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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 LOUIS GEIGER, CHRISTINA
13 GOMEZ, AMANDA HAYNES,
14 PRISCILLA ESCARCEGA, and GARA
15 BOOTEN, Individually and on Behalf of
16 All Others Similarly Situated,

17 Plaintiffs,

18 v.

19 CHARTER COMMUNICATIONS,
20 INC., CHARTER
21 COMMUNICATIONS, LLC,
22 SPECTRUM MANAGEMENT
23 HOLDING COMPANY, LLC, and
24 TWC ADMINISTRATION LLC,

25 Defendants.

CASE NO. 2:18-CV-00158-DMG-GJS

Hon. Dolly M. Gee

**PLAINTIFFS' NOTICE OF
UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
ATTORNEYS' FEES AND COSTS**

Date: January 29, 2021

Time: 10:00 a.m.

Courtroom: 8C

1 TO THE HONORABLE COURT, DEFENDANTS, AND THEIR COUNSEL OF
2 RECORD:

3 PLEASE TAKE NOTICE that on January 29, 2021, at 10:00 a.m., or as soon
4 thereafter as the matter may be heard in Courtroom 8C of the United States District
5 Court for the Central District of California, located at 350 West 1st Street, Los
6 Angeles, California 90012, Plaintiffs Louis Geiger, Christina Gomez, Amanda
7 Haynes, and Gara Booten, individually and on behalf of all others similarly situated
8 (collectively, "Plaintiffs") will, and hereby do, move this Court for an order granting
9 Plaintiffs' application for attorneys' fees and costs.

10 The Motion will be based on this Notice; the Memorandum of Points and
11 Authorities served and filed herewith; the Declaration of Rhonda H. Wills, filed
12 herewith; all pleadings, papers, and records on file; and such oral and documentary
13 evidence as may be presented prior to and at the hearing on this matter.

14
15 DATED: December 7, 2020

Respectfully submitted,

16 /s/ Rhonda H. Wills

17 Rhonda H. Wills

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PROOF OF SERVICE

I certify pursuant to 28 U.S.C. § 1746 that on December 7, 2020, I served the foregoing document as follows:

Via ECF (Electronic Filing)
J. SCOTT CARR
JOSEPH W. OZMER II
KRISTAPOR VARTANIAN
ATTORNEYS FOR DEFENDANTS

/s/ Rhonda H. Wills
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ATTORNEY FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
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LOUIS GEIGER, CHRISTINA
GOMEZ, AMANDA HAYNES,
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BOOTEN, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

CHARTER COMMUNICATIONS,
INC., CHARTER
COMMUNICATIONS, LLC,
SPECTRUM MANAGEMENT
HOLDING COMPANY, LLC, and
TWC ADMINISTRATION LLC,

Defendants.

CASE NO. 2:18-CV-00158-DMG-GJS

Hon. Dolly M. Gee

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED
MOTION FOR ATTORNEYS'
FEES AND COSTS**

Date: January 29, 2021

Time: 10:00 a.m.

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I. INTRODUCTION

On October 16, 2020, this Court preliminarily approved the class action settlement reached in this matter. As a result of the diligent prosecution of the claims for the named Plaintiffs, Class Members, and PAGA Aggrieved Employees, Charter Communications, Inc., Charter Communications, LLC, Spectrum Management Holding Company, LLC, and TWC Administration LLC, (hereinafter, “Defendants” or “Charter”) has agreed to make payment of a \$499,000.00 non-reversionary gross settlement amount to resolve the claims of (a) 50 Class Members, including Class Representatives Louis Geiger, Christina Gomez, Amanda Haynes, and Gara Booten; and (b) 202 PAGA Aggrieved Employees.

Other than trial, nearly every aspect of complex litigation has been conducted in this action: motion to amend pleadings, depositions (named plaintiffs, fact witnesses, and corporate representative), numerous sets of written discovery, motions for Rule 23 class certification and FLSA conditional certification, motion for approval of notice forms, motion to dismiss Rule 23 class members and preclude notice to FLSA collective action members, *ex parte* application for an order to stay enforcement of order denying motion to dismiss, motion for reconsideration of order denying motion to dismiss and preclude notice, summary adjudication motion, and decertification motions.¹

This Action has been actively and heavily litigated. Class Counsel has conducted extensive investigation in this case, including interviewing witnesses, propounding extensive written discovery including interrogatories and multiple sets of requests for production of documents, reviewing extensive thousands of pages of documents and records produced by Defendants, and taking numerous depositions of employees of Defendants.²

¹ See Declaration of Rhonda H. Wills (“Wills Decl.”), ¶ 10.

² See Wills Decl., ¶ 12.

1 Class Counsel seeks to recover attorneys' fees in an amount not to exceed
2 \$199,600.00, which is 40% of the value of the \$499,000.00 Gross Settlement Amount.
3 Class Counsel also seeks reimbursement of actual litigation costs and expenses in the
4 amount of \$29,074.92. Class Counsel's requested attorneys' fees are well within the
5 accepted range of attorneys' fees. *See e.g., Cicero v. DirecTV, Inc.*, No. EDCV 07-
6 1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) ("case law surveys suggest
7 that 50% is the upper limit, with 30-50% commonly being awarded in case in which
8 the common fund is relatively small."); *Flores v. TFI Int'l Inc.*, No. 12-cv-05790-JST,
9 2019 WL 1715180, at *10-11 (N.D. Cal. Apr. 17, 2019) (approving attorneys' fees of
10 \$2,900,000, representing "61 percent of the total amount paid by Defendants" in a
11 FLSA collective action settlement, explaining that "the award is reasonable under the
12 facts of this case"); *Rivas v. BG Retail, LLC*, No. 16-cv-06458-BLF, 2020 U.S. Dist.
13 LEXIS 8712, at *23-24 (N.D. Cal. Jan. 16, 2020) (concluding that plaintiffs' counsel's
14 requested attorneys' fees of "approximately 45% of the total recovery" in a wage and
15 hour class action settlement were reasonable); *Gomez v. H & R Gunlund Ranches,*
16 *Inc.*, No. CV F 10-1163 LJO MJS, 2011 WL 5884224, at *5 (E.D. Cal. Nov. 23, 2011)
17 (approving fees at 45% of the settlement fund).

