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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NORMA GARCIA and KARINA ANDRADE, individually, on a representative basis, and on behalf of all others similarly situated;

Plaintiffs,

vs.

TAPESTRY, INC., a Maryland Corporation which will do business in California as Coach Leatherware California, Inc. DBA Coach; and DOES 1 through 10, inclusive;

Defendants.

Case No.: 5:18-cv-1537 DMG (SHK)
[Assigned to the Hon. Dolly M. Gee]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS FEES, COSTS, AND SERVICE AWARDS

Hearing
Date: May 29, 2020
Time: 10:00 a.m.
Courtroom: 8C

Complaint filed: June 13, 2018

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 29, 2020 at 10:00 a.m. or as soon thereafter as the matter may be heard in the above-entitled Court located in Courtroom 8C at 350 W. First Street, Los Angeles, CA 90012, Plaintiffs Norma Garcia and Karina Andrade will move, pursuant to FRCP Rule 23, for an order awarding attorneys' fees, litigation expenses and Plaintiffs' service awards, in accordance with the Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement" or "S.A.") between the parties filed concurrently with this motion.

This motion is brought pursuant to the order dated January 24, 2020 [Doc. No. 64] and Fed. R. Civ. P. Rule 23(h). The motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, the Declaration of Brian Mankin, the Declarations of the Plaintiffs, the argument of counsel and upon such other material contained in the file and pleadings of this action. Counsel for the Parties have met and conferred, and have agreed on the filing of this motion, which is based on the Settlement Agreement between the Parties.

To date, there have been no objections received to the request for attorneys' fees, costs and service awards by any member of the Class and Defendant Tapestry, Inc., does not oppose the motion.

Dated: March 16, 2020

FERNANDEZ & LAUBY LLP

BY: /s/ Brian J. Mankin, Esq.
Brian J. Mankin, Esq.
Attorneys for Plaintiff and the similarly situated employees

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I. INTRODUCTION

After more than a year of intense litigation that included extensive discovery, depositions, motions for summary judgment, briefing a class certification motion, and culminating in a full-day mediation before respected class action mediator, Class Counsel successfully negotiated a settlement with Defendant Tapestry, Inc., which provides for a non-reversionary common fund of $995,000 ("Gross Settlement Amount"). As part of the settlement, the parties agreed to an amount of $331,666.66 (one-third of the Gross Settlement Amount) for attorneys' fees, which is less than Class Counsel's lodestar and results in a negative multiplier. (Settlement Agreement at ¶ 26.) Preliminary approval of the Settlement was granted on January 24, 2020. [Doc. No. 64].

The requested fee is within the accepted range of between 20% to 40% of a common fund and is fair compensation for undertaking such complex, risky and time consuming litigation on a contingent basis. See *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-2 (9th Cir. 2011). In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.,* 1 Cal.5th 480 (2016), the California Supreme Court affirmed the reasonableness of an award of attorneys' fees equal to one-third of the common fund, which correlated to lodestar with a 2 multiplier. Here, Class Counsel's lodestar is projected to be $390,070 through the conclusion of the matter, which means the requested fee award is less than the lodestar. Moreover, because this motion is being submitted during the objection period, significant additional work remains.

Accordingly, the requested fee award is reasonable because it is within the percentage approved in *Laffitte* and in light of the fact that Class Counsel's lodestar exceeds the requested fee. See also S*ingh v. Roadrunner Intermodal Servs.,* LLC, 2019 U.S. Dist. LEXIS 11724 (E.D. Cal. 2019) (following *Laffitte* to approve 33% fee award with cross-check lodestar multiplier of 2.03); *Emmons v. Quest Diagnostics Clinical Labs., Inc.,* 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte* to approve 33% fee award with cross-check lodestar multiplier of 1.7); *Estakhrian v. Obenstine*, 2019 U.S. Dist. Lexis 112828 (C.D. Cal. 2019) (approving 30% fee award); *Lee v.*

*Global Tel*Link Corp*., 2018 U.S. Dist. LEXIS 163410 (C.D. Cal. 2018) (approving lodestar multiplier of 3.0); *Warner v. Toyota Motor Sales, U.S.A., Inc.,* 2017 U.S. Dist. LEXIS 77576 (C.D. Cal. 2017) (approving lodestar multiplier of 2.92).

