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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

JEROME DIVINITY and GREGORY  
WILSON, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

WB STUDIO ENTERPRISES INC., a Delaware  
Corporation, et al.; JERRY BRUCKHEIMER  
TELEVISION, INC., a California Corporation,

Defendants.

Case No. 20STCV37526  
*Assigned to Hon. Elihu M. Berle, Dept. 6*

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR AWARD OF  
ATTORNEYS' FEES,  
REIMBURSEMENT OF COSTS AND  
INCENTIVE AWARD;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: June 21, 2023  
Time: 10:00 a.m.  
Dept: 6  
Place: Spring Street Courthouse  
312 N. Spring Street  
Los Angeles, CA 90012


Second Amended Complaint  
Filed: February 2, 2023

1 **TO EACH PARTY AND TO EACH PARTY’S ATTORNEY OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on on June 21, 2023, at 10:00 a.m., or as soon thereafter as counsel  
3 may be heard, in Department 6 of the Los Angeles County Superior Court, Spring Street Courthouse,  
4 located at 312 N. Spring Street, Los Angeles, CA 90012, Plaintiffs Jerome Divinity and Gregory Wilson  
5 (“Plaintiffs”) will move, and hereby do move this Court for entry of an order awarding attorneys’ fees of  
6 \$446,658.33 and reimbursement of costs in the amount of \$14,945.16, for a total of \$461,603.49. The  
7 requested fee represents a requested multiplier of 1.25 based on a \$357,823 lodestar. The fee request will  
8 compensate Plaintiffs’ Counsel for the work required to achieve the outstanding settlement in this case.  
9 The fee request includes an additional 25 hours required to bring these matters to closure, through the  
10 close of the notice period, final approval, the distribution of settlement proceeds to class members and  
11 post-judgment. As explained in the Motion, Class Counsel should receive a fee award of one-third of the  
12 \$1,339,975 common fund for the excellent recovery which will result in a gross average recovery of \$155  
13 for each of the 8,645 Class Members who did not opt out and an average net recovery of \$91.04 for  
14 Participating Class Members who are also Aggrieved Employees.<sup>1</sup> As of the filing hereof, there were no  
15 objections and one opt out. The deadline for Class Members to submit an objection or to opt out is May  
16 22, 2023, and has not yet passed. Plaintiffs will file supplemental papers along with the Declaration of  
17 the Settlement Administrator on June 9, 2023 to address the final participation rate and feedback.  
18 Plaintiffs also request that the Court award an incentive award to Plaintiffs Jerome Divinity and Gregory  
19 Wilson in the amount of \$5,000, each, totaling \$10,000 for their services in connection with bringing and  
20 maintaining this action.

21 The Motion will be based upon this Notice of Motion, the Declaration of Alan Harris, Jerome  
22 Divinity and Gregory Wilson, the Memorandum of Points and Authorities in Support of Motion for an  
23 Award of Attorneys’ Fees and Reimbursement of Costs, and the complete records and files of this action.

24  
25 DATED: April 21, 2023

HARRIS & RUBLE  
  
Alan Harris  
Attorney for Plaintiffs

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28 <sup>1</sup> The PAGA payment portion is approximately \$1.74 per Aggrieved Employee.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction.**

3 Plaintiffs Jerome Divinity and Gregory Wilson respectfully request that the Court approve their  
4 Motion for Attorney’s Fees, Costs, and Incentive Award, including a fee amounting to one-third of the  
5 \$1,339,975 class settlement created in this case. Plaintiffs seek \$446,658.33 in attorney’s fees and  
6 \$14,945.16 for reimbursement of Plaintiffs’ out-of-pocket costs, a total of \$461,603.49 for their services  
7 in generating a settlement fund for the benefit of the Class.

8 The recovery will result in a gross recovery on average of \$155 for each of the 8,645  
9 Participating Class Members and a net recovery on average of \$91.04 (including the PAGA payment to  
10 Aggrieved Employees)—an excellent result for a case in which a large portion of the recovery consists  
11 of penalties and interest. To date, only one person has elected to opt out of the Settlement and no  
12 persons have filed an objection. (April 21, 2023, Declaration of Laura Singh for CPT Group, Inc. (“CPT  
13 Decl.”)) at ¶¶ 6-7.) The May 22, 2023, deadline to object and opt out has not yet passed. Accordingly,  
14 Plaintiffs will file a supplement along with the Settlement Administrator’s Declaration once the deadline  
15 has passed.

16 The requested amount will compensate fairly Plaintiffs’ Counsel for work already performed in  
17 the case and an additional estimated 25 hours for the time required to bring this case to closure after  
18 final approval. (April 21, 2023, Declaration of Alan Harris (“Harris Decl.”) ¶ 21.) Further, Plaintiffs  
19 respectfully request that this Court award an Incentive Award of \$5,000 to each Plaintiff, totaling  
20 \$10,000 (“Incentive Award”), for their role in obtaining a positive result for the Class and in  
21 consideration of the relatively broad, general release each is required to enter. (See Generally,  
22 Declarations of Jerome Divinity and Gregory Wilson.)

