David S. Harris (SBN 215224)
NORTH BAY LAW GROUP
116 E. Blithedale Avenue, Suite #2
Mill Valley, California 94941-2024
Telephone: 415.388.8788
Facsimile: 415.388.8770
dsh@northbaylawgroup.com

Attorneys for Plaintiff Alicia Ranillo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

ALICIA RANILLO, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ENSIGN SONOMA LLC, a California limited liability company, and DOE 1 through and including DOE 100,

Defendants.

Case No. SCV-258369

PLAINTIFF'S NOTICE OF MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND ENHANCEMENT AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Assigned to Hon. Patrick M. Broderick

Date: June 14, 2019
Time: 9:00 a.m.
Place: Sonoma County Superior Court, Courtroom 16, 3035 Cleveland Avenue, Santa Rosa, California 95403

TO EACH PARTY AND TO EACH PARTY'S ATTORNEY OF RECORD: NOTICE IS HEREBY GIVEN that, on June 14, 2019, at 9:00 a.m., in Courtroom 16 of the above-entitled Court located at 3035 Cleveland Avenue, Santa Rosa, California 95403, Plaintiff Alicia Ranillo ("Plaintiff") will move for an order awarding Class Counsel attorneys' fees of $45,000.00, reimbursement of costs in the amount of $6,000.00 and an enhancement payment to the named Plaintiff in the amount of $5,000.00. The Motion will be based upon this Notice of Motion; the Declarations of David S. Harris, Alicia Ranillo and Daniel P. La, and the exhibits attached thereto; the Memorandum of Points and Authorities in Support of Plaintiff's Motion for Award of Attorneys' Fees, Reimbursement of Costs, and Enhancement Award; the complete records and files of this action; and the oral argument of counsel.

DATED: May 31, 2019

NORTH BAY LAW GROUP

David S. Harris
Attorneys for Plaintiff Alicia Ranillo

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

In connection with the $135,000 settlement generated by counsel for Plaintiff Alicia Ranillo in this case, this Court should approve Plaintiff's Motion for Award of Attorneys' Fees, Reimbursement of Costs, and Enhancement Award by granting this application for an award of (1) $45,000 in attorneys' fees to Class Counsel, (2) $6,000 for reimbursement of litigation costs, and (3) a $5,000 enhancement payment to named Plaintiff Alicia Ranillo.[1] Class Counsel secured a settlement on behalf of a Class of employees who were purportedly not provided with proper overtime compensation, with proper rest-and-meal breaks, with all wages owed to them on the final day of their employment, and with adequate pay stubs. For their services in generating a settlement fund for the benefit of a Class comprised of hourly employees, Class Counsel seeks a fee of $45,000 from the settlement amount and reimbursement of $6,000 for litigation costs incurred. This award will compensate fairly Class Counsel for work already performed in the case and for all of the work remaining to be performed in the case, including responding to Class Member inquiries, preparing the final-approval motion, and ensuring the settlement is fairly administered and implemented. Indeed, these amounts are particularly reasonable in light of the fact that Class Counsel's actual lodestar for work performed in this case is more than three times the amount being requested. Similarly, Class Counsel's out-of-pocket litigation costs exceed the $6,000 amount being requested.

Defendant Ensign Sonoma, LLC ("Defendant" or "Ensign") called upon an experienced defense firm: Call & Jensen. (See Declaration of David S. Harris in Support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Motion for Award of Attorneys' Fees, Reimbursement of Costs, and an Enhancement Award ("Harris Decl.") ¶ 30.) Nevertheless, Plaintiff achieved an outstanding result with a $135,000 common-fund, non-reversionary settlement, which will pay Class Members on account of alleged violations of the California Labor Code.

The public policy of California recognizes the extreme importance of deterring the type of misconduct Plaintiff has alleged in this action. Accordingly, unlike the prevailing "American Rule" in

[1] All capitalized terms shall have the same meanings as set forth in the Joint Stipulation of Class Action Settlement.

litigation, in which each party bears its own attorney's fees, in employment cases of this nature, as well as in civil-rights cases, antitrust cases, and other unique situations, the law requires that the wrongdoer pay the legal fees of the prevailing party. California law provides for payment of mandatory attorneys' fees and costs in the event of the nonpayment of wages. See Cal. Lab. Code §§ 218.5 and 1194(a). California Labor Code section 226(e) provides that an employee "is entitled to an award of costs and reasonable attorney's fees." Cal. Lab. Code § 226(e). California Labor Code section 2699(g)(1) provides "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g)(1).