Moreover, all of the factors typically considered by Courts in approving such a fee award, such as the results achieved, the risks of litigation, the skill of counsel, the contingent nature, the lodestar cross-check, and the reaction of the class, all support the requested award. For instance, the results in this case are exceptional when compared to the similar landmark case of *Troester v. Starbucks Corp.,* 5 Cal.5th 829 (2018) (hereinafter *"Troester"),* wherein the California Supreme Court held that the de minimis defense does not apply to wage-and-hour claims. In both cases, the primary claim alleged that the workers were not compensated for on-duty work that was performed after clocking-out at the end of a shift and/or while undergoing an unpaid bag/security inspection. In this case and in *Troester*, the trial Court granted the employer's motion for summary judgment on derivative penalty claims for late final pay (Labor Code § 203) and inaccurate wage statements (Labor Code § 226), leaving claims for short amounts of unpaid time per shift (often ranging from 30 seconds to 5 minutes per shift), as well as meal/rest break claims. In this case, Class Counsel successfully navigated a settlement for nearly $1 million dollars with the class certification hearing set to occur only 10 days after mediation. However, in *Troester*, the Plaintiffs were recently defeated at the class certification stage, such that the Class members will receive no compensation. Interestingly, in this case and in *Troester* the company was represented by the same highly competent defense counsel. The fact that Class Counsel here achieved a good settlement while the class certification motion was fully briefed and ready for oral argument just 10 days after mediation speaks volumes of the quality of the work performed.

Finally, Plaintiffs request that the Court approve payment of Class Counsel's litigation expenses in the amount of $30,610, which amount is less than cost allocation in the Settlement Agreement, such that the remainder will be placed in the Net Settlement

Amount for payment to the Class Members. Plaintiffs also respectfully request that this Court approved payment of the Class Representative Service Payments for Plaintiffs. (S.A. at ¶ 27.) As explained herein below, the requested service award is supported by legal authorities and is justified by both the personal involvement of the Plaintiffs and the risks they undertook to represent the Class.

II. RELEVANT PROCEDURAL HISTORY AND SUMMARY OF SETTLEMENT TERMS

A. BRIEF PROCEDURAL HISTORY

Plaintiff Norma Garcia filed a class action lawsuit on June 13, 2018, in Superior Court, County of Riverside. (DE 1-1). Defendant filed an answer on July 18, 2018, and then on the following day, removed the action under the Class Action Fairness Act ("CAFA"). (Dkt. 1-2). Thereafter, the Parties stipulated to permit Plaintiff Garcia to file a first amended complaint to add PAGA claims after the LWDA declined to assert jurisdiction over these claims. (Dkt. 19).

In preparation for the Rule 26 conference, the Parties engaged in a series of meet and confers regarding the merits of the claims and defenses, the scope of class discovery, briefing schedules and other matters. After the Rule 26 conference, the Parties engaged in several months of heavy litigation in preparation for a class certification hearing, including written discovery, depositions, exchanging the class contact information. Plaintiffs' counsel interviewed numerous Class Members and prepared to obtain declarations for a class certification motion. (Mankin Decl. ¶ 12).

On March 8, 2019, Plaintiff Garcia filed her class certification motion. (Dkt. 29). Shortly thereafter, Plaintiff also filed a motion for leave to amend the complaint to add Plaintiff Karina Andrade and clarify certain claims (Dkt. 35) while Defendant in-turn filed a motion for summary judgment (Dkt. 36). On May 10, 2019, the Court granted in part and denied in part Defendant's MSJ and granted Plaintiff's motion to file a Second Amended Complaint. (Dkt. 48). As part of the ruling, the Court continued the pending class certification deadlines and ordered the parties to meet and confer as to new

deadlines and any additional discovery that would be needed in preparation for the class certification hearing. Thereafter, Plaintiff filed a Second Amended Complaint, adding Karina Andrade as a named Plaintiff. (Dkt. 49).

Discovery continued while the Parties engaged in extensive motion practice. The Parties took the depositions of approximately 10 putative class members, both Plaintiffs were deposed, and Plaintiff took additional depositions of Defendant's witnesses in New York and California. The Parties also exchanged further written discovery and documents. (Mankin Decl. ¶ 13).

After fully briefing the motion for class certification, the Parties agreed to submit the matter to mediation so that the mediation would occur just 10 days before to the scheduled class certification hearing. The Court granted the Parties stipulation, and on September 10, 2019, the Parties attended mediation with Mariam Zadeh serving as mediator. The matter resolved at mediation for $995,000, which was the amount proposed by the mediator. (Mankin Decl. ¶ 14-15).

Plaintiffs then filed their Motion for Preliminary Approval of Class Action Settlement on November 18, 2019. (DE 60-1). On January 24, 2020, the Court granted Preliminary Approval and ordered this Motion be filed by March 16, 2020. (DE 64).

B. THIS SETTLEMENT RESULTS IN SIGNIFICANT MONETARY PAYMENTS

Defendant has agreed to pay a non-reversionary Gross Settlement Amount of $995,000. After deducting the proposed amounts for Court-approved attorneys' fees and costs, Plaintiffs' incentive award, costs of settlement administration, and the Private Attorneys General Act ("PAGA") payment to the California Labor and Workforce Development Agency, Defendants will pay a Net Settlement Amount ("NSA") of approximately $553,295.03 to all members of the Settlement Class. (Cofinco Decl. ¶ 15).