23 Plaintiffs achieved a reasonable result with a Settlement that will pay penalties to participating  
24 Class Members on account of alleged Labor Code violations. The result warrants a reasonable fee. In re  
25 Heritage Bond Litig., 2005 WL 1594403 at \*19 (C.D. Cal. 2005) (explaining that, in a class action,  
26 “[t]he result achieved is a significant factor to be considered in making a fee award.”) (citing Hensley v.  
27 Eckerhart, 461 U.S. 424, 436 (1983)).

28 California public policy recognizes the importance of deterring the type of misconduct Plaintiffs

1 have alleged in this action. Accordingly, unlike the prevailing “American Rule” in litigation, in which  
2 each party bears its own attorney’s fees, in employment cases of this nature, as well as in civil-rights  
3 cases, antitrust cases, and other unique situations, the law requires that the wrongdoer pay the legal fees  
4 of the prevailing party. California law provides for payment of mandatory attorneys’ fees and costs in  
5 the event of the nonpayment of wages. See Cal. Lab. Code § 218.5. Section 218.5 of the Labor Code  
6 provides for the award of attorneys’ fees in Labor Law cases “to the prevailing party if any party to the  
7 action requests attorney’s fees and costs upon the initiation of the action.” California Labor Code  
8 section 2699(g)(1) provides “[a]ny employee who prevails in any action shall be entitled to an award of  
9 reasonable attorney’s fees and costs.” Cal. Lab. Code § 2699(g)(1). California Labor Code section  
10 226(e) provides that an employee “is entitled to an award of costs and reasonable attorney’s fees.” Cal.  
11 Lab. Code § 226(e). “[S]tatutes governing conditions of employment are to be construed broadly in  
12 favor of protecting employees.” Peabody v. Time Warner Cable, Inc., 59 Cal. 4th 662, 667 (2014);  
13 Lusardi Construction Co. v. Aubry, 1 Cal. 4th 976, 985 (1992); Bureerong v. Uvawas, 922 F. Supp.  
14 1450, 1469 (C.D. Cal. 1996) (“the California law governing wages is remedial in nature and must be  
15 ‘liberally construed’”). So, too, the statutes providing for payment of attorneys’ fees to counsel who  
16 prevail in labor disputes should be construed in a liberal fashion so that high quality counsel will  
17 undertake the substantial risks in cases of this nature.

18 A detailed statement of all the services provided in connection with this application for a fee  
19 award is set forth in the April 21, 2023, Harris Declaration filed herewith. Day-by-day specifics of the  
20 attorneys’ work are set forth in **Exhibit 2** to the Harris Declaration.

## 21 **II. Background**

22 The relevant background facts are provided in the concurrently filed Motion for Final Approval.

## 23 **III. Argument.**

### 24 **A. A Common-Fund Attorneys’ Fee Award Is Appropriate.**

25 Here, Class Counsel has secured a common fund of \$1,339,975 for Plaintiffs and the Class.  
26 “Although American courts . . . have never awarded counsels’ fees as a routine component of costs, at  
27 least one exception to this rule has become well established as the rule itself: that one who expends  
28 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require

1 those passive beneficiaries to bear a fair share of the litigation costs.” Quinn v. State, 15 Cal. 3d 162,  
2 167 (1975); Laffitte v. Robert Half Int’l, Inc., 1 Cal. 5th 480, 486 (2016) (holding that a trial court may  
3 award a fee that is a percentage of a true common fund, regardless of lodestar, and affirming a \$6.3  
4 million fee even though the lodestar was between \$2.9 and \$3.1 million requiring a multiplier of 2.03 or  
5 2.13.)

6 An award of contingent attorney’s fees to counsel is justified under the “common fund” doctrine.  
7 Serrano v. Priest, 20 Cal. 3d 25, 34 (1977). See also Boeing Co. v. Van Gemert, 444 U.S. 472, 478  
8 (1980). An attorney who recovers a common fund for the benefit of persons other than his or her clients  
9 is entitled to a fee from the common fund. Mills v. Electric Auto-Lite Co., 396 U.S. 375, 392–96  
10 (1970); In re Pac. Enterps. Sec. Litig., 47 F. 3d 373, 379 (9th Cir. 1995); In re Activision Sec. Litig., 723  
11 F. Supp. 1373, 1375 (N.D. Cal. 1989); Glendale City Employees’ Ass’n v. City of Glendale, 15 Cal. 3d  
12 328, 341 n.19 (1975) (affirming use of the percentage of fund method: “a litigant who creates a fund in  
13 which others enjoy beneficial rights may require those beneficiaries to pay their fair share of the expense  
14 of litigation.”). It is well-established that the “experienced trial judge is the best judge of the value of  
15 professional services rendered in [the] court . . . .” Serrano, 20 Cal. 3d at 49.