18 This case was actively and heavily litigated for nearly three years, and Class
19 Counsel's aggregate lodestar is currently almost \$1 million, well above the requested
20 attorneys' fee award.³ Due to the high stakes involved in terms of both certification
21 and merits issues, wage and hour class actions are vigorously defended, and this case
22 was no exception. In fact, as this Honorable Court previously recognized in issuing an
23 order to show cause to Defendants in this Action,

24 Defendants passed up the opportunity to raise the arbitration
25 issue at the most opportune time, the certification stage, and
26 elected instead to file a procedurally uncomfortable MTD
27

28 ³ See Wills Decl., ¶ 24.

1 on the date the Court had ordered them to turn over class
2 lists. In doing so, Defendants omitted from their opening
3 and reply briefs two of the arguments against class notice on
4 which it now relies, including their most persuasive
5 argument. These decisions, taken together, have generated
6 a full round of MTD briefing, ex parte proceedings to stay
7 the May 14 Order, and another full round of MFR briefing.
8 Defendants are therefore ordered to show cause why the
9 Court should not order them to cover Plaintiffs' reasonable
10 costs and attorneys' fees associated with litigating the MTD,
11 the ex parte application, and the MFR.

12 [Doc. 97, pp. 10, 11].

13 To ensure that this case was properly prosecuted, Class Counsel was also
14 precluded from taking on other cases, and in fact had to turn away other meritorious
15 fee generating cases.⁴ This case was accepted on a contingency basis, with Class
16 Counsel advancing significant funding for litigation expenses over nearly three years,
17 including substantial deposition costs, mediator fees, legal research fees, and
18 significant printing, copying and scanning costs with respect to the thousands of
19 records produced by Defendants.⁵

20 Class Counsel's requested attorneys' fees are consistent with the legal
21 marketplace for wage and hour class actions of this nature, and Class Counsel's
22 requested fees are very reasonable in order to provide adequate compensation for
23 Class Counsel's skill and diligence in securing a valuable settlement for the Class and
24 incurring the risks taken in this action without any guarantee of success. The requested
25 fees are justified by the industrious work performed by Class Counsel, the benefits
26

27 _____
28 ⁴ See Wills Decl., ¶ 25.

⁵ See Wills Decl., ¶ 25.

1 achieved for the Class Members and PAGA aggrieved employees, and the risks
2 undertaken to bring about this result.

3 The proposed payments for attorneys' fees and litigation expenses in this Action
4 are very reasonable, especially in light of the fact that the Settlement's monetary relief
5 for the Class Members' overtime and wage statement claims constitutes an
6 approximate full recovery of each Class Members' unpaid overtime and wage
7 statement penalties.⁶ The Settlement will also require payment of a collective total of
8 \$88,943.75 to Aggrieved Employees and the LWDA to satisfy Plaintiffs' PAGA
9 claim, which represents a substantial percentage (17.82%) of the total gross Settlement
10 Amount.

11 Through this motion, Class Counsel are only requesting 21.25% of their
12 adjusted lodestar of \$939,210, which was calculated after the exercise of considerable
13 billing judgment.⁷ *Muniz v. UPS*, 738 F.3d 214 (9th Cir. Dec. 5, 2013). The adjusted
14 lodestar does not include time spent preparing this motion, time anticipated to be spent
15 preparing Plaintiffs' motion for final approval of settlement, and time anticipated to
16 be spent preparing for and attending the final approval hearing or additional time
17 which will be necessary to aid in the administration of the claims.⁸

18 Finally, the requested fee award of \$199,600.00 is well within the range of
19 reasonableness because the efforts expended by counsel were reasonably necessary to
20 achieve the results obtained through this Settlement. Class Counsel conducted
21 intensive factual and legal research to substantiate Plaintiffs' claims in this action,
22 drawing from Class Counsel's experience in wage and hour class actions, and Class
23 Counsel was involved in active litigation of this case for nearly three years.⁹
24 Moreover, this case presented unique challenges for Plaintiffs that made the outcome
25

26 ⁶ See Wills Decl., ¶ 26.

27 ⁷ See Wills Decl., ¶ 40.

28 ⁸ See Wills Decl., ¶ 43.

⁹ See Wills Decl., ¶ 27.

1 uncertain and risky, such as, the complexity and likely duration of further litigation,
2 the risk of maintaining class action status through trial, and the affirmative defenses
3 raised by Defendants which required substantial factual and legal analysis.¹⁰

4 Despite these challenges, Class Counsel was able to achieve a substantial result
5 for the 50 Class Members, including Class Representatives Louis Geiger, Christina
6 Gomez, Amanda Haynes, and Gara Booten, and 202 PAGA Aggrieved Employees.
7 In fact, the Settlement's monetary relief for the Class Members' overtime and wage
8 statement claims constitutes an approximate full recovery of each Class Members'
9 unpaid overtime and wage statement penalties.¹¹ The Settlement will also require
10 payment of a collective total of \$88,943.75 to Aggrieved Employees and the LWDA
11 to satisfy Plaintiffs' PAGA claim, which represents a substantial percentage (17.82%)
12 of the total gross Settlement Amount.

