that 25% of the common fund is “benchmark,”
 8 numerous courts in the Ninth Circuit have awarded higher amounts. *See Stetson v. West*
 9 *Publishing Corp.*, Case No. 13-57061, at *11 (9th Cir. May 11, 2016). The twenty-five
 10 percent benchmark may be adjusted upward or downward depending on the
 11 circumstances presented by the particular case. Indeed, the Ninth Circuit and district
 12 courts therein have routinely permitted recovery in the amount of 33.33%, 40% and even
 13 up to 50% of the common fund. *See, e.g., In re Activision Sec. Litig.*, 723 F. Supp. 1373,
 14 1378 (N.D. Cal. 1989) (listing Ninth Circuit cases).

15 Seeking a fee based on a percentage of the gross recovery, which is what Class
 16 Counsel is seeking here, is appropriate and even desirable in cases like this. *See*
 17 *Newberg on Class Actions*, Fourth Edition, vol. 4, p. 556, §14.6 (noting that percentage
 18 of the fund awards are preferable because they align the interests of the attorney with the
 19 client, as the attorney is not incentivized to bill unnecessary hours to generate a greater
 20 fee); *Boeing*, 444 U.S. at 478. Unlike the lodestar method which can encourage class
 21 counsel to devote unnecessary hours to generate a substantial fee, under the POR
 22 [percentage of recovery] method, the more the attorney succeeds in recovering money for
 23 the client, and the fewer legal hours expended to reach that result, the higher dollar
 24 amount of fees the lawyer earns. Thus, one of the primary advantages of the POR
 25 method is that it is thought to equate the interests of class counsel with those of the class
 26 members and encourage class counsel to prosecute the case in an efficient manner.

27 The California Supreme Court has also held that the award of attorneys’ fees in
 28 common fund wage and hour class action settlements should start with the percentage

1 method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the
2 overwhelming majority of federal and state courts in holding that when class action
3 litigation establishes a monetary fund for the benefit of the class members, and the trial
4 court in its equitable powers awards class counsel a fee out of that fund, the court may
5 determine the amount of a reasonable fee by choosing an appropriate percentage of the
6 fund created.”).

7 Indeed, the California Supreme Court in *Laffitte* affirmed a fee award representing
8 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar
9 amount that required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the
10 multiplier is “extraordinarily high or low [should] the trial court consider whether the
11 percentage method should be adjusted so as to bring the imputed multiplier within a
12 justifiable range.” *Id.* at 505.

13 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33
14 1/3 percent of the common fund is consistent with, and in the range of, awards in other
15 class action lawsuits.” *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014).
16 Federal courts have followed *Laffitte*, 1 Cal. 5th 480, in awarding attorneys’ fees in class
17 actions based on the percentage of the fund approach.

18 This Court followed *Laffitte* in awarding \$13,500,000 in attorneys’ fees in *Spann v.*
19 *J.C. Penney Corp.*, No. SACV120215FMOKESX, 2016 WL 5844606, at *11, F. Supp.
20 3d (C.D. Cal. Sept. 30, 2016). *Spann* involved claims for unfair advertising under
21 California statutes. *Id.* The case settled for \$50 million and the plaintiffs’ counsel sought
22 27% of the common fund based on a multiplier of 3.07. This Court granted final
23 approval and approved the attorneys’ fees pursuant to *Laffitte*:

24 “The percentage method calculates the fee as a percentage share
25 of a recovered common fund or the monetary value of plaintiffs’
26 recovery.” [Citation]. **This method is typically used when a
27 common fund is created.** [Citation]. California has
28 recognized that most fee awards based on either a **lodestar or
percentage calculation are 33 percent** and has endorsed the
federal benchmark of 25 percent.”

1 *Id.* at *12 (citing *Laffitte*, 1 Cal.5th at 489, emphasis added).