16 The common-fund doctrine is predicated on the principle of preventing unjust enrichment. It  
17 provides that, when a litigant’s efforts create or preserve a fund from which others derive benefits, the  
18 litigant may require the passive beneficiaries to compensate those who created the fund. Both state and  
19 federal courts in California have embraced this doctrine. Serrano, 20 Cal. 3d at 35; See Vasquez v.  
20 Coast Valley Roofing, 266 F.R.D. 482 (E.D. Cal. 2010) (determining that in a wage-and-hour action  
21 putative class-action settlement an award of attorneys’ fees in the amount of **33.3 percent** of the  
22 common fund was appropriate); See also In re Activision Sec. Litig., 723 F. Supp. 1373, 1377–78 (N.D.  
23 Cal. 1989) (stating that “*nearly all* common fund awards range around **30%**”) (emphasis added);  
24 Betancourt v. Advantage Human Resourcing, Inc., No. 14-CV-01788-JST, 2016 WL 344532, at \*9  
25 (N.D. Cal. Jan. 28, 2016) (stating that **34.3%** of the common fund was “fair and reasonable”); Deaver v.  
26 Compass Bank, No. 13-CV-00222-JSC, 2015 WL 8526982, at \*11 (N.D. Cal. Dec. 11, 2015) (awarding  
27 attorney fee award of **33%** of the total settlement amount); Boyd v. Bank of Am. Corp., No. SACV 13-  
28 0561-DOC, 2014 WL 6473804, at \*12 (C.D. Cal. Nov. 18, 2014) (**33.3 %** attorney fee award was

1 appropriate given “the exceptional terms of the Settlement, in both the monetary and non-monetary  
2 relief; the overwhelming support of the class for the settlement; and the considerable risks in  
3 litigation.”); Ching v. Siemens Indus., Inc., No. 11-CV-04838-MEJ, 2014 WL 2926210, at \*7-8 (N.D.  
4 Cal. June 27, 2014) (awarding **30%** of attorney’s fees); Elliott v. Rolling Frito-Lay Sales, LP, No.  
5 SACV 11-01730 DOC, 2014 WL 2761316, at \*10 (C.D. Cal. June 12, 2014) (“Although the case was  
6 resolved very early in litigation, the Court finds that the requested **30%** is a reasonable fee award.”);  
7 Fernandez v. Victoria Secret Stores, LLC, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at \*16  
8 (C.D. Cal. July 21, 2008) (“Considering the circumstances of this litigation, the court concludes that a  
9 **34%** award is fair and reasonable.”); Stuart v. Radioshack Corp., No. C-07-4499 EMC, 2010 WL  
10 3155645, at \*6 (N.D. Cal. Aug. 9, 2010) (awarding **33.3%** the settlement amount in attorney’s fees).  
11 “[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought  
12 negotiations is entitled to considerable weight.” Ellis v. Naval Air Rework Facility, 87 F.R.D. 15, 18  
13 (N.D. Cal.1980) affirmed, 661 F.2d 939 (9th Cir.1981).<sup>2</sup>

14 In the present case, the prerequisite supporting payment of fees by the beneficiaries of the  
15 common fund are satisfied. Under the doctrine, courts have historically and consistently recognized that  
16 class litigation is increasingly necessary to protect the rights of individuals whose injuries, penalties  
17 and/or liquidated damages are too small to economically justify individual representation. In Paul,  
18 Johnson, Alston & Hunt v. Graulty, 886 F. 2d 268, 271 (9th Cir. 1989), the Ninth Circuit embraced this  
19 principle when it stated that “it is well settled that the lawyer who creates a common fund is allowed an  
20 extra reward, beyond that which he has arranged with his client.” Id. at 271.

21 Accordingly, in the determination of a reasonable common-fund fee award, the awarding of  
22 attorneys’ fees is to serve as an economic incentive for counsel to bring class-action litigation in order to  
23 achieve increased access to the judicial system for meritorious claims and to enhance deterrents to  
24 wrongdoing. Accordingly, this case provides remedies to the Settlement Class Members that otherwise

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25  
26 <sup>2</sup> See also Chavez v. Petrissans, Case No. 1:08-cv-00122 LJO GSA, Doc. No. 89 (E.D.Cal. Dec.  
27 15, 2009) (awarding of attorneys’ fees of 33.3 percent of the common fund); Romero v. Producers Dairy  
28 Foods, Inc., No. 1:05-cv-0484-DLB, 2007 WL 3492841, at \* 4 (E.D. Cal. Nov.14, 2007) (ruling that in  
a class-action settlement attorneys’ fees in the amount of 33 percent of common fund were warranted);  
Bond v. Ferguson Enterprises, Inc., No. 1:09-cv-01662-OWW-MJS, 2011 WL 2648879, at \*11 (E.D.  
Cal. June 30, 2011) (approving attorneys’ fees in the amount of 30 percent of the common fund).

1 would have been at public expense, or the employees would never have received payment of the  
2 compensation to which they are entitled.

3 **B. The “Lodestar” Approach.**

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

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

17 The clear teaching of the Supreme Court cases is that that there are two factors that are not to be  
18 considered in establishing the lodestar figure. One of these prohibited factors is the amount of the  
19 recovery achieved on behalf of the client. The two seminal cases are Serrano III and Press v. Lucky  
20 Stores, 34 Cal. 3d 311, 322 (1983). In the first, no monetary recovery at all was sought or awarded. In  
21 the second, the trial court denied attorney’s fees on the explicit basis that only injunctive relief had been  
22 sought and, hence, no fund had been created. The Supreme Court unhesitatingly rejected this approach  
23 and ordered fees awarded on a lodestar basis. Likewise, in Ketchum, there was no monetary recovery  
24 because counsel’s efforts consisted of succeeding in dismissing the Plaintiffs’ abusive lawsuit.

25 The second of the prohibited factors is the actual cost to the client of the attorney’s services. In  
26 the “Serrano series” of opinions, the State Treasurer, challenging the amount of the award, sought  
27 discovery of the actual cost of the attorneys’ services. Denial of such discovery was upheld on the  
28 grounds that it was irrelevant; the only relevant factor is the market rate for the services rendered.