Statutes governing conditions of employment are construed broadly in favor of protecting employees. Lusardi Construction Co. v. Aubry, 1 Cal. 4th 976, 985 (1992); Bureerong v. Uvawas, 922 F. Supp. 1450, 1469 (C.D. Cal. 1996) ("the California law governing wages is remedial in nature and must be 'liberally construed'"). In Smith v. Superior Court, 39 Cal. 4th 77, 92 (2006), the Supreme Court held that the relevant sections of the California Labor Code should be construed to provide protection for workers:

> Finally, defendant relies on Hale v. Morgan (1978) 22 Cal. 3d 388 (Hale) and other authorities in asserting that penalties are never favored by courts of law or equity and that the statutes imposing penalties or creating forfeitures must be strictly construed . . . (citations omitted) . . .

Smith at 92. The rule of strict construction of penal statutes "has generally been applied in this state to criminal statutes, rather than statutes which prescribe only civil monetary penalties." People ex rel. Lungren v. Superior Court, 14 Cal. 4th 294, 312 (1996). Moreover, Hale v. Morgan, 22 Cal. 3d 388 (1978), "did not purport to alter the general rule that civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose." People ex rel. Lungren at 313. Statutes providing for payment of attorneys' fees in labor disputes should be construed in a liberal fashion so that high-quality counsel will undertake the substantial risks in cases of this nature.

Defendant does not oppose Plaintiff's request for an award of attorney's fees, reimbursement of costs, and enhancement award. Class Counsel respectfully requests that the Court award $45,000 in attorneys' fees, $6,000 for reimbursement of reasonable costs incurred in the prosecution of this case, and a $5,000 class-representative enhancement award to Plaintiff. A detailed and precise statement of all of the services provided in connection with this application for a fee award is set forth in the Harris

Declaration filed concurrently herewith.

II. Background, Strengths and Weaknesses of the Case, and Risks of Maintaining Class-Action Status Through Trial.

On February 8, 2016, this case was commenced in the Sonoma County Superior Court as a putative class action on behalf of Plaintiff and all others similarly situated for alleged violations of the California Labor Code. (See generally Feb. 8, 2016, Compl.) On March 15, 2016, Plaintiff filed a First Amended Complaint adding a cause of action under the Labor Code Private Attorneys General Act ("PAGA"), California Labor Code section 2699. (See Mar. 15, 2016, First Am. Compl.). On June 28, 2016, Plaintiff filed a Second Amended Complaint, which is the operative Complaint in this matter. (See June 28, 2016, Second Am. Compl.).

On March 6, 2018, the parties participated in an all-day mediation with an experienced employment mediator, Hon. Linda Quinn (Ret.) in Irvine, California. (Harris Decl. ¶ 6.) Between the filing of the case and mediation, the Parties engaged in substantial investigation and discovery in connection with this action. (Harris Decl. ¶ 6.) Defendant provided extensive documents and putative class data to Plaintiff and her counsel to review and analyze. (Harris Decl. ¶ 6.) This information included summary employment data for the entire putative Class, information as to Defendant's employment policies, and a statistically significant sampling of full payroll and hourly employee punch-data for the putative Class. (Harris Decl. ¶ 6.) Class Counsel spent significant time in anticipation of mediation reviewing the payroll information and hourly employment data provided by Defendant in order to prepare a comprehensive damage analysis. (Harris Decl. ¶ 6.) Given the reasonable arguments that could be made by both sides, the case was ultimately resolved after the full-day mediation, which included months of extensive settlement negotiations with the active assistance of Judge Quinn.

Settlement is an extremely attractive option for both Plaintiff and Defendant, given the reasonable arguments that can be made by both sides. Plaintiff contends that Defendant violated the California Labor Code by failing to provide Class Members with properly calculated overtime wages. Further, Plaintiff contends that Defendant failed to properly provide the thirty-minute meal periods and ten-minute rest periods mandated by sections 226.7 and 512 of the California Labor Code.