13 For the foregoing reasons, Plaintiff respectfully requests that the Court award
14 the requested attorneys' fees in the amount of \$199,600 and costs in the amount of
15 \$29,074.92. The requested attorneys' fees represent a mere 21.25% of Class Counsel's
16 adjusted lodestar of \$939,210.¹²

17 II. LEGAL ANALYSIS

18 A. The Attorneys' Fees Requested in Conjunction with the Prosecution and 19 Settlement of Claims Are Reasonable.

20 1. The Requested Fee Is Reasonable Under the Lodestar or Common 21 Fund Methods.

22 For Class Counsel's efforts in achieving the proposed Settlement for the benefit
23 of the Class Members and PAGA Aggrieved Employees, Class Counsel seeks,
24 pursuant to the Settlement, attorney's fees in the amount of \$199,600.00. This amount
25
26

27 ¹⁰ See Wills Decl., ¶ 28.

28 ¹¹ See Wills Decl., ¶ 26.

¹² See Wills Decl., ¶ 40.

1 is reasonable when considered under the lodestar method or common fund method for
2 analyzing a fee request.

3 The “lodestar method” is appropriate in class actions brought under fee-shifting
4 statutes, where the legislature has authorized the award of fees to ensure compensation
5 for counsel undertaking socially beneficial litigation. *See Staton v. Boeing*, 327 F.3d
6 938, 965 (9th Cir. 2003); *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods.*
7 *Liability Litig.*, 55 F.3d 768, 821 (3d Cir.1995). Here, Plaintiffs’ Complaint sought
8 attorney’s fees under the fee-shifting statutes of the California Labor Code and the
9 Fair Labor Standards Act, and therefore Class Counsel is entitled to compensation for
10 the relief they achieved for the Class Members and Aggrieved Employees. [Doc. 26
11 (Plaintiffs’ First Amended Complaint), p. 35].

12 The lodestar figure is calculated by multiplying the number of hours the
13 prevailing party reasonably expended on the litigation (as supported by adequate
14 documentation) by a reasonable hourly rate for the region and for the experience of
15 the lawyer. *Staton v. Boeing*, 327 F.3d 938, 965 (9th Cir. 2003). Though the lodestar
16 figure is “presumptively reasonable,” *Cunningham v. Cnty. of Los Angeles*, 879 F.2d
17 481, 488 (9th Cir.1988), the court may adjust it upward or downward by an
18 appropriate positive or negative multiplier reflecting a host of “reasonableness”
19 factors, “including the quality of representation, the benefit obtained for the Class, the
20 complexity and novelty of the issues presented, and the risk of nonpayment,” *Hanlon*,
21 150 F.3d at 1029 (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th
22 Cir.1975)). Foremost among these considerations, however, is the benefit obtained for
23 the Class. *See Hensley v. Eckerhart*, 461 U.S. 424, 434-36 (1983); *McCown v. City of*
24 *Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (ultimate reasonableness of the fee “is
25 determined primarily by reference to the level of success achieved by the plaintiff”).

26 Where a settlement produces a common fund for the benefit of the entire class,
27 courts have discretion to employ either the lodestar method or the percentage-of-
28 recovery method. *In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010)

(citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir.2000)). Because the benefit to the class is easily quantified in common-fund settlements, the Ninth Circuit has allowed courts to award attorneys a percentage of the common fund in lieu of calculating the lodestar. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d. 935, 942 (9th Cir. 2011). Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result. *See In re Coordinated Pretrial Proceedings*, 109 F.3d 602, 607 (9th Cir. 1997) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294-95 (9th Cir. 1994)).

2. Class Counsel’s Lodestar Figure Supports the Requested Fee Award.

The lodestar method requires the Court to determine a “touchstone” or lodestar figure based on the amount of time reasonably spent on the litigation multiplied by the reasonable hourly compensation rates for each attorney. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 965 (9th Cir. 2003); *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (Cal. 2014). Here, Class Counsels’ aggregate lodestar amount is \$939,210.¹³ This amount has been determined by multiplying counsels’ reasonably incurred work time by counsels’ applicable hourly rates.¹⁴

a. The Work Class Counsel Performed and the Number of Hours Spent on this Matter Are Reasonable.

Generally, hours are reasonable if they were “reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client.” *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *see also Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (Cal. 2001) (fee award should be “fully compensatory [and] absent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably

¹³ *See* Wills Decl., ¶ 40.

¹⁴ *See* Wills Decl., ¶ 41.

1 spent.”); *Hensley*, 461 U.S. at 435-36; *Caudle v. Bristow Optical Co., Inc.*, 224 F.3d
2 1014, 1028 (9th Cir. 2000); *Cabrales v. Cnty. of Los Angeles*, 935 F.2d 1050, 1052-
3 53 (9th Cir. 1991).

4 As set forth in the Wills Declaration, after exercising billing discretion, Class
5 Counsel’s office expended a total of 2,256.9 hours of time prosecuting and settling the
6 claims in this matter.¹⁵ This time does not include the time spent preparing the instant
7 fee motion, including the Wills Declaration summarizing the fees and costs and
8 reviewing the billing statement and exercising billing judgment.¹⁶ Attorney testimony
9 as to the number of hours worked on a case is sufficient evidence to support an award
10 of attorneys’ fees. *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal.
11 App. 3d 465, 470-471, 478 (1984); *Margolin v. Regional Planning Commission*, 134
12 Cal. App. 3d 999, 1006 (1982).