2 Thus, this Court in *Spann* noted that the percentage method is followed in common
3 fund cases and that California courts have generally awarded 33% in attorneys' fees. *Id.*

4 Similarly, the Eastern District in *Emmons v. Quest Diagnostics Clinical Labs., Inc.*,
5 No. 113CV00474DADBAM, 2017 WL 749018, at *7 (E.D. Cal. Feb. 27, 2017),
6 followed *Laffitte* in awarding 33% of the common fund. As the *Emmons* Court
7 explained, "[t]he California Supreme Court recently held that the percentage-of-fund
8 method of calculating attorneys' fees survives in California courts." *Id.*

9 Likewise, the Northern District Court in *Villalpando v. Exel Direct Inc.*, No. 3:12-
10 CV-04137-JCS, 2016 WL 7740854, at *2 (N.D. Cal. Dec. 12, 2016), cited *Laffitte* when
11 awarding 33% of the common fund:

12 Plaintiffs' fee request of \$ 4,500,000 represents one-third of the
13 Settlement Fund, which is reasonable under both applicable
14 law, and in light of the contingent risk, Counsel's documented
15 lodestar, the complex and protracted nature of the case, and
strong result for the Class.

16 *Id.*

17 Further, in *Chambers v. Whirlpool Corp.*, No. CV111733FMOJCGX, 2016 WL
18 5922456, at *10 (C.D. Cal. Oct. 11, 2016), this Court further reiterated that, "[i]n
19 diversity actions ..., the Ninth Circuit **applies state law to determine the right to fees**
20 **and the method for calculating fees.**" *Id.* (Emphasis added, citing *Mangold v. Cal.*
Public Util. Comm'n, 67 F.3d 1470, 1478 (9th Cir. 1995)).

21 Courts consider the following factors in issuing an award under the common fund
22 approach:

23 [T]he extent to which class counsel achieved exceptional results
24 for the class, whether the case was risky for class counsel,
25 whether counsel's performance generated benefits beyond the
26 cash settlement fund, the market rate for the particular field of
27 law (in some circumstances), the burdens class counsel
28 experienced while litigating the case (e.g., cost, duration,
foregoing other work), and whether the case was handled on a
contingency basis.

1 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (internal
 2 quotation marks omitted) (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50
 3 (9th Cir. 2002)).

4 Here, Plaintiff and his counsel respectfully request that this Court award a slight
 5 departure from the Ninth Circuit's 25% benchmark and award 26.06% of the common
 6 fund. Plaintiff's counsel meets the factors for a common fund award pursuant to the
 7 factors above.

8 **C. The Percentage Awarded Should Mimic the Market**

9 *Newberg on Class Actions*, Fourth Edition, vol. 4, p. 560, § 14.6 contains an
 10 interesting discussion of the concept of a market place analysis and why it is so valuable
 11 in determining a percentage award:

12 [Goodrich and Silver]...suggest that fee awards should be
 13 consistent with contingent fee arrangements negotiated in non-
 class litigation:

14 The percentage method is consistent with and is intended to
 15 mirror practice in the private marketplace where contingent fee
 attorneys typically negotiate percentage fee arrangements with
 16 their clients. As Judge Posner emphasized in *In re Continental*
Illinois Securities Litigations, "[t]he object in awarding a
 17 reasonable attorney's fee...is to simulate the market...The class
 counsel are entitled to the fee they would have received had
 18 they handled a similar suit on a contingent fee basis, with a
 similar outcome, for a paying client." In non-class litigations,
 19 one-third contingency fees are typical. In their concurring
 opinion in *Blum*, Justices Brennan and Marshall observed that
 20 "[i]n tort suits, an attorney might receive one-third of whatever
 the plaintiff recovers. In those cases, therefore, the fee is
 21 directly proportional to the recovery."

22 If named plaintiffs have agreed to pay a one-third contingent
 fee, that is powerful evidence of a reasonable fee. One of the
 23 best ways to demonstrate the value of counsel's work to the
 class is to review the consideration agreed to be paid by the
 24 named plaintiffs in their contracts. If the named plaintiffs have
 employed their counsel by contingent fee agreements that
 25 obligated them to pay one-third of the recovery, it would indeed
 be inequitable for the members of the class, who will enjoy the
 26 benefits of this settlement without incurring the risks of
 bringing the claim, to pay less than the named plaintiffs.