1 Serrano v. Unruh, 32 Cal. 3d 621, 641–42 (1982) (“Serrano IV”). In PLCM, the Supreme Court soundly  
2 rejected a contention that, because the prevailing party was represented by in-house counsel, actual cost  
3 rather than market rate should apply. PLCM, 22 Cal. 4th at 1091. In Ketchum, counsel was proceeding  
4 on a contingent-fee basis because, as the evidence showed, the defendant he was representing could not  
5 afford to compensate him on an hourly basis.

6 The opinion in Ketchum is instructive and binding on a number of other points. First, it  
7 reaffirms the rule that the lodestar figure is calculated by using the prevailing hourly rates for  
8 comparable legal services in the community. Ketchum, 24 Cal. 4th at 1132. Next, it explicitly  
9 recognizes that, in addition to the expertise presumptively enjoyed by the trial-court judge, it is proper to  
10 offer expert opinion by way of declaration or otherwise as to the prevailing rate for the sort of service  
11 rendered. Id. at 1128. It also reaffirms the rule that the lodestar includes hours reasonably spent in  
12 applying for fees and in defending the fee award. Id. at 1133.

13 The lodestar figure is arrived at by a compiling the professional time reasonably spent and the  
14 applicable hourly rate for each attorney. Serrano III, 20 Cal. 3d at 48; Ramos v. Countrywide Loans, 82  
15 Cal. App. 4th 615, 622–23 (2000).

16 Were the courts to limit attorney’s fees to the amount of the recovery, competent counsel would  
17 be prohibited from vigorously representing unpaid employees in cases of this nature. A recalcitrant  
18 employer could, by stonewalling a plaintiff, deprive Plaintiffs’ Counsel of a reasonable fee. Stokus v.  
19 Marsh, 217 Cal. App. 3d 647, 657 (1990). In Stokus, the municipal court, following litigation in an  
20 unlawful-detainer case, awarded \$75,000 in fees. Here, review of the detailed time records of Class  
21 Counsel, in which work is recorded to the tenth of an hour, without block billing, compels a conclusion  
22 that the requested lodestar is appropriate.

### 23 **C. Lodestar Rates Are Market Rates.**

24 The hourly rates to be utilized in establishing the lodestar figure are market rates. This has a  
25 number of important ramifications, and the market-rate principle applies both to attorney’s fees and to  
26 services such as paralegal fees. That the hourly rate to be used in calculating the lodestar is not the  
27 actual cost of the services but is instead the market rate was re-affirmed by the California Supreme  
28 Court in PLCM, in which the Court rejected a contention that, because the services were rendered by in-

1 house counsel, the rate should be based upon the cost to the client. PLCM Grp. v. Drexler, 22 Cal. 4th  
2 1084, 1096 (2000), as modified, (June 2, 2000); see also Serrano IV, 32 Cal.3d 621 (1982), discussed  
3 above. Indeed, the lodestar is established by ascertaining the market rate even where the legal services  
4 were rendered pro bono. Hayes v. Ward, 3 Cal. App. 4th 618, 628 (1992). Likewise, paralegal fees are  
5 to be set at market rate. Sundance v. Mun. Court for the Los Angeles Judicial Dist., 192 Cal. App. 3d  
6 268, 274–75 (1987). In Sundance, the trial court was reversed for declining to award compensation for  
7 850 hours of paralegal time on the ground that it had been volunteered, in other words, that it cost  
8 nothing.

9 Although a trial judge is deemed to possess unique insight into the value of services rendered in  
10 his or her courtroom, this may properly be supplemented by reference to expert testimony, especially as  
11 to the value of services rendered before other judges and in other courtrooms. Mandel v. Lackner, 92  
12 Cal. App. 3d 747, 762 (1979). The relevant community is that in which the court sits, in this case Los  
13 Angeles. The rates used by Class Counsel are within the range of rates recently approved for class  
14 actions. See, e.g., Pierce v. County of Los Angeles, 2012 U.S. Dist. LEXIS 150492, at \*42–52 & n.16  
15 (C.D. Cal. Mar. 2, 2012) (approving rates of up to **\$850**); In re HP Laser Printer Litig., 2011 U.S. Dist.  
16 LEXIS 98759, at \*14–19 (C.D. Cal. Aug. 31, 2011) (approving rates of up to **\$800**); Multi-Ethnic  
17 Immigrant Workers Org. Network v. City of Los Angeles, 2009 U.S. Dist. LEXIS 132269, at \*15–16  
18 (C.D. Cal. June 24, 2009) (approving rates of up to **\$800**); Wang v. Chinese Daily News, Inc., 2008 U.S.  
19 Dist. LEXIS 123824, at \*8–9 (C.D. Cal. Oct. 3, 2008) (approving rates of up to **\$800**), vacated on other  
20 grounds, 132 S. Ct. 74 (2011); In re Schering-Plough Corp. Enhance Sec. Litig., No. 08-397 (DMC)  
21 (JAD), 2013 WL 5505744, at \*58 n.43 (D.N.J. Oct. 1, 2013) (**\$875** per hourly rate for a “very  
22 experienced class action lawyer” characterized as “extremely reasonable, if not a bargain”). These cited  
23 cases found at least five years ago that the rates counsel is now seeking this Court to approve were  
24 reasonable. Rather than employing a multiplier, Class Counsel’s present fee request of represents but a  
25 fraction of the lodestar. The request is reasonable. Moreover, Class Counsel’s rates have been approved  
26 in connection with other class-wide settlements. (Harris Decl. ¶ 8.) This establishes their  
27 reasonableness. See Rutti v. Lojack Corp., 2012 U.S. Dist. LEXIS 107677, at \*30–31 (C.D. Cal. Jul. 31,  
28 2012) (explaining that “[a]ffidavits of the Plaintiff’s attorney and other attorneys regarding prevailing