13 This case was actively and heavily litigated for nearly three years, and Class
14 Counsel’s aggregate lodestar is well above the requested attorneys’ fee award.¹⁷ Due
15 to the high stakes involved in terms of both certification and merits issues, wage and
16 hour class actions are vigorously defended, and this case was no exception. As this
17 Honorable Court previously recognized in issuing an order to show cause to
18 Defendants in this Action,

19 Defendants passed up the opportunity to raise the arbitration
20 issue at the most opportune time, the certification stage, and
21 elected instead to file a procedurally uncomfortable MTD
22 on the date the Court had ordered them to turn over class
23 lists. In doing so, Defendants omitted from their opening
24 and reply briefs two of the arguments against class notice on
25 which it now relies, including their most persuasive
26

27 ¹⁵ See Wills Decl., ¶¶ 40, 41.

28 ¹⁶ See Wills Decl., ¶ 43.

¹⁷ See Wills Decl., ¶ 24.

1 argument. These decisions, taken together, have generated
2 a full round of MTD briefing, ex parte proceedings to stay
3 the May 14 Order, and another full round of MFR briefing.
4 Defendants are therefore ordered to show cause why the
5 Court should not order them to cover Plaintiffs' reasonable
6 costs and attorneys' fees associated with litigating the MTD,
7 the ex parte application, and the MFR.

8 [Doc. 97, pp. 10, 11].

9 Plaintiffs' counsel has submitted detailed summaries that show the hours
10 worked, the tasks undertaken and the hourly rates applied during this litigation.¹⁸ An
11 attorney's time records constitute prima facie evidence of reasonableness. *Hadley v.*
12 *Krepel*, 167 Cal. App. 3d 677, 682 (1985). Class Counsel is entitled to compensation
13 for "all the hours reasonably spent" prosecuting and settling this case. *Ketchum v.*
14 *Moses*, 24 Cal. 4th 1122, 1133 (2001).

15 All of the time submitted by Class Counsel on this case was required by the
16 nature and circumstances of the vigorous defenses raised by Defendants. Defendants,
17 for example, contested that it had unlawful policies requiring off-the-clock work. To
18 that end, a significant amount of time was spent on discovery, investigation and
19 analysis of the evidence and legal authority relating to the claims and defenses. This
20 investigation necessitated the interviews of numerous witnesses regarding the off-the-
21 clock policies because no accurate records could reflect this time. Although this
22 process is extremely time consuming, Class Counsel undertook these efforts to ensure
23 that there was a proper analysis completed and an accurate damages analysis could be
24 presented to the mediator and Defendants. Had Class Counsel not been diligent in
25 performing all this work, the Class would not have benefitted from the proposed
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28 ¹⁸ See Wills Decl., ¶ 40, 41; Ex. A to Wills Decl.

1 Settlement as they did from the tenacity and skill utilized by Class Counsel to obtain
2 the required evidence and perform the required analysis.

3 **b. The Hourly Rates Upon Which Plaintiffs' Lodestar**
4 **Calculations Are Based Are Reasonable.**

5 Class Counsel is entitled to compensation at hourly rates that reflect the
6 reasonable market value of the services performed. *See Serrano v. Unruh*, 32 Cal. 3d
7 621, 643 (1982). Reasonable rates are those charged by private attorneys of
8 comparable skill, reputation, and experience for similar litigation, as measured by the
9 prevailing rates charged by corporate attorneys of equal caliber. *See, e.g., Bihun v.*
10 *AT&T Information Systems*, 13 Cal. App. 4th 976, 997 (1993); *Stokus v. Marsh*, 217
11 Cal. App. 3d 647, 657 (1990) (citing *Hadley v. Krepel*, 167 Cal. App. 3d 677, 682
12 (1985) ("In determining what constitutes a reasonable compensation for an attorney
13 who has rendered services in connection with a legal proceeding, the court may and
14 should consider 'the nature of the litigation, its difficulty, the amount involved, the
15 skill required and the skill employed in handling the litigation, the attention given, the
16 success of the attorney's efforts, his learning, his age, and his experience in the
17 particular type of work demanded, the intricacies and importance of the litigation, the
18 labor and necessity for skilled legal training and ability in trying the cause, and the
19 time consumed.'")).

20 The relevant community is generally defined as "the forum in which the district
21 court sits." *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997). Declarations
22 regarding the prevailing market rate in the relevant community are sufficient to
23 establish a reasonable hourly rate. *See Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th Cir.
24 1998). Courts also routinely use survey data in assessing the reasonableness of
25 attorneys' hourly rates. *See, e.g. Syers Properties III, Inc. v. Rankin*, 226 Cal. App.
26 4th 691, 695-96 (Cal. Ct. App. 2014); *Fish v. St. Cloud State Univ.*, 295 F.3d 849, 852
27 (8th Cir. 2002); *American Petroleum Inst. v. United States EPA*, 72 F.3d 907, 912
28

(D.C. Cir. 1996); *Martin v. University of South Alabama*, 911 F.2d 604, 607 (11th Cir. 1990).