Accordingly, Plaintiff contends that Defendant's employees are entitled to "one additional hour of pay at [their] regular rate of compensation for each work day that [a] meal or rest period [w]as not provided." Cal. Lab. Code § 226.7(b). In addition, Plaintiff contends that Defendant willfully failed to pay in a timely fashion those Class Members whose employment with Defendant had been terminated. Accordingly, Plaintiff contends that those employees are entitled to the "waiting-time penalties" specified by section 203 of the California Labor Code. Finally, Plaintiff contends that Defendant failed to issue pay stubs that contain all of the information required by the California Labor Code. Defendant vigorously disputes all of Plaintiff's contentions.

Settlement is an attractive option with respect to Plaintiff's overtime and meal-and-rest break claims. Based on a review of materials produced by Defendant and on discussions with Defendant's counsel, Plaintiff's counsel acknowledges that some may argue that any unpaid overtime and the number of meal and/or rest breaks missed by any given Class Member may require individualized inquiry, with a result that class certification might be denied on these claims. With respect to the breaks claim, Defendant argues there is no improper common policy or procedure to support a claim for the failure to provide rest and meal breaks. Indeed, Defendant argues that its only common policy regarding meal and rest breaks is that non-exempt, hourly employees are permitted to take them, which policy Defendant contends is articulated in a written policy. Defendant argues that, in light of its purportedly compliant written breaks policy, Plaintiff would be unable to secure class certification for the meal and rest-break claims. See Washington v. Joe's Crab Shack, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (denying certification of rest-break claims where written policy was fully compliant with the law and individualized inquiries would be required to determine whether and when rest breaks were missed).

Defendant also argues that, due to the nature of its business, there are disparate break practices resulting from a variety of factors, including the period of time during which the employee worked, the job title, nature of the work, location within the facility, management styles, and/or employee preferences. Defendant argues that, when faced with similar facts, courts have denied class certification because employees' breaks, in practice, are not uniform. See, e.g., Hughes v. WinCo Foods, 2012 WL 34483 at *5–6 (C.D. Cal. Jan. 4, 2012) ("[T]he decision-making with respect to when

employees may take meal and rest breaks is diverse. It varies from store to store, and from department-to-department within the same store. There is simply no manner in which the timing of such breaks can be proven reliably with evidence of 'a single stroke.'"). Defendant argues that Plaintiff cannot meet her burden to certify the class action because a highly individualized inquiry would have to be made to determine whether a particular missed break was the personal choice of the employee, or was somehow mandated by Defendant. Under Brinker Restaurant Corp. v. Superior Court, 53 Cal. 4th 1004, 1040–41 (2012), the key inquiry is whether the non-exempt employee had a reasonable opportunity to take an uninterrupted break. This inquiry, Defendant contends, will necessarily involve an evaluation of the individual facts and details of each job assignment worked by each non-exempt employee, whether breaks were taken in accordance with Defendant's policy, and, if not, why they were not taken.

Similarly, Plaintiff's overtime claim relates to Defendant's alleged failure to compute accurately the correct regular rate when paying overtime, as Plaintiff contends that Defendant failed to incorporate shift differential rates into the employees' regular rate. In particular, the applicable overtime rate to be used when computing the overtime compensation to be paid to an employee is based on the employee's "regular rate of pay," which is the compensation an employee normally earns for the work he or she performs. The regular rate of pay includes an employee's base pay (*i.e.*, hourly rate), plus any shift-differential rates earned by the employee during the pay period. Plaintiff contends that Defendant failed to include both regular and shift-differential rates (hours worked for early or late shifts) when calculating the regular rate. Plaintiff concedes that the magnitude of damages for the miscalculation of the regular rate and overtime wages is extremely small. Plaintiff also acknowledges that Defendant may argue that the miscalculation of overtime and the resulting damages owed to any given Class Member may require a rather individualized inquiry, which may result in class certification being denied on this claim. Thus, in light of the reasonable arguments that can be made by both sides, compromise of the overtime and meal-break and-rest break claims is appropriate.