The average settlement payment to the Class Members is approximately $668.23 and the largest individual settlement payments estimated to be $2,357.19. (Cofinco Decl. ¶ 16).

As noted in Plaintiffs' Motion for Preliminary Approval, the unpaid wage claims had a maximum realistic trial value of $486,730, which accounted for the majority of the valuation after the penalty claims for (wage statements and waiting time penalties) were removed in light of Defendant's argument at summary judgment that it could not have reasonably predicted that the *Troester* decision would change the de minimus standard used by the federal courts, and thus, it argued that any failure to pay wages was unknowing and unintentional. Considering that the Gross Settlement Amount is valued at twice the value of the unpaid wage claim, and further considering that the very similar case of *Troester* was defeated at class certification by the same defense counsel, it is clear that the Settlement provides significant monetary value to the Class Members, especially in light of the risks.

III. THE ATTORNEYS FEE'S REQUESTED ARE FAIR AND REASONABLE, AND SHOULD BE AWARDED AS A PERCENTAGE OF THE COMMON FUND

A. THE FEE SHOULD BE AWARDED AS A PERCENTAGE OF THE COMMON FUND

Class Counsel seeks an attorney fee award for their successful prosecution and resolution of this action, calculated as one-third of the cash value of the common fund created by the Settlement. In cases such as this one, the Ninth Circuit Court of Appeals has long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits afforded to class members by the settlement. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (1989); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769 (9th Cir. 1977). The awarding of a fee based on a percentage of the common fund recovered is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, *supra*, 557 F.2d at 769. The non-reversionary Gross Settlement Amount is $995,000. Accordingly, Class Counsel requests $331,666.66 in attorneys fees as properly calculated as a reasonable percentage (1/3) of the common fund created for the benefit of

the Class. This is especially true here where the common fund is non-reversionary and class members will be automatically mailed their settlement payment.

In actions involving state law claims, federal courts in diversity case should apply state law both to determining the right to fees and the method of calculating them.[1] See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Mangold v. California Public Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995). "Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent and has endorsed the federal benchmark of 25 percent." *Smith v. CRST Van Expedited, Inc.*, 2013 U.S. Dist. LEXIS 6049, 2013 WL 163293, *5 (S.D. Cal. 2013); see *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n. 11, 75 Cal. Rptr. 3d 413 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.") In *Cicero v. DirecTV, Inc.*, 2010 U.S. Dist. LEXIS 86920, at *17; 2010 WL 2991486, at *6 (C.D. Cal. 2010), the Court found that a review of California cases "reveals that courts usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fun[d] under $10 million."

The California Supreme Court held that the percentage-of-fund method of calculating attorneys' fees survives in California courts and expressly approved a one-third fee award in a wage and hour class settlement. *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 503-06 (2016). A court "may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Id.* at 503. The California Supreme Court suggested considerations of the risks and potential value of the litigation,

[1] This settlement involves statutory claims under California law. For such state law claims, Courts may apply "state law in determining not only the right to fees, but also in the method of calculating the fees." *Estakhrian v. Obenstine*, 2019 U.S. Dist. LEXIS 112828, *6 (2019). The reason for this rule under the *Erie* rule is to prevent forum shopping, and "the *Erie* principles apply equally in the context of pendent jurisdiction." *Mangold*, *supra*, 67 F.3d at 1478

the contingency, novelty, and difficulty of the litigation, the skill shown by counsel, and a lodestar cross-check were all appropriate means of discerning an appropriate percentage award in a common fund case. *Id.* at 504.

B. THE SIX FACTORS USED BY THE NINTH CIRCUIT SUPPORT THE FEE AWARD

What has now emerged in most fee award decisions is a recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. See, A. Conte, *Attorney Fee Awards*, 2nd Ed., § 207, at §§44. In determining an appropriate fee in a common fund case, a court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt*, *supra*, 886 F.2d at 272 (the benchmark percentage fee may be adjusted to account for the circumstances involved in this case.)

Courts consider several factors in calculating a reasonable percentage fee in common fund cases:

> (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases.

In re Omnivision Technologies, Inc., 2007 WL 4293467 at *9 (N.D.Cal. 2007).

A court may also cross-check its percentage calculation against the lodestar method to determine the reasonableness of the award. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015).

Here, each of these factors support the award of the percentage fee (1/3) requested in this case and the upward adjustment.

i. The Results Achieved

"The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *Omnivision*, 2007 WL 4293467 at *9; See also *In re Heritage Bond Litig*., 2005 U.S. Dist. LEXIS 13627, at *27-28 (C.D. Cal. 2005).