27 The complex and heavily litigated nature of this litigation, and its successful result
 28 lead to the clear conclusion that the fee request herein is reasonable. In *Cambden I*

1 *Condominium Association, Inc., v. Dunkel*, 946 F. 2d 768 (11th Cir. 1991), the court
2 identified various factors to be considered in arriving at a common fund fee
3 determination. Each of the factors is now briefly addressed.

4 1. The time and labor required - this is overwhelmingly established in this
5 motion, based upon the work involved, and the supporting attorney declarations and time
6 charts submitted;

7 2. The novelty and difficulty of the questions involved – although Plaintiff
8 believed that he could have easily obtained class certification, there was substantial risk
9 that this case may not have prevailed on its merits. Further, merits determination on
10 wage statement cases is uncertain at this time. For example, in *Ward v. United Airlines*
11 and *Oman v. Delta Airlines*, the California Supreme Court will decide whether there the
12 CBA exemption under the RLA can bar a Labor Code §226 brought by an employee that
13 is covered by a CBA;

14 3. The skill requisite to perform the legal services properly - this goes hand in
15 hand with the first and second factors. Plaintiff's counsel was able to litigate this case
16 effectively and ultimately achieved a very good result for the class because of Plaintiff's
17 counsel's experience in litigating wage and hour cases;

18 4. The preclusion of other employment by the attorney due to the acceptance of
19 the case - the case required and demanded attorney time on both sides. The result of this
20 scheduling was that Class Counsel could have spent such time on numerous other matters
21 while this litigation was ongoing;

22 5. The customary fee – as discussed above, numerous courts, including this
23 District, have approved an upward departure of the 25% benchmark. In the present case,
24 Plaintiff only seeks a 1% departure to 26.06%;

25 6. Whether the fee is fixed or contingent- this matter was clearly contingent
26 without any sort of fixed or guaranteed fees for Class Counsel. Indeed, Plaintiff's
27 counsel's sole payment was based on contingency fee and no fixed guaranteed costs
28 would have received unless Plaintiff's counsel were successful in this litigation;

1 7. Time limitation imposed by the client or the circumstances – although the
2 client did not impose any time limitations, Class Counsel invested a significant amount of
3 time in this case;

4 8. The amount involved and results obtained – which is discussed above;

5 9. The experience, reputation and ability of the attorney – as evidenced by the
6 supporting declarations, Class Counsel has been designated and certified as class counsel
7 in numerous other matters, including in the Central District;

8 10. The nature and length of the relationship with the client - this does not
9 apply; and

10 11. Awards in similar cases –similar cases were identified in the section above.

11 **IV. THE LODESTAR CALCULATION “CROSS-CHECK”**

12 It has been noted that it is sometimes helpful to courts to “cross-check” a
13 percentage award by employing a lodestar with a multiplier analysis. While the lodestar
14 method is generally considered inappropriate in a common fund case where real cash
15 benefits (as opposed to coupons or non-monetary benefits) are made available to class
16 members, its use can provide further validation of the appropriateness of the percentage
17 award approach. *See In re Prudential Ins. Co. of America Sales Practice Litigation*, 106
18 F. Supp. 2d 721 (D.N.J. 2000). Such is the case here.

19 The declarations of Class Counsel evidence the fact that they devoted
20 approximately 262.8 hours of time to this litigation to date. (Declaration of Larry W.
21 Lee ("Lee Decl.") ¶7; Declaration of Edward W. Choi ("Choi Decl.") ¶9; Declaration of
22 David J. Lee ("D. Lee Decl.") ¶¶5-6). These hours are summarized in the time and task
23 charts that are attached to Plaintiff's counsel's declarations. And, to the extent that any
24 argument is made that the time spent was duplicative, the way in which Plaintiff's
25 counsel work is for each attorney to handle a task and for the other attorneys to review
26 and revise the work, which is identical to the way defense firms staff and handle cases.
27 More importantly, as recently noted by the Ninth Circuit in *Stetson v. West Publishing*
28 *Corp.*, Case No. 13-57061, at *13 (9th Cir. May 11, 2016), “some amount of duplicative

work is ‘inherent in the process of litigating over time.’” (Citing *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)).