Settlement is also an attractive option with respect to Plaintiff's section 203 claim. For example, Defendant contends that no damages are owed for the alleged "untimely" payment of wages because its behavior was not "willful," which is a requirement under section 203. See Cal. Lab. Code § 203(a). Defendant could likewise assert that section 203, as with all penalty statutes, is strongly

disfavored and must be narrowly construed. See Hale v. Morgan, 22 Cal. 3d 388, 405 (1978). The same could be said with respect to Plaintiff's pay-stub claim under section 226 of the Labor Code. With respect to Plaintiff's pay-stub claim, Plaintiff's counsel is aware that Defendant has arguable defenses with respect to whether such violations merit awarding employees the statutory amount, namely, that such violations are purely technical in nature, that Defendant substantially complied with section 226, and that Defendant's alleged violation was neither knowing nor intentional. Defendant further argues that this technical violation—failing to list the legal name of the employer—only occurred on a subset of employee paystubs, all of which Defendant contends cut against awarding any substantial penalties under section 226. Cf., e.g., Milligan v. American Airlines, 327 Fed. Appx. 694 (9th Cir. 2009).

Furthermore, as a class action, this case presents a clear risk of lengthy and expensive litigation. It would likely be another one to two years before this case went to trial so that, *inter alia*, the Parties could properly complete class discovery, Plaintiff could file a motion for certification, and the Parties could file cross-motions for summary judgment. That said, the Parties have, in fact, conducted extensive discovery and analysis of the claims. Defendant has provided Plaintiff with relevant information regarding the employment records of Plaintiff and a statistically significant sample of the entire Class. Nevertheless, the law makes clear that exhaustive, protracted, and costly discovery need not be conducted in a class action before a settlement can be reached. 7-Eleven Owners for Fair Franchising, 85 Cal. App. 4th 1135, 1150 (2000). "In the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement . . . . '[N]otwithstanding the status of discovery, Plaintiffs' negotiators had access to a plethora of information regarding the facts of their case.'" Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1239–40 (9th Cir. 1998) (citations omitted). Here, there was more than sufficient investigation and discovery conducted to permit counsel to enter into the Settlement Agreement.

For all of the foregoing reasons, the Parties decided to settle. Plaintiff filed the Motion for Conditional Class Certification and Preliminary Approval of Class-Action Settlement on January 22, 2019. On March 15, 2019, this Court granted preliminary approval. (See generally Mar. 15, 2019,

Preliminary Approval Order.)

III. Argument.

A. A Common-Fund Attorneys' Fee Award Is Appropriate.

Here, Class Counsel has secured a non-reversionary common fund of $135,000 for Plaintiff and a Class of approximately 180 current and former employees of Defendant. "Although American courts . . . have never awarded counsels' fees as a routine component of costs, at least one exception to this rule has become well-established as the rule itself: that one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." Quinn v. State, 15 Cal. 3d 162, 167 (1975). The courts in California explained the reason for the approval of a contingency fee in Ketchum v. Moses, 24 Cal. 4th 1122 (2001):

> As we explained in Radar v. Thrasher (1962) 57 Cal. 2d 244, 253 []: "'[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a *larger compensation* than would otherwise be reasonable.' . . . The economic rationale for fee enhancement in contingent cases has been explained as follows: "A contingent fee *must be higher* than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders *but for the loan of those services*." . . . "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."

Id. at 1132–33 (emphasis added; citations omitted).

An award of contingent attorney's fees to counsel is justified under the "common-fund" doctrine. Serrano v. Priest, 20 Cal. 3d 25, 34 (1977). See also Boeing Co. v. Van Gemert, 444 U.S. 472, 478, 100 S. Ct. 745, 749 (1980). An attorney who recovers a common fund for the benefit of persons other than his or her clients is entitled to a fee from the common fund. Mills v. Electric Auto-Lite Co., 396 U.S. 375, 392–96 (1970); In re Pac. Enterprises Sec. Litig., 47 F. 3d 373, 379 (9th Cir. 1995); In re Activision Sec. Litig., 723 F. Supp. 1373, 1375 (N.D. Cal. 1989); Glendale City Employees' Ass'n v. City of Glendale, 15 Cal. 3d 328, 341 n.19 (1975). It is well-established that the "experienced trial judge is the best judge of the value of professional services rendered in [the] court . . . ." Serrano, 20 Cal. 3d at 49. The common-fund doctrine is predicated on the principle of preventing unjust enrichment. It provides that, when a litigant's efforts create or preserve a fund from which others derive benefits, the litigant may require the passive beneficiaries to compensate those who

created the fund. Both state and federal courts in California have embraced this doctrine. Serrano, 20 Cal. 3d at 35.