Class Counsel obtained a very good result in this case for the Class Members. While penalties often form a large part of the potential damages, in this case the Court found that traditional penalties under Labor Code § 203 and 226 could not be assessed against Defendant since the *Troester* decision effectively modified the low standing the federal de minimus rule. Consequently, if the case went to trial, Plaintiffs could only recover the proven unpaid wages and potentially premiums for not providing breaks.

If Plaintiffs proved at trial that Defendant did not pay the workers by 2.5 minutes per shift (time spent undergoing a bag check or closing the store after clocking out), then the maximum trial value was limited to approximately $405,000 for all employees. Even if Plaintiffs proved double the amount of unpaid time (5 minutes per shift), the maximum damages at trial for all employees would have been approximately $810,000. Thus, without the ability to recovery additional penalties, the only remaining claim at trial that could have generated a recovery would have been the meal and rest break claims. However, these claims faced challenges as well since Defendant claimed to have compliant policies and practices.

Considering that Plaintiffs recovered as much if not more than the potential trial value for the unpaid wage claims, it is clear that the settlement provided significant monetary benefits to the Class Members.

The Settlement is particularly advantageous to the Class Member because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.

ii. Risks of Litigation

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award

of fees." *Omnivision*, 2007 WL 4293467 at *9. At the time this case was brought, the result was far from certain. The *Troester* decision had not been issued by the California Supreme Court, leaving the state of the law highly uncertain. And Defendant's numerous defenses to the case created difficulties with proof and complex legal issues for Class Counsel to overcome, as discussed below. A number of defenses asserted by Defendant presented serious threats to the claims of Plaintiffs and the other Class Members. Defendant strongly disputed that Plaintiffs could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable law and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiffs' ability to certify the class. Considering that Defendant's counsel defeated class certification in the *Troester* case just months after settling this case, the threat was not mere puffery. (Mankin Decl. at ¶ 16.)

Additionally, because Defendant prevailed, in part, on its motion for summary judgment as to the waiting time penalty claims (Labor Code § 203) and wage statement penalty claims (Labor Code § 226), Defendant argued that Plaintiff's inability to proceed on these two theories cut the legs out from under Plaintiffs' damage calculations, and Defendant argued that the same grounds that precluded these penalty claims would nullify the PAGA claims. While Plaintiffs argued that alternative grounds existed to recover waiting time penalties and PAGA penalties, it was clear that there were no guarantees that the Court would adopt the alternative theories. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery. (Mankin Decl. at ¶ 12.)

There was also a significant risk that, if the Action was not settled, Plaintiffs may not have certified the case at the class certification hearing that was scheduled just 10 days later. Defendant also argued that even if certified that Plaintiffs could not maintain a certified class through trial, and thereby not recover on behalf of any employees other than themselves. Indeed, there were very substantial risks which could have resulted in the Class receiving nothing if the claims were litigated through class certification or trial.

iii. The Skill Required and the Quality of Work

The "prosecution and management of a complex . . . class action requires unique legal skills and abilities." *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1047 (N.D. Cal. 2008). Here, the skill of Class Counsel and the quality of work is established not only by the result achieved, but also the fact that Class Counsel achieved this settlement after class certification was fully briefed. The Settlement was possible only because Class Counsel was able to convince Defendant that Plaintiffs could potentially prevail on the difficult legal issues regarding liability, obtain class certification, overcome difficulties in proof as to monetary relief and take the case to trial. (Mankin Decl. at ¶ 19-20.)

In successfully navigating these hurdles so as to convince Defendant to settle, Class Counsel displayed exemplary skills that might be expected of attorneys of comparable experience. Class Counsel's skill resulted in the Defendant agreeing to mediation just before the class certification hearing in light of the skill and quality of work by Class Counsel in this area of law. (Mankin Decl. at ¶ 21.)

In light of the concerted and dedicated effort this case demanded in order to properly handle and prosecute, Class Counsel were precluded from taking other cases, and in fact, had to turn away meritorious fee generating cases. (Mankin Decl. at ¶ 22.)

iv. The Contingent Nature of the Fee and the Financial Burden

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to the bank with his fee. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). The attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a market place contingent fee taking into account the risk and other factors of the undertaking. *Id* at 1257. Otherwise, the contingent fee attorney receives nothing.

In this case, Class Counsel subjected themselves to this contingent fee market risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate. Counsel retained on a

contingency fee basis, whether in private matters or in class action litigation, is entitled to a premium above their hourly rate in order to compensate for both the risks and the delay in payment. See e.g. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734 (9th Cir. 2016) (courts "must" apply a risk enhancement); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier).