In addition, as explained above, Class Counsel expect to expend an additional 59.9 hours through the final approval hearing, including on matters such as preparing the Motion for Final Approval, travel to and attending the final approval hearing, and further conferring with class members regarding the case status. (Lee Decl. ¶ 8; Choi Decl. ¶ 9; D. Lee Decl. ¶6). Thus, Class Counsel will have expended 336.40 hours through final approval.

Applying the various hourly rates of the law firms and lawyers who dedicated their efforts to this matter, a lodestar of \$218,620.00 is established for the amount of work spent through final approval. (Lee Decl. ¶ 9; Choi Decl. ¶ 9; D. Lee Decl. ¶6). The percentage award sought by Class Counsel, if converted to the lodestar method, would entail a multiplier of approximately 1.83. In the Ninth Circuit, multipliers "ranging from one to four are frequently awarded ... when the lodestar method is applied." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n. 6 (9th Cir.). Again, in *Spann*, this Court granted a 3.07 multiplier. Thus, as set forth in the Introduction to this motion, the fee application is supported whether by the cross-check lodestar/multiplier method discussed herein, or by the percentage of the common fund discussed in the preceding sections.

A. Plaintiff’s Counsels’ Lodestar Is Reasonable

The hourly rates employed by Class Counsel, as declared to in the attorney declarations, are reasonable. Plaintiff’s attorneys are entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. The background and experience of Plaintiff’s counsel are fully set forth in the declarations filed in support of this motion. The basic hourly rates listed for each firm are fair, and representative of the combination of years of experience and the clear successes they have had in the past in connection with class action litigation. The time and task charts summarize the total hours devoted to the matter by the various law firms, along with the

1 hourly rates as set forth in the supporting declarations, and the total billed. (Lee Decl. ¶
2 9; Choi Decl. ¶ 7; D. Lee Decl. ¶7).

3 As discussed in their supporting declarations, Class Counsel are a group of well-
4 experienced litigators, including class action litigation. (Lee Decl. ¶¶ 10-11; Choi Decl. ¶
5 8; D. Lee Decl. ¶ 11). Under California law, counsel are entitled to compensation for all
6 hours reasonably spent on the matter. *Ketchum vs. Moses*, 24 Cal. 4th 1122, 1133 (2001).
7 Reasonableness of hours is assessed by “the entire course of the litigation, including
8 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself . .
9 . .” *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal. App. 4th 440, 447 (2000). In
10 addition, the attached time and task charts clearly reflect the many hours which were
11 necessarily spent on the case.

12 In History of the Case section above, the nature and extent of the proceedings held
13 throughout this litigation were set forth in detail. Without repeating the same, it is
14 incorporated herein. The total hours and billings thus generated are all supported herein.
15 In sum, it is submitted that the reasonableness of Plaintiff’s lodestar is manifest. In the
16 present case, Class Counsel’s lodestar multiplier of 1.83 is less than the 2.13 lodestar that
17 was granted in *Laffitte* and 3.07 lodestar in *Spann*. Thus, the lodestar cross check heavily
18 favors granting of 26.06% fees in this case.

19 **V. THE COURT SHOULD APPROVE THE REQUEST FOR** 20 **REIMBURSEMENT OF COSTS**

21 The request for reimbursement of costs, in the amount of \$16,222.25 is fair and
22 reasonable. As stated above, the costs are all litigation related costs, which have been
23 detailed in the supporting declarations of Class Counsel. (Lee Decl. ¶ 12; Choi Decl. ¶
24 10; D. Lee Decl. ¶ 12). The authority for the Court to award costs is the parties'
25 Settlement Agreement and Labor Code Sections 218.5, 226(e), and 2699(g)(1). Further,
26 pursuant to the Settlement Agreement, Defendant has agreed not to oppose any request
27 for reimbursement of costs up to \$25,000.00, but the actual costs that are being sought are
28 much less than the amount allotted in the Settlement Agreement. Pursuant to all of the

1 authority cited above, including this Court's opinion in *Vandervort*, 8 F. Supp. 3d at
 2 1209-10, Plaintiff's counsel should be awarded their costs.