In the present case, it is clear that a common fund has been created and that the requisites supporting payment of fees by the beneficiaries of that fund are satisfied. Under the foregoing doctrine, courts have historically and consistently recognized that class litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify individual representation. In Paul, Johnson, Alston & Hunt v. Graulty, 886 F. 2d 268, 271 (9th Cir. 1989), the Ninth Circuit embraced this principle when it stated:

> Since the Supreme Court's 1885 decision in Central Railroad & Banking Co. of Ga. v. Pettus, 113 U.S. 116, 28 L.Ed. 915, 5 S.Ct. 387 (1885), it is well settled that the lawyer who creates a common fund is allowed an extra reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit. The amount of such a reward is that which is deemed 'reasonable' under the circumstances.

Id. at 271 (citations and emphasis omitted).

Accordingly, in the determination of a reasonable common-fund fee award, the awarding of attorneys' fees is to serve as an economic incentive for counsel to bring class-action litigation in order to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing.

When this case was originally filed, the prospect of a long, drawn-out battle with Defendant was almost a certainty. Effective prosecution and ultimate settlement of this case took creativity, as well as tenacity on such mundane tasks as researching case law and analyzing documents. Accordingly, this case provided remedies to Class Members that otherwise would have been at public expense.

B. The "Lodestar" Approach Is Mandated by California Law.

Since 1977, California has followed the policy of awarding attorney's fees in cases involving matters of public interest. Serrano v. Priest, 20 Cal. 3d 25 (1977) ("Serrano III"). In doing so, it has, from the beginning, adopted the "lodestar" approach. Serrano III at 48 n. 23. The efforts of counsel, resulting in payments to Plaintiff and Settlement Class Members, vindicated a fundamental public policy of the Labor Code of the State of California. For that reason, Plaintiff's counsel is entitled to an award of reasonable fees. Keeping in mind the fact that the struggle to secure a recovery for Plaintiff has been difficult, the issue, then, is how such fees are to be calculated.

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

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

The second of the prohibited factors is the actual cost to the client of the attorney's services. In the "Serrano series" of opinions, the State Treasurer, challenging the amount of the award, sought discovery of the actual cost of the attorneys' services. Denial of such discovery was upheld on the grounds that it was irrelevant; the only relevant factor is the market rate for the services rendered. Serrano v. Unruh, 32 Cal. 3d 621, 641–42 (1982) ("Serrano IV").

The opinion in Ketchum is instructive and binding on a number of other points. First, it reaffirms the rule that the lodestar figure is calculated by using the prevailing hourly rates for comparable legal services in the community. Ketchum, 24 Cal. 4th at 1132. Furthermore, it explicitly recognizes that, in addition to the expertise presumptively enjoyed by the trial-court judge, it is proper to offer outside opinion and reference as to the prevailing rate for the sort of service rendered. Id. at 1128.

The lodestar figure is arrived at by a careful compilation of the professional time reasonably

spent and the ascertainment of reasonable hourly compensation for each attorney. This is done before any consideration of whether to augment the resultant lodestar figure based upon factors such as the contingency (risk of non-compensation) of any fee award. Serrano III, 20 Cal. 3d at 48; Ramos v. Countrywide Loans, 82 Cal. App. 4th 615, 622–23 (2000).

Fees arrived at by application of the lodestar method are not limited by the amount of damages obtained. In Armenta v. Osmose, Inc., 135 Cal. App. 4th 314, 316 (2005), the court awarded fees of $301,625.40 in a case in which the total award of unpaid minimum wages, liquidated damages, and continuing wages under section 203 was only $90,398.22. In Flannery v. Prentice, 26 Cal. 4th 572, 576 (2001), the jury awarded damages of $250,000, and the trial court awarded $1,088,231 in attorney's fees. In Vo v. Las Virgenes Municipal Water District, 79 Cal. App. 4th 440, 442 (2000), the court approved an award of $470,000 in fees, yet damages were only $37,500.

Were the courts to limit attorney's fees to the amount of the recovery, competent counsel would be prohibited from vigorously representing unpaid employees in cases of this nature. A recalcitrant employer could, by stonewalling a plaintiff, deprive plaintiff's counsel of a reasonable fee. Stokus v. Marsh, 217 Cal. App. 3d 647, 657 (1990). In the just-cited case, the municipal court, following litigation in an unlawful-detainer case, awarded $75,000 in fees. Here, similarly, a review of the detailed time records of Class Counsel compels a conclusion that the requested lodestar is more than appropriate, as the $45,000 amount being requested for attorney's fees is *less than* one-third of Class Counsel's total lodestar in the case, without any multiplier being applied. (Harris Decl. ¶ 34.)