1 fees in the community, and rate determination in other cases, particularly those setting a rate for the  
2 Plaintiff’s attorney, are satisfactory evidence of the prevailing market rate”) (quoting United  
3 Steelworkers of Am. v. Phelps Dodge Co., 896 F.2d 403, 407 (9th Cir. 1990)).

4 For example, Judge Fitzgerald, in granting final approval to settlement of a hotly contested class  
5 action, found that Harris & Ruble “exercised considerable skill in the litigation of the motion for class  
6 certification, dispositive motions to dismiss, and substantial discovery, and they did so against  
7 experienced, highly skilled opposing counsel and on an entirely contingent basis.” Schroeder v. Envoy  
8 Air, Inc., C.D. Ca. (No. CV 16-4911-MWF, April 22, 2019), p. 12. Further, a fee of 33% of the  
9 recovery was awarded, (id., 12-13,) the district court approving hourly rates as follows: “\$210 for law  
10 clerks and paralegals, \$350 for junior associates, \$750 for senior associates, and between \$500 and \$890  
11 for partners.” Id. 13.

12 **D. The Total Hours Expended Were Reasonably Required.**

13 Class Counsel spent a reasonable number of hours for the work required in this matter, all of  
14 which effort should be considered in making the fee award. Professional time reasonably and  
15 necessarily expended in securing an award of attorney’s fees is subject to reimbursement. Serrano IV,  
16 32 Cal. 3d 621, 624 (1982); Guinn v. Dotson, 23 Cal. App. 4th 262, 270 (1994).

17 **E. The Total Lodestar Dollar Amount.**

18 Plaintiffs achieved an outstanding result with a gross \$1,339,975 settlement, which will pay  
19 wages and penalties to participating Settlement Class Members on account of alleged Labor Code  
20 violations. The total hours and expenses incurred is reasonable for cases of this nature. The total  
21 lodestar in this case is \$357,823 for approximately 476.40 hours of work to date on this case. (Harris  
22 Decl. ¶ 21.) This request amounts to a modest multiplier. The amount requested is reasonable  
23 considering the result obtained for the Settlement Class Members. It also includes an anticipated 25  
24 additional hours of work that will be required after final approval increasing the lodestar by \$15,000  
25 (=25 hours x \$600). Class Counsel is mindful that in California, percentage fee awards generally should  
26 be in some way “anchored” to the lodestar. Lealao v. Beneficial Cal., Inc., 82 Cal. App. 4th 19, 39  
27 (2000), citing Serrano v. Priest, 20 Cal. 3d 25, 49 n.23 (1977).



1           **F.       A Multiplier is Appropriate.**

2           California law provides that while “the unadorned lodestar reflects the general local hourly rate  
3 for a *fee-bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or  
4 any other factors a trial court may consider[.]” Ketchum, 24 Cal. 4th at 1138. “Once the court has fixed  
5 the lodestar, it may increase or decrease that amount by applying a positive or negative ‘multiplier’ to  
6 take into account a variety of other factors, including the quality of the representation, the novelty and  
7 complexity of the issues, the results obtained, and the contingent risk presented.” Laffitte, 1 Cal.5th at  
8 489; see also Ketchum, 24 Cal. 4th at 1132 (noting that court may also consider “the extent to which the  
9 nature of the litigation precluded other employment by the attorneys”). “The purpose of such an  
10 adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines,  
11 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill  
12 justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such  
13 services.” Ketchum, 24 Cal.4th at 1132. “Once the court establishes the lodestar amount, it may  
14 enhance the fee award by a multiplier in order to make an appropriate fee award. (Serrano, 20 Cal. 3d at  
15 48-49; Press, 34 Cal. 3d at 321- 322). Risk multipliers are available under California, and more  
16 commonly, in contingency cases. See Ketchum, 24 Cal. 4th 1122, 1136-37; Greene v. Dillingham  
17 Construction N.A., Inc., 101 Cal. App. 4th 418, 426-29 (2002); Weeks v. Baker & McKenzie, 63 Cal.  
18 App. 4th 1128, 1169-77 (1998); Flannery v. California Highway Patrol, 61 Cal. App. 4th 629 (1998);  
19 Bowman v. City of Berkeley, 131 Cal. App. 4th 173, 177 (2005); see also Mangold v. Cal. Pub. Util.  
20 Comm’n, 67 F.3d 1470, 1478 (9th Cir. 1995). “The contingency adjustment may be made at the  
21 lodestar phase of the court’s calculation or by applying a multiplier to the noncontingency lodestar  
22 calculation (but not both).” Horsford v. Board of Trustees of California State University, 132 Cal. App.  
23 4th 359, 395 (2005). The size of the monetary recovery by itself does not limit the amount of fees.  
24 City of Riverside v. Rivera, 477 U.S. 561 (1986) (\$33,350 damages award; \$245,456 fees award);  
25 Graciano v. Robinson Ford Sales, Inc., 144 Cal. App. 4th 140, 153 (2006); Beaty v. BET Holdings, Inc.,  
26 222 F.3d 607, 612 (9th Cir. 2000). See also Dang v. Cross, 422 F.3d 800, 813 (9th Cir. 2005); Quesada  
27 v. Thomason, 850 F.2d 537, 539-40 (9th Cir. 1988). Enhancement is available for exceptional quality of  
28 representation and results. Pennsylvania v. Delaware Valley Citizens’ Council, 478 U.S. 546 (1986);