The simple fact is that despite the most vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir.1967). Indeed, if counsel is not adequately compensated for the risks inherent in difficult class actions, competent attorneys will be discouraged from prosecuting similar cases. *Steiner v. BOC Financial Corp*., 1980 U.S. Dist. LEXIS 14561 at *6- *7 (S.D.N.Y. 1980). Class Counsel has invested time and money into cases which ultimately generated no fee, which further emphasizes the need for contingent cases to provide premium compensation when successful.

Here, the contingent nature of the fee award, both from the point of view of eventual settlement and the point of view of establishing eligibility for an award, also warrant the requested fee award. A number of difficult issues, the adverse resolution of any one of which could have doomed the successful prosecution of the action, were present here. As discussed above, attorneys' fees in this case were not only contingent but extremely risky, with a very real chance that Class Counsel would receive nothing at all for their efforts, having devoted time and advanced costs. (Mankin Decl. at ¶ 22.)

Class Counsel were required to advance all costs in this litigation. Especially in this type of litigation where the corporate defendant and its attorneys are well funded, this can prove to be very expensive and risky. Accordingly, because the risk of advancing costs in this type of litigation can be significant, it is therefore cost prohibitive to many attorneys. The financial burdens undertaken by Plaintiffs and Class Counsel in prosecuting this action on behalf of the Class were substantial. To date, Class Counsel advanced more than $30,000 in costs which could not have been recovered if this case had been lost. (Mankin Decl. at ¶ 31.)

Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel also support the fee requested.

v. Awards in Similar Cases

The attorneys' fees requested by Class Counsel are within the range of fees awarded in comparable cases. A review of class action settlements over the past 10 years shows that the courts have historically awarded fees in the range of 20% to 50%, depending upon the circumstances of the case. *In re Warner Communications Sec. Lit,* 618 F.Supp. 735, 749-50 (S.D. N.Y. 1985). Class Counsels' requested fees are one-third of the total value of the case, a percentage well within the range of reasonableness given the excellent results obtained for the Class, the risks undertaken, and the skill of the prosecution, and the contingent nature of the representation.

In *In re Warner Communications Sec. Lit*., Judge Keenan concluded that percentage fees in common fund cases range from 20% to 50%. *Id.*, 618 F.Supp. at 749-50. Professor Newberg agrees:

> No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.

Newberg, *Newberg on Class Actions*, 3rd Ed., § 14.03, at 14-13§§.

In similar federal actions involving wage and hour class actions, fee requests of 30% or more are routinely awarded. See e.g., *Ingalls v. Hallmark Mktg. Corp., 2009 U.S. Dist. LEXIS 131078 (C.D. Cal.2009) (awarding 33.33% fee on a $ 5.6 million wage and hour class action); Birch v. Office Depot, Inc., 2007 U.S. Dist. LEXIS 102747 (S.D. Cal. 2007) (awarding a 40% fee on a $ 16 million wage and hour class action); Rippee v. Boston Mkt. Corp., 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. 2006) (awarding a 40% fee on a $3.75 million wage and hour class action); Stuart v. Radioshack Corp., 2010 U.S. Dist. LEXIS 92067, *15-18 (N.D. Cal. 2010) (awarding attorneys' fees amounting to one-third of a $4.5 million settlement in a Section 2802 inter-storing class action); Romero v.*

*Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, *4, 10 (E.D. Cal. 2007) (awarding 33% of common fund); Cicero*, *supra*, 2010 U.S. Dist. LEXIS 86920 at *16-18; *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, *17 (N.D. Cal. 2009) ("'nearly all common fund awards range around 30%'") (quoting *In re Activision Sec. Litigation, 723 F.Supp. 1373 (N.D. Cal. 1989)); Bond v. Ferguson Enterprises, Inc., 2011 U.S. Dist. LEXIS 70390, *28-29, 36 (E.D. Cal. 2011) (*awarding attorney's fees amounting to 30% of a $2.25 million settlement in a meal break class action, and concluding "Plaintiff's request for a multiplier of 1.75 of its lodestar is reasonable*.")*

Moreover, Class Counsel has personally 100 or more class and PAGA actions that awarded 1/3 fee of the common fund, including recently on November 25, 2019, in *Boyd v. May Trucking Company* (U.S.D.C Central District of California, Case No. 5:17-cv-02166), District Judge Jesus Bernal award a fee of 1/3 of the common fund on a pre-cert class action settlement, which further supports the reasonableness of the requested fee.

A fee award equal to one-third of the common fund in this case is therefore reasonable in light of the fee awards that have been approved in other similar cases.

vi. The Reaction of the Class

Following the mailing of the notice, which disclosed the terms of the Settlement and the requested fee award, to date, there have been no objections to the Settlement by any member of the Class nor any opt-outs. Therefore, the approval of the Class is evident and this factor supports approval of the requested fee. See *In re Omnivision*, *supra*, 559 F. Supp. 2d at 1043.