C. Lodestar Rates Are Market Rates.

The hourly rates to be utilized in establishing the lodestar figure are market rates. This has a number of important ramifications, and the market-rate principle applies both to attorney's fees and to services such as paralegal fees. That the hourly rate to be used in calculating the lodestar is not the actual cost of the services but is instead the market rate was re-affirmed by the California Supreme Court in PLCM Group, Inc., where the Court rejected a contention that, because the services were rendered by in-house counsel, the rate should be based upon the cost to the client. This rule harkens back at least to Serrano IV, 32 Cal.3d 621 (1982). In appealing an award of attorney's fees to a public-interest law firm, the State Treasurer complained, *inter alia*, of being denied discovery into the actual

salaries paid to the individual attorneys. The Supreme Court held that discovery had been properly denied. The salaries were irrelevant because the proper hourly rate for computation of the lodestar was the reasonable market value of the services rendered. Serrano IV, 32 Cal. 3d at 641–42.

In assessing reasonableness, courts often refer to the "Laffey" Matrix, "an official source of attorney rates based in the District of Columbia area," Syers Props. III, Inc. v. Rankin, 226 Cal. App. 4th 691, 695 (2014) (internal quotations omitted), so named for the case that generated the index: Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354 (D.D.C. 1983). The rates set forth in the Laffey Matrix can be adjusted to areas outside of the District of Columbia by "using the [U.S. Office of Personnel Management's ("OPM")] Locality Pay Tables," and by following the "formula used by Chief Judge Walker in In re HPL Technologies, Inc. Securities Litigation," 366 F. Supp. 2d 912 (N.D. Cal. 2005), and In re Chiron Corp. Securities Litigation, 2007 4249902 (N.D. Cal. Nov. 30, 2007). Syers Props. III, Inc., 226 Cal. App. 4th at 695. (Harris Decl. ¶¶ 35-43.)

A copy of the current Adjusted Laffey Matrix is attached as **Exhibit 6** to the Harris Declaration filed herewith, and lists billing rates as follows:

June 1, 2018, Through May 31, 2019, Laffey Matrix	
Experience	***Hourly Rate***
20+ Years	$894.00
11–19 Years	$742.00
8–10 Years	$658.00
4–7 Years	$455.00
1–3 Years	$371.00
Paralegals and Law Clerks	$202.00

(Harris Decl. Ex. 6.) Adjusting these rates to the San Francisco Bay Area results in the following hourly rates applied for each Class Counsel timekeeper:

Attorney	***Hourly Rate***
David Harris	$805.29
J. Michael Solano (paralegal)	$219.23

(Harris Decl. ¶¶ 35-43.) Accordingly, Plaintiff submits that the hourly rates for Class Counsel, above, are market rates and should be used in calculating Class Counsel's lodestar.

D. The Total Lodestar Dollar Amount Is Reasonable.

Defendant was entitled to and did retain able and experienced counsel. Work on this case began in October 2015 and will continue into July 2019. The total hours and expenses incurred is reasonable

for a case of this nature. The total lodestar in this case is $151,683.22 for approximately 223 hours of work through the filing of this motion. (Harris Decl. ¶ 34.) Class Counsel requests attorneys' fees of $45,000, which is less than one-third of the total lodestar to date. (Harris Decl. ¶ 34.) The lodestar, however, does not include the time that will be spent in finalizing this Motion, securing final approval, responding to further client and Class Member inquiries, and concluding administration of this case. (Harris Decl. ¶ 40.) Thus, by the time the entire class-notice process has been completed, and the Court hears the Motion for final approval, Class Counsel will have expended substantial additional hours in prosecuting this matter.