Based on the experience of counsel as reflected in appropriate employment law market rates, the hourly rates requested are: \$700 per hour for partner time; \$275 - \$375 per hour for time spent by associates; and a rate of \$175 per hour for law clerk work.¹⁹ The hourly rates charged by Class Counsel are commensurate with the rates charged by other law firms and are well-within the market rates for similar experience and skill.²⁰

3. In Determining Reasonableness of Class Counsel's Fees, the Appropriateness of a Multiplier Should be Considered.

Although Class Counsel is only asking for 21.25% of their adjusted lodestar, it is common that courts will often apply a multiplier to the class counsel's lodestar in contingency class action cases such as this to enhance fees where appropriate. Factors to consider when determining whether to enhance a fee award include the "results obtained," preclusion of other employment, the significant risks incurred in a contingency fee arrangement, and public service. Indeed, California's policy of encouraging multipliers or enhancements to the lodestar vindicates public policies. *Blum v. Stenson*, 465 U.S. 886, 888 (1984). The lodestar-adjustment method is intended to mirror the legal marketplace so that contingency fee cases are properly analyzed considering the additional risks incurred by Class Counsel as well as the benefits that they provide in taking cases from clients who may otherwise be unable to pay a normal hourly rate for their services. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (Cal. 2001).

Courts routinely award multipliers in successful wage and hour (and other) class actions in a case such as this one where Class Counsel was faced with a great amount of risk in bringing such a class action through a contingency fee arrangement where

¹⁹ See Wills Decl., ¶ 41.

²⁰ See Wills Decl., ¶¶ 37-39.

1 the attorneys were involved in intense investigation of claims prior to settlement and
2 Class Counsel brought about a significant result for the Class. *See e.g.*, Conte &
3 Newberg, Newberg on Class Actions, § 14:3 at 14 (multipliers of up to 4 are common).

4 **a. Contingent Risk and Preclusion of Other Work.**

5 Most employment litigation plaintiffs are unable to pay their attorneys on an
6 hourly basis and thus can obtain representation only if they can find counsel who are
7 willing to accept their case on a contingent basis and to advance either all or a
8 significant portion of the costs. At the same time, most plaintiffs' attorneys are neither
9 able nor willing to accept such contingent cases unless they can anticipate that, if they
10 ultimately prevail after time-consuming and expensive litigation, they will recover a
11 fee greater than they would have recovered if paid on an hourly basis. For this reason,
12 courts have long recognized "contingent risk" as a factor supporting an upward
13 enhancement of the lodestar. *See, e.g., Serrano v. Priest*, 20 Cal. 3d 25, 49 (Cal. 1977);
14 *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (Cal. Ct. App. 1991). The
15 purpose of the contingent risk enhancement is "to compensate for the risk of loss
16 generally in contingency cases as a class" (*Beasley v. Wells Fargo Bank*, 235 Cal.
17 App. 3d 1407, 1419 (Cal. Ct. App. 1991) (emphasis omitted)), and to entice competent
18 counsel to undertake difficult public interest cases, despite the risks inherent in such
19 cases. The simple fact is that despite the most vigorous and competent efforts, success
20 is never guaranteed. Furthermore, class counsel not only must turn away other
21 income-generating opportunities but must take on a substantial risk of "never
22 receiving compensation at all." *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1217-
23 18 (Cal. Ct. App. 2008) (emphasis in the original). "A contingent fee must be higher
24 than a fee for the same legal services paid as they are performed" because it
25 "compensates the lawyer not only for the legal services he renders but for the loan of
26 those services." *Id.* "If he is paid no more, competent counsel will be reluctant to
27 accept fee award cases." *Id.* Applying these standards, courts routinely awarded fee
28 enhancements. Conte & Newberg, Newberg on Class Actions, § 14:3 at 14

(multipliers of up to 4 are common); *see also, e.g., Wershba v. Apple Computer Inc.*, 91 Cal. App. 4th 224, 255 (Cal. Ct. App. 2001) (noting that multipliers “can range from 2 to 4 or even higher.”); *Coalition for Los Angeles County Planning v. Board of Supervisors*, 76 Cal. App. 3d 241 (Cal. Ct. App. 1977) (more than twice the submitted lodestar); *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407 (Cal. Ct. App. 1991).

The same is true in the instant case where Class Counsel was subjected to the contingent risk in this all-or-nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate. This commitment had a significant impact on Class Counsel’s ability to accept other work and to litigate other cases during that time period. Taking on this case meant that Class Counsel had to turn away other fee-generating work.²¹ This case consumed a significant portion of Class Counsel’s billable hours in that 2,256.9 hours were spent on this case by the firm’s attorneys and law clerks.²² Having several of the firm’s attorneys and law clerks tied up in a case that produced no income for over three years (and, in fact, required the outlay of \$29,074.92 in costs),²³ impacts the firm’s finances, and the firm’s ability to take and work on other cases that could have provided a more certain and reliable stream of income. Class Counsel successfully obtained substantial monetary relief for the Class Members and PAGA Aggrieved Employees, and Class Counsel has already been working for over three years without payment.

b. Results Obtained.

As a result of the Settlement, Defendants will pay a total of: \$96,556.25 to the 50 Overtime Class Members, including the four Class Representatives; \$53,900.00 to the 18 Wage Statement Class Members; and a total of \$88,943.75 to the 202 PAGA Aggrieved Employees and the California Labor & Workforce Development Agency (“LWDA”). The Settlement’s monetary relief for the Class Members’ overtime and

²¹ See Wills Decl., ¶ 25.

²² See Wills Decl., ¶¶ 40, 41.

²³ See Wills Decl., ¶ 45.

1 wage statement claims constitutes an approximate full recovery of each Class
2 Members' unpaid overtime and wage statement penalties.²⁴ The Settlement will also
3 require payment of a collective total of \$88,943.75 to the PAGA Aggrieved
4 Employees and the LWDA to satisfy Plaintiffs' PAGA claim, which represents a
5 substantial percentage (17.82%) of the total gross Settlement Amount.