3 **VI. PLAINTIFF'S ENHANCEMENT REQUEST SHOULD BE APPROVED**

4 Plaintiff respectfully requests that the full amount of the service payment be
 5 awarded to him for his efforts that she undertook on behalf of the Class Members. It is
 6 commonly held that it is appropriate to recognize the role of the representative plaintiffs
 7 without whose actions and courage the benefits of the settlement, which are conferred on
 8 the class as a whole, would never have been achieved. The criteria courts may consider
 9 in relation to incentive payments include: 1) the risk to the class representative in
 10 commencing the suit, both financial and otherwise; 2) the notoriety and personal
 11 difficulties encountered by the class representative; 3) the amount of time and effort spent
 12 by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or
 13 lack thereof) enjoyed by the class representative as a result of the litigation. *See Munoz v.*
 14 *BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412 (2010) (citing
 15 *Stanton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003)). Each of these factors favors
 16 the service awards requested in the present case.

17 Plaintiff is the only representative in this case. Plaintiff personally met with his
 18 attorneys to provide information regarding the facts involved. (Declaration of Miguel
 19 Angel Serrano Castillo ("Castillo Decl.") ¶6). Plaintiff met with his attorneys to discuss
 20 the case and facts related to this matter. (*Id.* at ¶6) Plaintiff has made himself available
 21 to answer questions and to sign declarations in support of the various motions that have
 22 been brought in this case. (*Id.* at ¶7)

23 Plaintiff took these risks upon himself from which the whole Class benefitted.
 24 Class members did not have to file individual lawsuits, nor did they have to bear the risks
 25 of payment of fees and costs should they not prevail. Class members also do not have to
 26 face the risk of potential retaliation or risk of future employment, due to Plaintiff's
 27 efforts. In short, Plaintiff sacrificed a significant amount of time, effort, and her own
 28 rights in bringing about the benefits to the class.

1 The payment of enhancement awards to successful class representatives is
 2 appropriate and the amount of \$7,500 to Plaintiff is within the typically accepted range.
 3 *See e.g. Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal.
 4 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer*
 5 *Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three
 6 incentive awards of \$ 35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14
 7 (S.D. Ohio 2001) (granting a \$50,000 Incentive award); *Enter. Energy Corp. v. Columbia*
 8 *Gas Transmission Corp.*, 137 F.R.D. 240, 251-252 (S.D. Ohio 1991) (\$50,000 awarded
 9 to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
 10 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 Incentive award in
 11 FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.
 12 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).
 13 Moreover, a \$7,500 service payment represents a mere **0.49%** of the gross settlement
 14 amount. For such reasons, Plaintiff respectfully requests that this Court find the service
 15 payments amount of \$7,500 to Plaintiff as fair, reasonable and adequate and that the
 16 service payment be awarded to Plaintiff.

17 **VII. CONCLUSION**

18 Plaintiff and Class Counsel respectfully submit that the motion for approval of
 19 attorneys' fees and costs should be granted. Whether analyzed under the percentage of
 20 the fund approach, which is the dominant view, or via the cross-check approach under the
 21 loadstar/multiplier approach, the fees are fully supported. This entire case has been
 22 litigated from the onset, demanded an extraordinary effort on the part of Class Counsel,
 23 and further required substantial costs advanced.

24 Finally, and as instructed by our Supreme Court and Ninth Circuit law, fees should
 25 be awarded off of the total fund created. It is the creation of the fund, and the opportunity
 26 to simply receive one's share, which creates the right to the fee. *Boeing Co. v. Van*
 27 *Gemert*, 444 U.S. 472, 478 (1980).

28 Based on the foregoing, Plaintiff and Class Counsel respectfully request that this

1 Motion be granted in its entirety and grant Plaintiff's counsel's fee request of
2 \$400,000.00, cost requested in the amount of \$16,222.25 and class representative
3 enhancement of \$7,500.00.
4

5 DATED: May 17, 2019

LAW OFFICES OF CHOI & ASSOCIATES

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7
8 By: /s/ Edward W. Choi

9 Edward W. Choi, Esq.

10 Attorney for Plaintiff and the Class
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