E. A "Multiplier" May Be Applied to the "Lodestar."

Although not being sought in this instance, multipliers are "routinely" used to enhance the lodestar in common-fund cases. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1051 (2002). The purpose of a multiplier is to compensate counsel for undertaking the risk of working on a contingent-fee basis, and based on the delay in recovering the fee, the skill displayed by counsel in litigating or settling the case, the novelty and complexity of the issues, and the importance of the lawsuit to the class and the public. See Serrano v. Priest, 20 Cal. 3d 25, 48–49 (1977); Ramos v. Countrywide Home Loans, Inc., 82 Cal. App. 4th 615, 622–23 (2000); Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19, 49 (2000). In common-fund cases, multipliers reward attorneys by paying them a premium over their normal hourly rates for taking the risk of winning contingency cases. Vizcaino, 290 F.3d at 1051; see also San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, 155 Cal. App. 3d 738, 755, n.2 (1984). California has adopted a "relatively permissive attitude on the use of multipliers." Lealao, 82 Cal. App. 4th at 43.

Here, however, Class Counsel's lodestar is $151,683.22 for 223 hours performed through the filing of this Motion. Class Counsel seeks $45,000.00 in attorney's fees, or 33.33 percent of the settlement fund. Consequently, although entitled to it under the law, Class Counsel seeks no multiplier whatsoever in this case.

F. The Award Should Include All Reasonably Incurred Costs and Expenses.

The cases cited in the preceding sections of this Memorandum universally approve awards that include reimbursement of all costs and expenses reasonably incurred by counsel in the litigation. These

are not limited to the costs recoverable under sections 1032 and 1033.5 of the Code of Civil Procedure. In other words, those costs and expenses that would properly be included in a memorandum of costs and disbursements. Bussey v. Affleck, 225 Cal. App. 3d 1162, 1166 (1990); Cal. Hous. Fin. Agency v. E.R. Fairway Assocs. I, 37 Cal. App. 4th 1508, 1514–15 (1995); Arntz Contracting Co. v. St. Paul Fire and Marine Ins. Co., 47 Cal. App. 4th 464, 492 (1996).

The Harris Declaration filed and served herewith sets out such litigation-related costs and expenses in detail. (Harris Decl. Ex. 7.) Although Class Counsel has incurred costs and expenses to date in the amount of at least $6,569.32, as set forth in the Harris Declaration and in the Settlement Agreement, Class Counsel may only seek reimbursement of litigation expenses in an amount not-to-exceed $6,000.00. (Harris Decl., ¶ 44.)

G. Class Counsel Are Entitled to Reasonable Attorneys' Fees and Costs under the California Labor Code.

Section 218.5 of the California Labor Code provides that, "[i]n any action brought for the nonpayment of wages . . . the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." Cal. Lab. Code § 218.5. Section 226(e) provides "[a]n employee . . . is entitled to an award of costs and reasonable attorney's fees. Cal. Lab. Code § 226(e). Section 1194(a) provides "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action . . . reasonable attorneys' fees, and costs of suit." Cal. Lab. Code § 1194(a). Finally, PAGA provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g). It is indisputably recognized that Plaintiff and the Class are entitled to recover the reasonable attorneys' fees and costs pursuant to the foregoing provisions of California state law.

H. Plaintiff's Enhancement Award.

On March 15, 2019, this Court appointed Plaintiff Alicia Ranillo as the Class Representative. (Preliminary Approval Order ¶ 4.) The Settlement Agreement provides that Plaintiff may seek a Class Representative Enhancement award in an amount of five-thousand dollars ($5,000) for her time and effort prosecuting this case on behalf of the class and for assuming the risk of paying Defendant's costs

in the event of an unsuccessful outcome. (Settlement, ¶ III(3)(b).) This enhancement award is in addition to the amount she will receive as a member of the Class. Here, Plaintiff requests an enhancement award in the amount of $5,000. Plaintiff's proposed "enhancement" payment is entirely reasonable, as Plaintiff is entitled to this additional amount for the services she rendered as a Class Representative. See Bell v. Farmers Ins. Exch., 115 Cal. App. 4th 715, 726 (2004) (affirming an order for "service payments to the five named plaintiffs compensating them for their efforts in bringing suit"). Enhancement awards "are not uncommon and can serve an important function in promoting class action settlements," Sheppard v. Consol. Edison Co. of N.Y., Inc., 2002 U.S. Dist. LEXIS 16314, at *16 (S.D.N.Y. 2002), and "[c]ourts routinely approve incentive awards to compensate named [p]laintiffs for the services they provided and the risks they incurred during the course of the class action litigation." In re S. Ohio Correctional Facility, 175 F.R.D. 270, 272 (S.D. Ohio 1997), reversed on other grounds, 191 F.3d 453 (6th Cir. 1999).