6 The settlement amounts are significant, particularly in light of the risks posed
7 by time-consuming and costly continued litigation, which could have gone on for
8 years before any final resolution. These significant results are indicative of Class
9 Counsel's contribution and support the proposed fee. Class Counsel's requested award
10 of \$199,600 for fees therefore is extremely reasonable as it represents a discount of
11 78.75% from Class Counsel's lodestar.²⁵

12 **c. Class Counsel's Skill.**

13 Class Counsel's skill, experience, and diligence in achieving a settlement are
14 factors that weigh toward awarding an enhanced fee award. *See Leala v. Beneficial*
15 *Calif., Inc.*, 82 Cal. App. 4th 19, 52 (2000) ("counsel should be rewarded, not
16 punished, for helping to achieve [the] goal" of early settlement). Here, Class Counsel's
17 experience allowed Class Counsel to focus on the appropriate factual and legal issues,
18 analyze discovery produced by Defendants, interview and depose current and former
19 employees, and effectively participate in the mediation and other post-mediation
20 settlement negotiations that led to this Settlement.²⁶

21 Class Counsel, Rhonda H. Wills of Wills Law Firm, PLLC, is highly
22 experienced in complex and class action litigation.²⁷ Ms. Wills has been appointed
23 class counsel and lead counsel through both certification and settlement of numerous
24 wage and hour class and collective actions.²⁸ Plaintiffs' counsels' experience in wage
25

26 ²⁴ See Wills Decl., ¶ 26.

27 ²⁵ See Wills Decl., ¶ 40.

28 ²⁶ See Wills Decl., ¶ 29.

²⁷ See Wills Decl., ¶ 7.

²⁸ See Wills Decl., ¶¶ 7, 8.

1 and hour class and collective actions was integral in evaluating the strengths and
2 weaknesses of the case and the reasonableness of the settlement.²⁹

3 This case presented unique challenges for Plaintiffs, both factually and legally.
4 However, Class Counsel's experience, knowledge and efforts enabled the parties to
5 work through such issues. Liability was highly contested in this action with respect to
6 all claims, and Defendants vigorously presented their defenses towards the
7 certifiability of the Class and on the merits of Plaintiffs' claims.³⁰ Class Counsel has
8 demonstrated substantial skill, diligence, efficiency, and high quality of work in
9 achieving the proposed Settlement in light of the defenses mounted by Defendants.

10 Class Counsel regularly litigates wage-and-hour claims and has done so under
11 circumstances justifying considerable fee awards.³¹ Here, Class Counsel were able to
12 reach a settlement due in large part to Class Counsel's expertise and experience. Class
13 Counsel expended substantial efforts in achieving a settlement in this case despite the
14 difficult challenges. Class Counsel will also spend additional time securing final
15 approval of the settlement, and monitoring the distribution of the settlement funds.
16 Based on experience and knowledge of the practice, the hourly compensation set forth
17 in the Wills Declaration for the worked performed on behalf of the Class by Class
18 Counsel's firm is commensurate with similar attorneys and support staff practicing in
19 the same field, handling similar wage and hour class action lawsuits.³² Based on the
20 amount of time, skill and diligence Class Counsel put into handling the substantial and
21 time consuming tasks which led to the resolution of Plaintiffs' claims through the
22 instant Settlement, a fee of \$199,600 is entirely fair and reasonable.

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²⁹ See Wills Decl., ¶ 21.

27 ³⁰ See Wills Decl., ¶ 30.

28 ³¹ See Wills Decl., ¶ 31.

³² See Wills Decl., ¶ 36.

B. The Requested Attorneys' Fees Are Also Fair and Reasonable When Reviewed Under the Common Fund Theory.

In this case, the lodestar figures described above fully support an award of \$199,600 in attorneys' fees. Analyzing Class Counsel's request pursuant to the common fund doctrine also supports the fees Plaintiffs seek. Under the common fund theory, Class Counsel is entitled to a reasonable fee from the fund created by the settlement. *E.g. In re Bluetooth*, 654 F.3d at 942. While the benchmark in the Ninth Circuit is 25%, the Ninth Circuit has permitted recovery up to 50%. *See e.g. In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (listing 9th Circuit cases).

Applying the common fund calculation method, Class Counsel's requested attorneys' fees of 40% of the total recovery are well within the accepted range of attorneys' fees. *See e.g., Cicero v. DirecTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) ("case law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in case in which the common fund is relatively small."); *Flores v. TFI Int'l Inc.*, No. 12-cv-05790-JST, 2019 WL 1715180, at *10-11 (N.D. Cal. Apr. 17, 2019) (approving attorneys' fees of \$2,900,000, representing "61 percent of the total amount paid by Defendants" in a FLSA collective action settlement, explaining that "the award is reasonable under the facts of this case"); *Rivas v. BG Retail, LLC*, No. 16-cv-06458-BLF, 2020 U.S. Dist. LEXIS 8712, at *23-24 (N.D. Cal. Jan. 16, 2020) (concluding that plaintiffs' counsel's requested attorneys' fees of "approximately 45% of the total recovery" in a wage and hour class action settlement were reasonable); *Gomez v. H & R Gunlund Ranches, Inc.*, No. CV F 10-1163 LJO MJS, 2011 WL 5884224, at *5 (E.D. Cal. Nov. 23, 2011) (approving fees at 45% of the settlement fund).

Trial courts have broad discretion to evaluate the reasonableness of a percentage fee request in light of the facts of the case. In the end, "[t]he choice of a fee calculation method is generally one within the discretion of the trial court, the goal under either

1 the percentage or lodestar approach being the award of a reasonable fee to compensate
2 counsel for their efforts.” *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 504 (Cal.
3 2016).