C. THE FEE AWARD IS ALSO SUPPORTED BY CLASS COUNSEL'S LODESTAR

In federal court, the percentage of the fund method is the typical method for determining and awarding fees. *Williams v. MGM-Pathe*, *supra*, 129 F.3d at 1027. However, in the Ninth Circuit, district courts may use a "lodestar cross-check" to analyze the reasonableness of a percentage-based fee award. *Vizcaino,* 290 F.3d at 1050, n. 5.

When performing the lodestar cross-check, the first step "requires the Court to determine whether the hourly rates sought by counsel are reasonable." *Tawfilis v.*

Allergan, Inc., 2018 U.S. Dist. LEXIS 173687, at *17 (C.D. Cal. Aug. 27, 2018). The second step in the lodestar cross-check is an analysis of "whether Class Counsel's expenditure of time was generally reasonable." *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 U.S. Dist. LEXIS 127131, at *19 (C.D. Cal. July 30, 2018). Importantly, this analysis "need entail neither mathematical precision nor bean-counting." *In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 306 (3d Cir. 2005).

As shown below, Class Counsel's requested rates are reasonable, directly in line with rates in the prevailing community for similar work, and are identical to the rates awarded to Class Counsel in similar cases in both California and federal courts. As such, the Court should award the requested fees because the 2.1 multiplier needed to reach the 25% Ninth Circuit benchmark is reasonable and within the range of approved multipliers.

i. The Rates Requested are Reasonable

Class Counsel calculated the lodestar based on their firm's hourly rates: $695 per hour for Brian Mankin and $550 per hour for Misty Lauby. *See Missouri v. Jenkins by Agyei* 491 U.S. 274, 283-284 (1989) (utilizing current rates to calculate lodestar is appropriate as a means of compensating for delay in payment).

The United States Supreme Court has held that hourly rates "are to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *see also Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir.1996) ("The proper reference point … is the rates charged by private attorneys in the same legal market as prevailing counsel"). But the determination is not based upon "rates actually charged by the prevailing party"; instead, the "district court must determine a reasonable hourly rate considering the experience, skill, and reputation of the attorney requesting fees." *Chalmers v. City of Los Angeles,* 796 F.2d 1205, 1210 (9th Cir. 1986).

Therefore, Class Counsel have offices in Orange and Riverside County, and practice throughout Southern California.

The perfect starting point for this analysis is provided by the Wolters Kluwer Real Rate Report ("Real Rate Report"). The Real Rate Report is not based on self-reported

numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees that law firms billed to clients.[2] In this regard, the Real Rate Report is "a much better reflection of true market rates than self-reported rates in all practice areas." *Brown v. CVS Pharmacy, Inc*., 2017 U.S. Dist. LEXIS 182309, at *21 (C.D. Cal. Apr. 24, 2017); *see also PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1085 (2000) (holding that rates should be premised upon precisely this form of independent, "objective" rate data that reflects "fair market" rates actually billed to clients "in the community for similar work"). Additionally, the Real Rate Report is based on an enormous and statistically significant compilation of data which is compiled to provide the hourly rates for partners and associates in metropolitan areas.[3]

The Real Rate Report provides direct rates for Los Angeles, which is part of the "relevant community" to where Class Counsel are based considering the proximity and substantial overlap of cases and attorney coverage. And, for the Los Angeles area, the Real Rate Report states that: (a) the rate for partners is between $640 and $869.75 per hour for the middle and upper quartiles, and (b) the rate for associates is between $478.74 and $638.97 for the median and upper quartiles.[4] Furthermore, for Labor and Employment attorneys, the upper quartile rates are $695 per hour for partners and $510 for associates.[5]

The rates requested by Class Counsel are directly in line with, and lower than, the objective real-world rates included in the Real Rate Report:

Attorney	**Requested Rate**	***General* Los Angeles Rate**
Brian J. Mankin	$695	$869.75
Misty M. Lauby	$550	$638.97

Moreover, the reasonableness of these rates is reinforced by the fact that both Mr. Mankin has substantial experience in wage-and-hour class and PAGA actions. (Mankin

[2] Wolters Kluwer's ELM Solutions, Inc., 2017 Real Rate Report, attached to Mankin Decl. as Exhibit A
[3] *Id.*
[4] *Id.*
[5] 2017 Real Rate Report, attached to Mankin Decl. as Exhibit A

Decl. ¶¶ 2-7; Lauby Decl. ¶¶ 5-8). Notably, during Mr. Mankin's nearly 20 years of practice, he has litigated between 400 and 500 employee vs. employer cases, and over 200 class/PAGA cases, wherein he has been certified as Class Counsel in well over 100 cases while recovering in excess of $150 million for employees throughout his career. (*Id.* at ¶¶ 3, 4). Mr. Mankin is highly respected in the class action arena, having been named a "Super Lawyer" in the area of employment litigation among Southern California attorneys for the last couple years. (*Id.* at ¶ 7). In 2018, Mr. Mankin prevailed at PAGA-only trial in the Orange County Superior Court and was awarded $675 per hour on a contested post-trial fee motion. (*Id.* at ¶ 5). Ms. Lauby has been an attorney for 13 years and has worked with Mr. Mankin for the last two years handling class and PAGA litigation matters. (Lauby Decl. ¶ 5-8).