1 Wing v. Asarco, Inc., 114 F.3d 986, 989 (9th Cir. 1997) (upholding 2.0 multiplier awarded for quality of  
2 representation and exceptional results, or alternatively because of counsel’s continuing obligations to the  
3 class). Several factors may be considered by the court in determining whether to augment the fee:

- 4 (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting  
5 Them;
- 6 (2) the extent to which the nature of the litigation precluded other employment by the attorneys;
- 7 (3) the contingent nature of the fee award, both from the point of view of eventual victory on the  
8 merits and the point of view of establishing eligibility for an award;
- 9 (4) the result obtained by the litigation;
- 10 (5) any delay in receipt of payment; and
- 11 (6) the public impact of the litigation

12 Serrano, 20 Cal. 3d at 48-49: also see Chavez v. Netflix, Inc., 162 Cal. App. 4th 43, 66 (2008)  
13 (affirming multiplier of 2.5, and citing authority that “multipliers can range from 2 to 4 or even  
14 higher.”); City of Oakland v. Oakland Raiders, 203 Cal. App. 3d 78, 83 (1988) (multiplier of 2.34).  
15 Though all these factors and others can be considered, the contingent nature of a case alone justifies  
16 application of a positive multiplier. See Center for Biological Diversity v. County of San Bernardino,  
17 185 Cal. App. 4th 866, 897 (2010) (affirming 1.5 multiplier based on contingent risk alone). Any one  
18 factor may justify an enhancement. Krumme v. Mercury Ins. Co., 123 Cal. App. 4th 924, 947 (2004).

19 In this case, Class Counsel’s actual lodestar is \$357,823 for 476.40 hours performed through  
20 completion of the mailing of Class Notice and Claim Forms. Class Counsel seeks \$461,603.49 in  
21 attorneys’ fees, or 33.33 percent of the settlement fund. Consequently, Class Counsel seeks payment of  
22 a mere 1.25 times the lodestar. This is on the extremely low side of the range of reasonableness for fee  
23 awards in other class actions. See, e.g., Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 255  
24 (2001) (“Multipliers can range from 2 to 4 or even higher.”); see also City of Oakland v. Oakland  
25 Raiders, 203 Cal. App. 3d 78, 84–85 (1988) (2.34 multiplier); Vizcaino v. Microsoft Corp., 290 F.3d  
26 1043, 1051 (2002) (3.65 multiplier). It is common for attorneys’ fee awards in successful class actions,  
27 calculated on a feespreading basis, to exceed—often by multiples—the lodestar value of the time spent  
28 by counsel. See, e.g., In re Sutter Health Uninsured Pricing Cases, 171 Cal. App. 4th 495, 412 (2009)

1 (affirming that multiplier of 2.52 was “fair and reasonable”); Chavez v. Netflix, Inc., 162 Cal. App. 4th  
2 43, 66 (2008) (affirming award of fees 2.5 times lodestar in consumer class action).

3 1. This Case Presented Novel and Complex Issues, and the Result Achieved by Plaintiffs’  
4 Counsel Warrants a Fee Enhancement.

5 As this Court is no doubt aware this case presented novel and complex issues - even more so  
6 than most wage and hour cases, which are already inherently complex. The novel and complex nature  
7 of this case, together with the skill displayed in litigating these issues favors enhancement of the fee  
8 award. Serrano, 20 Cal. 3d at 49. Particularly because of the paucity of legal authority addressing  
9 Labor code 226(a)(6) for day players in the motion picture industry, this case was more complex and  
10 challenging than any other wage and hour class litigation. To address the legal issues raised by this  
11 case, Plaintiffs were required to synthesize the significant body of law concerning the wage statement  
12 issues.

13 Moreover, Plaintiffs’ litigation has now caused Defendant to reimburse its employees for use of  
14 a personal cellphone as it is a necessary business expense. Workers now receive \$3 per day for  
15 reimbursement of phone expenses. (Harris Decl. ¶ 32.)

16 The lodestar may also be enhanced when “an exceptional effort produced an exceptional  
17 benefit.” Graham v. DaimlerChrysler Corp., 34 Cal. 4th 553, 582 (2004). The extraordinary skill on the  
18 part of Plaintiffs’ counsel is best demonstrated by the exceptional result achieved, facing off against  
19 skilled defense counsel. This exceptional result was only possible because of the exceptional effort of  
20 Plaintiffs’ counsel.

21 2. Representation of Plaintiffs Carried with it the Substantial Risk that Counsel Would Receive  
22 No Compensation for Their Legal Services.