4 In determining the reasonableness of the percentage to award class counsel, a
5 common set of factors are to be reviewed under the percentage-of-the-benefit analysis.
6 *Dept. of Trans. v. Yuki*, 31 Cal. App. 4th 1754, 1771 (1995). No rigid formula applies
7 and each factor should be considered only where appropriate. *Id.* The relevant factors
8 include: (1) the result obtained; (2) the time and labor required of the attorneys; (3)
9 the contingent nature of the case, and the consequent delay in the payment of fees to
10 Class Counsel; (4) the extent to which the nature of the litigation precluded other
11 employment by the attorneys; (5) the experience, reputation, and ability of the
12 attorneys who performed the services and the skill they displayed; and (6) the
13 informed consent of the clients to the fee agreement. *See Serrano v. Priest*, 20 Cal. 3d
14 25, 49 (1997).

15 Each of the relevant factors supports the reasonableness of Class Counsel’s fee
16 request.

17 **1. Counsel Achieved a Superior Result.**

18 As discussed throughout this brief, the Settlement provides substantial relief for
19 the Class. Counsel who obtain “substantial relief” are entitled to full compensation for
20 their efforts, even if some contentions were rejected or some sought-after relief was
21 denied. *See Schwarz v. Sec. of Health & Human Servs.*, 73 F.3d 895, 901-02 (9th Cir.
22 1995).

23 As a result of the Settlement, Defendants will pay a total of: \$96,556.25 to the
24 50 Overtime Class Members, including the four Class Representatives; \$53,900.00 to
25 the 18 Wage Statement Class Members; and a total of \$88,943.75 to the 202 PAGA
26 Aggrieved Employees and the California Labor & Workforce Development Agency
27 (“LWDA”). The Settlement’s monetary relief for the Class Members’ overtime and
28 wage statement claims constitutes an approximate full recovery of each Class

Members' unpaid overtime and wage statement penalties.³³ The Settlement will also require payment of a collective total of \$88,943.75 to the PAGA Aggrieved Employees and the LWDA to satisfy Plaintiffs' PAGA claim, which represents a substantial percentage (17.82%) of the total gross Settlement Amount.

The settlement amounts are significant, particularly in light of the risks posed by time-consuming and costly continued litigation, which could have gone on for years before any final resolution. The present litigation was therefore successful in bringing about the substantial recovery obtained.

2. Counsel Devoted Significant Time and Labor to the Class Claims.

As explained more fully in Class Counsel's lodestar analysis, Class Counsel's office expended a total of 2,256.9 hours of time prosecuting and settling the claims in this matter, after exercising billing discretion.³⁴ This time does not include the time spent preparing the instant fee motion, including the Wills Declaration summarizing the fees and costs and reviewing the billing statement and exercising billing judgment.³⁵

From the filing of the original Complaint in November 2017 to the final approval stage in January 2021, Class Counsel will have engaged in almost every conceivable litigation task, except trial (e.g., pleadings, written discovery, discovery motions, depositions, mediation, summary adjudication, class certification, etc.). This factor therefore supports the reasonableness of the requested fee amount.

3. Counsel Assumed Substantial Risk in Pursuing this Case on a Contingency Basis.

Plaintiffs' counsel undertook this litigation on a purely contingent basis, with no assurance of recovering expenses or attorneys' fees. Plaintiffs' counsel expended considerable time and resources to prosecute the case successfully on behalf of the

³³ See Wills Decl., ¶ 26.

³⁴ See Wills Decl., ¶ 40.

³⁵ See Wills Decl., ¶ 43.

1 Class Members and PAGA Aggrieved Employees. Counsel undertook substantial risk
2 of non-payment, and the percentage fee request here will fairly compensate Class
3 Counsel for this risk. “In common fund cases, attorneys whose compensation depends
4 on their winning the case must make up in compensation in the cases they win for the
5 lack of compensation in the cases they lose.” *Vizcaino v. Microsoft Corp.*, 290 F.3d
6 1043, 1051 (9th Cir. 2002).

7 The risk Plaintiffs’ counsel took in litigating this case was substantial
8 considering Defense counsel maintained legal and factual arguments throughout the
9 litigation that could have resulted in no recovery for the Class Members and PAGA
10 Aggrieved Employees. Defendant has maintained throughout this litigation that they
11 have complied fully with federal and state wage and hour laws and that Plaintiffs’
12 claims were not suitable for class treatment.

13 Furthermore, the substantial time and resources devoted to this litigation has
14 precluded Plaintiffs’ counsel from pursuing other meritorious, fee-generating legal
15 matters.³⁶ Class Counsel’s requested fees appropriately reflect Class Counsel’s
16 commitment to this case, which has required counsel to forego other cases and income,
17 as well as accrue out-of-pocket litigation expenses.

18 **4. The Case Required Substantial Skill, and Class Counsel Produced**
19 **Quality Work.**

20 Class Counsel is highly experienced in complex and class action litigation.³⁷
21 Rhonda H. Wills of Wills Law Firm, PLLC has been appointed class counsel and lead
22 counsel through both certification and settlement of numerous wage and hour class
23 and collective actions.³⁸ Plaintiffs’ counsels’ experience in wage and hour class and
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27 ³⁶ See Wills Decl., ¶ 25.

28 ³⁷ See Wills Decl., ¶ 7.

³⁸ See Wills Decl., ¶¶ 7, 8.

collective actions was integral in evaluating the strengths and weaknesses of the case and the reasonableness of the settlement.³⁹

Class Counsel spent significant effort and exhibited considerable skill in developing the factual and legal claims in this case, and in arguing these claims to Defense counsel and the private mediator. Through these efforts and in the face of difficult issues of fact and law, Class Counsel negotiated a favorable settlement against a well-funded and highly skilled adversary.