Moreover, Class Counsel have been awarded their requested rates on final approval of similar class and PAGA settlements venued in Los Angeles, including *Jimmie Venegas v. City Nissan, Inc.*, Los Angeles Superior Court, Case No. BC694099 (June 19, 2018) and *Chang v. Fidelitone*, Los Angeles Superior Court, Case No. BC625531 (January 30, 2019). (Mankin Decl. ¶ 27).

Class Counsel have also been routinely awarded their requested rates in venues considered to have relatively lower billable rates than Los Angeles and Orange County (e.g., Riverside and San Bernardino), including the following non-exhaustive list of cases: *Hill v. Amazon.com LLC, et al.,* Riverside Superior Court, Case No. RIC1614641 (Sept. 17, 2018); *Cuevas v. FHI, LLC*, Riverside Superior Court, Case No. RIC1713814 (Nov. 15, 2018); *Mitchell v. American Residential Services*, Riverside Superior Court, Case No. RIC1709360 (Feb. 14, 2018); *Wetzlich v. SharkNinja Management Company*, San Bernardino Superior Court, Case No. CIVDS1700491 (July 31, 2018); and *Bass v. Southern Refrigerated Transport*, San Bernardino Superior Court, Case No. CIVDS 1705054 (Aug. 6, 2018). (Mankin Decl. ¶ 28).

Class Counsel's requested rates of $695 and $550 per hour are also directly in line with rates awarded in similar cases in Orange County and the surrounding areas:

Attorney	Years of Experience	Requested Rate
Brian J. Mankin	19	$695
Misty M. Lauby	13	$550
Case Name	**Years of Experience**	**Approved Rate**
Orange County Rate Analysis[6]		
Bravo De Rueda v. Alta Home Care	16	$750
Gharamsini v. Smile Brands, Inc	16	$750
Brulee v. Dal Glob. Servs., LLC	10	$600
	11	$600
	11	$595
Medeiros v. HSBC Card Servs.	Various	$725 – $930
Los Angeles Rate Analysis[7]		
Rooker v. Gen. Mills Operations, LLC	18	$675
	4	$425
Brown v. CVS Pharmacy, Inc.	14	$650
Bravo v. Gale Triangle, Inc.	13	$650
Riverside Rate Analysis[8]		
Weinstein v. Mortg Contracting Serv.	13	$625
	13	$625
Hollis v. Union Pac. R.R. Co.	14	$717
	5	$440

Therefore, the evidence herein shows that the rates requested by Class Counsel are entirely reasonable because they fall squarely within the prevailing market rate of attorneys of similar "experience, skill, and reputation."[9]

ii. The Hours Expended Were Reasonable and Necessary

Class Counsel are entitled to be compensated for "all hours reasonably expended." *Hensley,* 461 U.S. at 431. And, here, Class Counsel reasonably expended 655 hours

[6] *Bravo De Rueda v. Alta Home Care*, Case No. 30-2011-00506932 (Orange County Superior Court Sept. 7, 2013); *Gharamsini v. Smile Brands, Inc*., Case No. 30-2012-0061-9560 (Orange County Superior Court May 28, 2013); *Brulee v. Dal Glob. Servs., LLC*, 2018 U.S. Dist. LEXIS 211269 (C.D. Cal. 2018); *Medeiros v. HSBC Card Servs.*, 2017 U.S. Dist. LEXIS 178484 (C.D. Cal. 2017).

[7] *Rooker v. Gen. Mills Operations, LLC*, 2018 U.S. Dist. LEXIS 50834 (C.D. Cal. Mar. 26, 2018); *Brown v. CVS Pharmacy, Inc*., 2017 U.S. Dist. LEXIS 182309 (C.D. Cal. Apr. 24, 2017); *Bravo v. Gale Triangle, Inc*., 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. Feb. 16, 2017).

[8] *Weinstein v. Mortg. Contracting Servs., LLC*, 2018 U.S. Dist. LEXIS 182718 (C.D. Cal. Oct. 23, 2018); *Hollis v. Union Pac. R.R. Co.,* 2018 U.S. Dist. LEXIS 161232 (C.D. Cal. Sep. 19, 2018).