23 Plaintiffs’ attorneys all undertook representation of Plaintiffs in this costly and time-consuming  
24 case on a contingency basis. (Harris Decl. ¶ 26.) It is well established that enhancement of the lodestar  
25 is necessary to account for such risk. See Serrano, 20 Cal. 3d at 49. The “contingent fee compensates  
26 the lawyer not only for the legal services he renders but for the loan of those services. The implicit  
27 interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the  
28 debt of the client to the lawyer) is much higher than that of conventional loans” Ketchum. 24 Cal. 4th

1 at 1132. Legal services provided on a contingent with the hope of being paid upon a favorable litigation  
2 outcome, also inherently involve delay in receipt of payment further justifying an enhancement of  
3 Plaintiffs' lodestar. See Graham, 34 Cal. 4th at 579. Courts have additionally noted that, "an  
4 enhancement of the lodestar amount to reflect the contingency risk is 'one of the most common fee  
5 enhancers'." Bernardi v. County of Monterey 167 Cal. App. 4th 1379, 1399 (2008). More recently, the  
6 California Court of Appeals affirmed the application of a multiplier of 1.5 based solely on the contingent  
7 risk. See Center for Biological Diversity v. County of San Bernardino 185 Cal. App. 4th 866, 897  
8 (2010); see also Nishiki v. Danko Meredith, APC, 25 Cal. App. 5th 883, 898 (2018), review  
9 denied (Nov. 14, 2018) (contingency risk supported application of 1.5 multiplier to lodestar amount).  
10 "The purpose of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial  
11 incentives for attorneys enforcing important constitutional rights into line with incentives they have to  
12 undertake claims for which they are paid on a fee -for -services basis." Ketchum, 24 Cal. 4th at 1132.

13 Here, Plaintiffs' counsel faced a significant risk of receiving no compensation for their work.  
14 Indeed, the actions and remarks of Defendant and their attorneys all show that this case carried  
15 significant risk. Had Defendant's assessment of this case been correct, Plaintiffs' counsel may have  
16 gone uncompensated. Having provided legal services at the substantial risk of not being compensated at  
17 all, Plaintiffs' attorneys should have their lodestar enhanced accordingly.

### 18 3. This Case Precluded Other Employment of Plaintiffs' Counsel.

19 This case and the burden of being responsible for the hundreds of workers throughout the State,  
20 has demanded a tremendous expenditure of time, particularly for a small firm like Harris & Ruble. For  
21 that reason too, Plaintiffs' lodestar should be enhanced by a multiplier.

### 22 4. Plaintiffs' Litigation Has Had a Broad Public Impact.

23 Finally, Plaintiffs' fee award also should be increased to reflect the broad impact this case has  
24 had. California's Supreme Court implicitly found that it would be appropriate to enhance an award by  
25 means of a multiplier 'to reflect the broad public impact of the results obtained. Weeks v. Baker &  
26 McKenzie, 63 Cal. App. 4th 1128, 1172 (1998); Coalition for L.A. County Planning Etc. Interest v. Bd.  
27 of Supervisors, 76 Cal. App. 3d 241, 251 (1977) (affirming multiplier of fee award based in part on  
28 "importance of the suit and the public nature of plaintiffs position). Specifically, the California Supreme

1 Court has recognized the public interest in enforcing California’s labor laws. Sav-On Drug Stores, Inc.  
2 v. Superior Court, 34 Cal.4th 319, 340 (2004). Plaintiffs’ litigation has vindicated the hundreds of  
3 workers’ rights under California labor law. It appears that other entertainment studios, in addition to  
4 Defendant Warner Bros have now started to reimburse for business use of phones as well. (Harris Decl.  
5 ¶ 32.) In light of the broad public impact of this case, and the importance of the rights vindicated, a  
6 significant lodestar multiplier is appropriate.

7 **G. The Award Should Include All Reasonably Incurred Costs & Expenses.**

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

15 The Harris Declaration filed and served herewith sets out such expenses in detail. (Harris Decl.,  
16 Exs. 3-4.) The request for reimbursement of \$14,945.16 in costs is reasonable considering that it is  
17 slightly less than all costs to date and that the Class has secured a good result, so far.

18 **H. The Court Should Award Plaintiffs A \$5,000 Incentive Award, Each**

19 The Settlement provide for an additional payment in the amount of up to \$5,000 to Plaintiff on  
20 account of the services rendered to the Settlement Class in bringing this litigation, the time devoted, as  
21 well as the broad release made in connection with the Settlement. Incentive awards “are not uncommon  
22 and can serve an important function in promoting class action settlements.” Sheppard v. Consol. Edison  
23 Co. of N.Y., Inc., 2002 U.S. Dist. LEXIS 16314 at \*16 (E.D.N.Y. filed Aug. 1, 2002). “Courts  
24 routinely approve incentive awards to compensate named plaintiffs for the services they provided and  
25 the risks they incurred during the course of the class action litigation.” In re S. Ohio Corr. Facility, 175  
26 F.R.D. 270, 272 (S.D. Ohio 1997), rev’d on other grounds, 191 F.3d 453 (6th Cir. 1999). It is  
27 appropriate to provide a payment to class representatives for his or her services to the class. Van Vracken  
28 v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995); Wang v. Chinese Daily News, Inc.,

1 231 F.R.D. 602, 614 (C.D. Cal. 2005) (“Proceeding by means of a class action avoids subjecting each  
2 employee to the risks associated with challenging an employer”); Bogosian v. Gulf Oil Corp., 621 F.  
3 Supp. 27, 32 (E.D. Pa. 1985); St. Marie v. Eastern R.R. Ass’n., 72 F.R.D. 443, 449 (S.D.N.Y. 1976)  
4 (“The risks entailed in suing one’s employer are such that the few hardy souls who come forward should  
5 be permitted to speak for others when the vocal ones are otherwise fully qualified”), rev’d on other  
6 grounds, St. Marie v. Eastern R.R. Ass’n., 650 F.2d 395 (2d Cir. 1981).