5. Class Members' Reaction to the Proposed Fee Award Supports Court Approval.

Class Counsel's requested fee amount was fully disclosed on pages 3 and 4 of the Court-approved Notice. Thus far, Class Counsel has not been made aware of any objections to Class Counsel's requested fee award, and Class Counsel has not been informed that any Class Members have opted out of the Settlement.⁴⁰ Thus, Class Members' reaction to the proposed fee amount has been overwhelmingly positive.

6. The Portion of the Settlement Fund Set Aside for Attorneys' Fees Is Reasonable.

Plaintiffs request attorneys' fees equal to 40% of the \$499,000.00 non-reversionary gross settlement amount. This percentage falls squarely within the scope of awards in employment wage and hour class action cases in California. *See e.g., Cicero v. DirecTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) ("case law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in case in which the common fund is relatively small."); *Flores v. TFI Int'l Inc.*, No. 12-cv-05790-JST, 2019 WL 1715180, at *10-11 (N.D. Cal. Apr. 17, 2019) (approving attorneys' fees of \$2,900,000, representing "61 percent of the total amount paid by Defendants" in a FLSA collective action settlement, explaining that "the award is reasonable under the facts of this case"); *Rivas v. BG*

³⁹ *See* Wills Decl., ¶ 21.

⁴⁰ *See* Wills Decl., ¶ 32.

1 *Retail, LLC*, No. 16-cv-06458-BLF, 2020 U.S. Dist. LEXIS 8712, at *23-24 (N.D.
2 Cal. Jan. 16, 2020) (concluding that plaintiffs' counsel's requested attorneys' fees of
3 "approximately 45% of the total recovery" in a wage and hour class action settlement
4 were reasonable); *Gomez v. H & R Gunlund Ranches, Inc.*, No. CV F 10-1163 LJO
5 MJS, 2011 WL 5884224, at *5 (E.D. Cal. Nov. 23, 2011) (approving fees at 45% of
6 the settlement fund).

7 In sum, Plaintiffs' request for attorneys' fees is extremely reasonable. Class
8 Counsel's requested award of \$199,600 for fees also represents a substantial discount
9 of 78.75% from Class Counsel's lodestar.⁴¹

10 **C. Class Counsel's Litigation Costs Are Reasonable.**

11 The settlement agreement provides that Defendants will not object to Plaintiffs'
12 application of actual litigation expenses (not to exceed \$30,000) out of the \$499,000
13 gross settlement fund. The Court-approved Class Notice also fully disclosed
14 Plaintiffs' request for reimbursement of litigation expenses. Plaintiff's counsel have
15 reasonably incurred out-of-pocket litigation expenses in the aggregate amount of
16 \$29,074.92.⁴²

17 All litigation costs were reasonably necessary to the conduct of the litigation,
18 including Plaintiffs' efforts to obtain class-wide relief and the settlement resolution of
19 the case. "Reasonable costs and expenses incurred by an attorney who creates or
20 preserves a common fund are reimbursed proportionately by those class members who
21 benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F.Supp. 1362,
22 1366 (N.D. Cal. 1996) (citing *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92
23 (1970). The expenses must be relevant to the litigation and reasonable in amount. *Id.*
24 at 1266.

25 Plaintiffs' counsels' litigation expenses to date include the following
26 categories: (1) filing fees; (2) service of process fees; (3) deposition related expenses,

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28 ⁴¹ See Wills Decl., ¶ 40.

⁴² See Wills Decl., ¶ 45.

1 including transcripts and recorded video; (4) mediation fees; (5) travel expenses; (6)
2 legal research fees; (7) courier fees; (8) postage and mailing fees; and (9) printing,
3 copying and scanning costs with respect to the thousands of records produced by
4 Defendants.⁴³ Plaintiffs' counsel put forward these out-of-pocket expenses without
5 assurance they would be repaid. These expenses were necessary to secure the
6 resolution of this litigation. *See In re Immune Response Sec. Litig.*, 497 F.Supp.2d
7 1166, 1177-78 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy
8 costs, travel expenses, postage, telephone and fax costs, computerized legal research
9 fees, and mediation expenses are relevant and necessary expenses in class action
10 litigation). A summary of all costs incurred is provided in the Wills Decl. ¶ 45, Ex. B.
11 All of these expenses were incurred in the normal course of Class Counsel's business
12 and are of the sort normally billed to paying clients.

13 For these reasons, Class Counsel's request for reimbursement of litigation
14 expenses incurred in the present litigation in the amount of \$29,074.92 is reasonable.

15 **D. Defendants Do Not Oppose Class Counsel's Request For Fees and Costs.**

16 Defendants do not oppose Class Counsels' request for fees and costs and agreed
17 to their terms in the Parties' settlement agreement. Defendants' agreement is
18 significant. The Court should therefore grant final approval of the agreed-upon
19 attorneys' fees and costs.

20 **III. CONCLUSION**

21 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
22 this motion and award to Class Counsel attorney's fees in the amount of \$199,600 and
23 out-of-pocket expenses in the amount of \$29,074.92.

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28 ⁴³ See Wills Decl., ¶ 45.

1 DATED: December 7, 2020

Respectfully submitted,

2 /s/ Rhonda H. Wills

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PROOF OF SERVICE

I certify pursuant to 28 U.S.C. § 1746 that on December 7, 2020, I served the foregoing document as follows:

Via ECF (Electronic Filing)
J. SCOTT CARR
JOSEPH W. OZMER II
KRISTAPOR VARTANIAN
ATTORNEYS FOR DEFENDANTS

/s/ Rhonda H. Wills
Rhonda H. Wills