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14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT
16 NORTHERN CALIFORNIA

17 RODRIGO CAMILO, an individual,
18 ALVARO CAMILO, an individual,
19 RICARDO G. SANCHEZ, an individual,
20 JOSE MANUEL LOPEZ, an individual

21 PLAINTIFFS AND PUTATIVE PLAINTIFFS

22 Plaintiffs,
23 vs.

24 Defendants.

25 SERVERO C. OZUNA, an individual, DON
26 VITO OZUNA FOOD CORPORATION, a
27 California corporation
28

Case No. 5:18-CV-02842-VKD

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

DATE: March 3, 2020
TIME: 10:00 am
COURTROOM: 2 FIFTH FLOOR
Date Action Filed: May 14, 2018

1 STATEMENT OF FACTS

2 Class counsel James Dal Bon has been practicing law since 1992. The majority of his
3 has been spent representing low income workers. Most recently the courts have awarded
4 him the following rates in legal fees in wage hour cases like this one: In Lopez vs Logistic
5 Delivery Solutions 13CV24931, a wage and hour class action, the court used a billing rate of
6 \$400 per hour. In Rodriguez vs Heavenly Greens 16 CV 295143 , a wage and hour class action,
7 the court used a billing rate of approximately \$437 an hour, in Ledo vs Prado 17-CV-02393
8 LHK the court awarded \$563 per hour with a lodestar multiplier of 1.4, In Martinez vs Letech
9 14-CV-02945, a wage and hour trial at Doc ## 46 and 51 the court awarded me \$54,939.37 in
10 attorney's fees at \$577 per hour. See Decl of James Dal Bon

11 Trial counsel Vickie Booke has thirty years' experience as a lawyer. For most of her
12 career, she defended small employers in numerous wage and hour cases brought by
13 individuals, class allegations and representative actions. She successfully tried a wage and
14 hour collective action involving misclassification and claims of unpaid overtime on behalf of
15 a small employer before the Hon. Ronald Whyte (Ret.) In Lopez vs Logistic Delivery
16 Solutions 13CV24931, a wage and hour class action, the court used a billing rate of \$400 per
17 hour. In Rodriguez vs Heavenly Greens 16 CV 295143 , a wage and hour class action, the
18 court used a billing rate of approximately \$437 an hour. See Decl of Vickie Booke. Decl of
19 James Dal Bon

20
21 THE COURT MUST EVALUATE THE REASONABENESS OF THE ATTORNEY'S FEES
22 REQUESTED IN THIS CASE.

23 In evaluating a class action settlement, the courts have an independent obligation to
24 ensure that an attorney's fee award is reasonable despite any agreement between the parties
25 for the payment of class counsel's attorney's fees. See *Staton v. Boeing Co.*, 327 F.3d 938,
26 963-64 (9th Cir.2003); . The reasonableness of any fee award must be considered in light of
27
28

1 the “American Rule,” which provides that courts generally cannot award attorneys’ fees to a
2 prevailing plaintiff unless (1) fee-shifting is expressly authorized by the governing statute; (2)
3 the opponents acted in bad faith or willfully violated a court order; or (3) “the successful
4 litigants have created a common fund for recovery or extended a substantial benefit to a
5 class.” *Alyeska Pipeline Serv. Co. v. Wilderness Soc.*, 421 U.S. 240, 275, 95 S.Ct. 1612, 44 L.Ed.2d
6 141 (1975) *Aaron J. Walker v. GN Netcom, Inc., Motorola, Inc., Plantronics, Inc. (In re*
7 *Bluetooth Headset Prod. Liab. Litig.)*, 654 F.3d 935, 941 (9th Cir. 2011)

8 Two exceptions to the American Rule exist in this case. The settlement provides for a
9 common fund of \$375,000,00 to pay the class members back wages, penalties and interest.
10 Additionally, 29 USC Section 216 and Cal. Lab. Code Section 1194 award attorney’s fees to the
11 prevailing plaintiff in wage and hour cases. Thus, the court must evaluate the reasonableness
12 of the award requested by class counsel in this case.

13
14 THE COURT AT ITS DISCRETION MAY USE THE PERCENTAGE METHOD AND/OR THE
15 LODESTAR METHOD TO DETERMINE THE REASONABLENESS OF ATTORNEY’S FEES.

16 Where a settlement produces a common fund for the benefit of the entire class, courts
17 can either use the lodestar method or the percentage-of-recovery method. *Bluetooth* at 941
18 quoting *In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (2010) The percentage of recovery is
19 the easiest method to use in determining the reasonableness of the attorney’s fee. In
20 applying this method, the Ninth Circuit has established 25% of the fund as the “benchmark”
21 for a reasonable fee award. Class counsel must provide an “adequate” explanation of any
22 “special circumstances” justifying an award of more than 25%. *Bluetooth* at 942.