Enhancement awards in actions against employers play a particularly important role. Here, Plaintiff asserted claims that may have never been brought. See Crab Addision, Inc. v. Superior Court, 169 Cal. App. 4th 958, 971 (2008) ("Current employees suing their employers run a greater risk of retaliation. . . . For them, individual litigation may not be a viable option . . . . [In addition], employees may be unaware of the violation of their rights and their right to sue.") It is appropriate to provide a payment to class representatives for their services to the class. Van Vraken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995); Wang v. Chinese Daily News, Inc., 231 F.R.D. 602, 614 (C.D. Cal. 2005) ("Proceeding by means of a class action avoids subjecting each employee to the risks associated with challenging an employer"); Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 32 (E.D. Pa. 1985). Courts should consider "the risk to the class representative in commencing suit, both financial and otherwise," as well as "the amount of time and effort spent by the class representative" and "the personal benefit (or lack thereof) enjoyed by the class as a result of the litigation." Smith v. CRST Van Expedited, Inc., 2013 U.S. Dist. LEXIS 6049, at *16 (S.D. Cal. filed Jan. 14, 2013) (quoting Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995)). In light of Plaintiff's willingness to come forward with this action on behalf of a Class of current and former employees, an enhancement award of $5,000 represents an entirely reasonable amount. See, e.g., Cook v. Niedert,

142 F.3d 1044, 1016 (7th Cir. 1997) (approving an incentive award of $25,000 to a class representative); Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 28 (E.D. Pa. 1985) (approving an award of $20,000 apiece to two class representatives). Indeed, enhancement awards are particularly appropriate in the context of employment class actions, where they help to alleviate the "stigma upon future employment opportunities for having initiated an action against a former employer." Campbell v. First Investors Corp., 2012 WL 5373423 at *8 (S.D. Cal. filed Oct. 29, 2012). In point of fact, being blackballed from future employment is not an unrealistic fear considering the public's ability to search for internet-reported cases like this one. Because the requested enhancement payment amounts to only a small percentage of the Settlement and is below the range awarded in similar cases, *see* Smith v. CRST Van Expedited, Inc., 2013 WL 163293 at *6 (S.D. Cal. filed Jan. 14, 2013) (noting that incentive awards range from $25,000 to $50,000), Plaintiff's requested enhancement award should be approved.

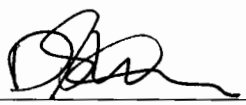
In furtherance of this action, Plaintiff was willing to come forward with the litigation on behalf of the absent Class of former and current employees, Plaintiff informed counsel of her employment issues, and provided counsel with facts, documents, details, and decision-making, which eventually culminated into the Settlement. (Harris Decl. ¶ 45.) The Declaration of Alicia Ranillo in Support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Motion for Attorney's Fees, Costs, and an Enhancement Award, filed concurrently herewith, details her efforts and participation in the litigation of this case. As a result of the Plaintiff's efforts, Class Members will receive significant payments for wages and damages under the Labor Code.

IV. Conclusion.

It is respectfully requested that this Court award (1) attorneys' fees in the amount of $45,000 to Class Counsel, (2) reimbursement of litigation costs in the amount of $6,000 to Class Counsel, and (3) an enhancement award to the named Plaintiff in the amount of $5,000.00.

DATED: May 31, 2019

NORTH BAY LAW GROUP



David S. Harris
Attorneys for Plaintiff

PROOF OF SERVICE

I declare under the penalty of perjury that I, J. Michael Solano, am a citizen of the United States and I am employed in the County of Marin. I am over the age of eighteen years and not a party to the within action. My business address is 116 E. Blithedale Avenue, Suite No. 2, Mill Valley, CA 94941.

On the date below, I caused the following documents:

PLAINTIFF'S NOTICE OF MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND ENHANCEMENT AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

to be served on the interested party in said action, who is:

Julie R. Trotter
Delavan J. Dickson
CALL & JENSEN
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660

Attorneys for Defendant Ensign Sonoma LLC

[X] BY UNITED STATES MAIL

I placed a true and correct copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Mill Valley, California, addressed to the parties as set forth above. CCP Sections 1013(a), 2015.5.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on May 31, 2019 at Mill Valley, California.

J. MICHAEL SOLANO