7 Under the terms of the Settlement, Class Counsel requests an Incentive Award for Plaintiffs of  
8 \$5,000, each, for the extensive efforts in bringing and prosecuting this case, which is in addition to an  
9 individual settlement payment. According to the Ninth Circuit, “[i]ncentive awards are fairly typical in  
10 class action cases” and “are intended to compensate class representatives for work done on behalf of [a]  
11 class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
12 recognize their willingness to act as a private attorney general.” Rodriguez v. West Publ’g Corp., 563  
13 F.3d 948, 958–59 (9th Cir. 2009) (emphasis removed), vacated on other grounds, 688 F.3d 645, 660 (9th  
14 Cir. 2012). Courts should consider “the risk to the class representative in commencing suit, both  
15 financial and otherwise,” as well as “the amount of time and effort spent by the class representative” and  
16 “the personal benefit (or lack thereof) enjoyed by the class as a result of the litigation.” Smith v. CRST  
17 Van Expedited, Inc., 2013 U.S. Dist. LEXIS 6049, at \*16 (S.D. Cal. filed Jan. 14, 2013) (quoting Van  
18 Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995)) (internal quotations omitted).

19 Here, all of the factors support approving the award. First, as a direct result of Plaintiffs’ having  
20 brought this suit, participating Settlement Class Members will receive substantial payments. Second,  
21 Plaintiffs expended considerable time conferring with Class Counsel, providing factual background and  
22 support, analyzing and provided data, and consulting with Counsel during settlement discussions,  
23 (Divinity Decl. ¶ 4-7; Wilson Decl. ¶ 4-7.) Third, Plaintiffs “undertook the financial risk that, in the  
24 event of a judgment in favor of [defendant] in this action, [the named Plaintiffs] could have been  
25 personally responsible for any costs awarded in favor of [defendant].” Vasquez v. Coast Valley  
26 Roofing, Inc., 266 F.R.D. 482, 491 (E.D. Cal. 2010).

27 Indeed, incentive awards are particularly appropriate in employment class actions, where they  
28 help to alleviate the “stigma upon future employment opportunities for having initiated an action against

1 a former employer.” Campbell v. First Investors Corp., 2012 WL 5373423, at \*8 (S.D. Cal. filed Oct.  
2 29, 2012). The requested incentive award is in line with the current trend for such awards and *below* the  
3 range sometimes awarded in similar cases. See Smith, 2013 U.S. Dist. LEXIS, at \*17–18 (noting that  
4 incentive awards range from \$18,500 to \$50,000).

5 In light of Plaintiffs’ willingness to come forward on behalf of the Class, and in light of their  
6 efforts in advancing the litigation, the proposed payment is reasonable. Plaintiffs sought out and  
7 obtained the services of counsel, participated in discovery, and assisted throughout the negotiation of the  
8 settlement and bringing the case to closure. In doing so, he has successfully brought and maintained  
9 claims that may have never been brought. See Crab Addison, Inc. v. Superior Court, 169 Cal. App. 4th  
10 958, 971 (2008) (“Current employees suing their employers run a greater risk of retaliation. For them,  
11 individual litigation may not be a viable option . . . . [In addition], employees may be unaware of the  
12 violation of their rights and their right to sue.”).

13 **IV. Conclusion.**

14 Plaintiffs respectfully request that this Court award attorney fees in the amount of \$446,658.33  
15 and reimbursement of out-of-pocket costs in the sum of \$14,945.16, a total of \$461,603.49. Further, it is  
16 respectfully requested that the Court award an Incentive Award to Plaintiffs in the amount of \$5,000,  
17 each.

18 DATED: April 21, 2023

HARRIS & RUBLE



Alan Harris  
Attorney for Plaintiffs

1 **PROOF OF SERVICE**

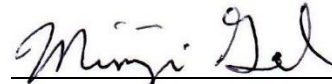
2 I am an attorney for Plaintiff(s) herein, over the age of eighteen years, and not a party to the within  
3 action. My business address is 655 N. Central Ave., 17<sup>th</sup> Floor, Glendale, CA 91203. On April 21,  
2023, I served the within document(s):

4 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES,  
5 REIMBURSEMENT OF COSTS AND INCENTIVE AWARD; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT THEREOF**

6 Electronic Service: Based on a court order, I cause the above-entitled document(s) to be served  
7 through Case Anywhere addressed to all parties appearing on the electronic service list for the above-  
entitled case and on the interested parties in this case:

8 SETH E. PIERCE  
9 sep@msk.com  
STEPHEN A. ROSSI  
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13 I declare under penalty of perjury that the above is true and correct. Executed on April 21, 2023, at  
14 Los Angeles, California.

15   
16 Min Ji Gal