23 In reviewing the billing in this matter, counsel has decided to simply ask for
24 30%. Counsel asserts this is fair in this case. Counsel represented these workers on a
25 contingency fee basis. None of the Plaintiffs has had to pay anything for their representation.
26 Plaintiffs’ counsel worked on this case paying their support staff at no charge to the clients
27 and taking a significant amount of time from paying clients to represent these employees.
28

1 The court can also use the lodestar method to cross check the reasonableness of the
2 percentage of the common fund the Plaintiff's counsel has requested. In the lodestar method
3 the number of hours billed by the attorney is multiplied by the prevailing hourly rate for
4 attorneys in the area. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013); *In re*
5 *Taco Bell Wage & Hour Actions*, 222 F. Supp. 3d 813, 829 (E.D. Cal. 2016)

6 The court can adjust the amount awarded up based on a number of factors including:

7
8 (1) the novelty and difficulty of the questions involved,

9
10 (2) the skill displayed in presenting them,

11
12 (3) the extent to which the nature of the litigation precluded other employment by the
13 attorneys,

14
15 (4) the contingent nature of the fee award.”

16
17 *In re Taco Bell Wage & Hour Actions*, 222 F. Supp. 3d at 829.

18 Class counsel asserts that some of the factors support a modest lodestar multiplier up
19 to 1.375 times the hours billed.

20 The case had some complexity in that it was a dual opt in FSLA and opt-out Rule 23
21 class action. Two classes had been created and two separate procedures put in place to
22 handle the Rule 23 and FSLA requirements. The clients speak Spanish so class counsel had to
23 translate complex legal theories to his clients. The Defendants had a convoluted method of
24 paying his employees that took a while to back track. Much of the time spent back tracking
25 the calculation method was not billed for.

26 Considering the above, Class Counsel asserts that a lodestar analysis supports, and
27 cross checks the 30% attorney's fee award requested in this case. One Hundred Twelve
28 Thousand Five Hundred Dollars (\$112,500) divided by the total 204.44 hours worked in this

1 case equals (133.2 hour by Vickie Boone plus 71.24 hours by James Dal Bon) \$550.28 an hour
2 for attorney's fees. At \$400 per hour, the lowest per hour awarded to either counsel by a
3 court equals a modest 1.375 multiplier. For James Dal Bon \$550 is lower than the \$563 and
4 \$577 per hour awarded in Ledo and Martinez. Finally James Dal Bon did not bill for the
5 Supplemental Briefing he did in the Second Motion for Preliminary Approval, taking
6 responsibility for not obtaining approval on the first try.

7 NONE OF THE THREE SIGNS OF COLLUSION EXIST IN THIS CASE

8 The district court must examine the settlement to determine whether class counsel
9 colluded with the Defendants to defraud class members. The Ninth Circuit has found the
10 following three factors indicate collusion:

11 (1) "when counsel receive a disproportionate distribution of the settlement, or when the
12 class receives no monetary distribution but class counsel are amply
13 rewarded," *Hanlon*, 150 F.3d at 1021;

14
15 (2) when the parties negotiate a "clear sailing" arrangement providing for the payment of
16 attorneys' fees separate and apart from class funds, which carries "the potential of
17 enabling a defendant to pay class counsel excessive fees and costs in exchange for
18 counsel accepting an unfair settlement on behalf of the class,"

19
20 (3) and when the parties arrange for fees not awarded to revert to defendants rather than
21 be added to the class fund, *See Aaron J. Walker v. GN Netcom, Inc., Motorola, Inc.,*
22 *Plantronics, Inc. (In re Bluetooth Headset Prod. Liab. Litig.)*, 654 F.3d 935, 945-47 (9th
23 Cir. 2011)

24
25 None of these three factors exist in this case. The class members are receiving a
26 "monetary distribution" of 70% of the settlement funds. Class counsel is asking for 30% of
27 the award. Finally, none of the settlement funds revert back to the Defendants.

28 THE COURT SHOULD RE-IMBURSE CLASS COUNSEL THEIR COSTS

1 The courts have found that reimbursement of costs should be paid in a class action
2 because “ all beneficiaries should bear their fair share of the costs of the litigation, and these
3 are the normal costs of litigation that clients traditionally pay.” See, e.g., Leonard v. Baumer
4 (In re United Energy Corp. Sec. Litig.), Fed. Sec. L. Rep. P 94, 376, 1989 WL 73211, at *6 (C.D.
5 Cal. March 9, 1989). In this case the Mediation fee, cost of service, cost of the paralegal \add
6 to little more than \$7000. These costs are moderate and demonstrate class counsel carefully
7 proceeded with an eye keeping costs low.

8 Plaintiffs’ counsel will ensure this motion and billing appear on the class website. We
9 reserve further argument for CPT Group to produce their final calculations.

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11 Attorney for the Plaintiff

12 November 29, 2019

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14 

15 James Dal Bon