[9] "Firm size" is not relevant in this analysis, which only focuses on the rates of comparably skilled and experienced attorneys in the market. Although plaintiff's employment firms are small compared to Big Law, this does not make plaintiff's attorneys any less skilled or experienced than Big Law counterparts.

prosecuting these complex and nuanced claims on behalf of the Class Members (see Paragraph 29 to the Mankin Decl. and Exhibit B thereto), as summarized in the chart below, all of which results in a negative multiplier:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin *Lead Trial Counsel (19 years)*	**$695**	214.0[10]	$148,730.00
Misty M. Lauby Senior *Associate (13 years)*	**$550**	415.4	$228,470.00
Peter J. Carlson *Associate (6 years)*	**$495**	26.0	$12,870.00
Grand Total for Attorneys		**655.4**	**$390,070.00**

See Blackwell v. Foley, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) ("An attorney's sworn testimony that, in fact, [he] took the time claimed . . . is evidence of considerable weight on the issue of the time required.").

Furthermore, the hours expended by Class Counsel are inherently reasonable because the tasks were handled with a keen eye toward efficiency, with Ms. Lauby handling the associate-level work and Mr. Mankin handling a partner and supervisory role. Although certain tasks may have work from both attorneys, all such time was reasonable and necessary to create a work product that would yield the best result for the Class. In turn, this quality work product resulted in a substantial settlement, and Class Counsel should not be penalized for the strategy through which it produced such a

[10] Because the notice process is ongoing through April 9, 2020, this includes an estimated 50 hours of additional work that is anticipated to be performed through the conclusion of this mater.

beneficial result for the Class. *See Davis v. City of San Francisco*, 976 F.2d 1536, 1544 (9th Cir. 1992) (upholding the district court's determination that it was reasonable for multiple attorneys to spend time on the case because "broad-based class litigation often requires the participation of multiple attorneys"); *Charlebois v. Angels Baseball LP*, 2012 U.S. Dist. LEXIS 91069, at *12 (C.D. Cal. May 30, 2012) (declining to reduce billed hours "simply because Class Counsel kept each other informed about the case and double-checked each other's work; indeed, many motions this Court denies would have benefitted from a second read and more strategizing by the attorneys involved for time spent on same task").

For all of these reasons, Class Counsel respectfully submits that the requested fee of $331,666.66 is fair, reasonable and adequate.

IV. CLASS COUNSEL'S COSTS WERE REASONABLY INCURRED

As part of the Settlement Agreement, the Parties agreed that Class Counsel shall be entitled to recoup up to $40,000 in litigation costs.

Class Counsel's actual expenses were $30,609.35 while prosecuting this action on behalf of the Class, including filing fees, deposition expenses, mediation expenses, legal research charges, travel expenses, among other items detailed in the itemized breakdown of costs attached to Mankin Decl. as Exhibit C. As such, Class Counsel seeks reimbursement for these costs, which were reasonably incurred in the prosecution of this matter. (Mankin Decl. ¶ 31).

V. THE REQUESTED SERVICE AWARD OF $10,000 IS REASONABLE

Plaintiffs and Class Counsel respectfully request that the Court award the requested (and unopposed) service award of $10,000 to each Plaintiff.

Service awards are "discretionary . . . and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

Here, Plaintiffs respectfully submit that they are entitled to the requested service award for the efforts they made on behalf of the class, including the time spent gathering various documents, reviewing and analyzing documents related to the claims, discussing the case with Class Counsel on numerous occasions in-person and via telephone, responding to written discovery, reviewing pleadings, taking a day off work to have their deposition taken, taking a day off work to attend mediation in Encino, and providing valuable information to the mediator to help reach such a favorable settlement. (Mankin Decl. ¶ 32-33; Plaintiffs' Decl. ¶¶ 4-7). In total, Plaintiff Garcia estimates that she spent approximately 79.5 hours on tasks to benefit the Class, and Plaintiff Andrade estimates that she spent 61.5 hours on the matter. (Plaintiffs' Decl. ¶¶ 5).

Plaintiffs also executed a general release of all claims and assumed far more risk than any of the unnamed class members, who will now be able to collect their share of the recovery without any action or involvement other than cashing a check. From the very start of the case, Plaintiffs were aware that, should Defendant defeat the claims, they could be liable for Defendant's costs and fees. (See Plaintiffs' Decl. ¶ 7). In addition, Plaintiffs moved forward with this action knowing the potential reputational risks associated with class action litigation, which this Court has previously held is a factor justifying and supporting the requested service award. *See Scott v. HSS,* 2017 U.S. Dist. LEXIS 207758, at *26.

VI. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court award $331,666.66 for attorneys' fees, $30,609.35 for costs, and $10,000 each for the Class Representatives' service award.

Dated: March 16, 2020

FERNANDEZ & LAUBY LLP

BY: /s/ Brian J. Mankin, Esq.
Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Class