THE TIDRICK LAW FIRM LLP
STEVEN G. TIDRICK, SBN 224760
JOEL B. YOUNG, SBN 236662
1300 Clay Street, Suite 600
Oakland, California 94612
Telephone: (510) 788-5100
Facsimile: (510) 291-3226
E-mail: sgt@tidricklaw.com
E-mail: jby@tidricklaw.com

Attorneys for Individual and Representative
Plaintiff JANE ROE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JANE ROE, on behalf of herself and all others similarly situated,

Plaintiff,

v.

JOSE TORRES L.D. LATIN CLUB BAR, INC. *et al.*,

Defendants.

Civil Case No. 3:19-cv-06088-LB

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FOR AWARD OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES

The Honorable Laurel Beeler

Date: August 27, 2020
Time: 9:30 A.M.
Courtroom: Courtroom B, 15th Floor
450 Golden Gate Avenue
San Francisco, California
Judge: The Honorable Laurel Beeler

1
2 **NOTICE OF MOTION AND MOTION**

3 **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that on August 27, 2020, at 9:30 A.M. or as soon thereafter as
5 the matter may be heard, before the Honorable Laurel Beeler, United States District Court,
6 Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 15th Floor,
7 Courtroom B, Plaintiff Jane Roe ("Plaintiff") will and hereby does move the Court, pursuant to
8 Rule 23(h) of the Federal Rules of Civil Procedure, for an order awarding $33,750 in attorneys'
9 fees and $5,000 for costs payable to Class Counsel, and a service award to Plaintiff Jane Roe in
10 the amount of $10,000.00 for her service to the class. The motion will be based on this Notice, the
11 Memorandum of Points and Authorities below, the declaration of Steven G. Tidrick, Esq. filed
12 herewith, the other records, pleadings, and papers filed in this action, and any evidence or
13 argument presented at the hearing on this motion.

14 DATED: July 20, 2020 Respectfully submitted,

15 THE TIDRICK LAW FIRM LLP

16
17 By: /s/ Steven G. Tidrick
STEVEN G. TIDRICK, SBN 224760

18 Attorneys for Individual and Representative
19 Plaintiff JANE ROE

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 Through this motion, Plaintiff Jane Roe ("Plaintiff") seeks an order awarding $33,750 in
23 attorneys' fees, $5,000 in incurred litigation costs (which is less than the actual costs incurred),
24 and an enhancement payment to Plaintiff in the amount of $10,000.00 for her service to the class.

25 **II. NATURE OF CASE AND PROCEDURAL HISTORY**

26 In the interests of efficiency, Plaintiff refers the Court to (1) Plaintiff's motion for
27 preliminary approval of the settlement, which describes the case and its procedural history. *See*
28

Docket No. 17 ("Plaintiff's Motion for Preliminary Approval"), at ECF pages 4:6-5:5.[1] That motion also summarizes the terms of the settlement agreement. *See* Plaintiff's Motion for Preliminary Approval, ECF No. 17, at ECF pages 5:18-9:1. The settlement agreement, entitled "Class Action Settlement and Release," was filed on March 19, 2020 (ECF No. 14) ("Settlement Agreement"). The Court entered an order preliminarily approving the settlement on May 14, 2020. See ECF No. 23.

III. SETTLEMENT TERMS RELEVANT TO THIS MOTION

The Settlement Agreement authorizes the Court to award a service award (also known as an enhancement payment) to the Class Representative, Jane Roe, not to exceed $10,000, for her service to the class. *See* Settlement Agreement, ECF No. 14, at ECF page 6, §§ 6(a)(iv). It is within the Court's discretion whether to award such a payment and in what amount. *See id*. The Settlement Agreement provides that any of that requested amount that the Court does not approve shall be added to the Net Settlement Amount to be distributed to the Class. See *id*. at ECF page 6, § 7.

The Court also has the discretion to award Class Counsel attorneys' fees of up to twenty five percent (25%) of the $135,000 Gross Settlement Value, *i.e.*, $33,750, and reimbursement of reasonable litigation expenses, with the total fees and costs not to exceed $38,750. *See* Settlement Agreement, ECF No. 14, at ECF pages 6 and 10, §§ 7 and 14. The Settlement Agreement provides that any of those requested amounts that the Court does not approve shall be added to the Net Settlement Amount to be distributed to the Class. *See id*. at ECF page 6, § 7.

IV. ARGUMENT

A. Plaintiff's Counsel Are Entitled to Recover Fees from the Common Fund

Federal Rule of Civil Procedure 23 provides that, "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. Proc. 23(h). Rule 23(h) applies to requests for attorney's fees for settled class actions. *See Staton v. Boeing Co*., 327 F.3d 938, 964 (9th Cir. 2003) (explaining

[1] In this brief, page references for ECF-filed documents refer to the page numbers at the tops of the pages generated by the ECF system, not to the page numbers at the bottoms of the pages.

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2 that "[a]ttorneys' fees provisions included in proposed class action agreements are, like every
3 other aspect of such agreements, subject to the determination whether the settlement is
4 'fundamentally fair, adequate and reasonable'"). According to the Ninth Circuit, in order to
5 protect the due-process rights of unnamed class members, any such request must be filed prior to
6 the deadline to object to the settlement. *In re Mercury Interactive Corp. Sec. Litig*., 618 F.3d 988,
7 994-95 (9th Cir. 2010) ("*In re Mercury*"). *See also Weeks v. Kellogg Co*., 2011 U.S. Dist. LEXIS
8 155472, at *80 (C.D. Cal. Nov. 23, 2011) (applying *In re Mercury* and holding that the filing of a
9 fee petition one week before the objection deadline comported with due process). The present
10 motion, filed on July 20, 2020, complies with *In re Mercury*.

11 With regard to the merits of the Motion, in analyzing Rule 23(h) fee requests, courts
12 "'have an independent obligation to ensure that the award, like the settlement itself, is reasonable,
13 even if the parties have already agreed to an amount.'" *Vandervort v. Balboa Capital Corp*., 2014
14 U.S. Dist. LEXIS 46174 (C.D. Cal. Mar. 27, 2014) (quoting *In re Bluetooth Headset Prods.*
15 *Litig*., 654 F.3d 936, 941 (9th Cir. 2011)).

16 The U.S. Supreme Court "has recognized consistently that a litigant or a lawyer who
17 recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole."
18 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton*, 327 F.3d at 967 (same). For
19 purposes of determining a reasonable fee, "'courts have discretion to employ either the lodestar
20 method or the percentage-of-recovery method.'" *Greko v. Diesel U.S.A., Inc*., 2013 U.S. Dist.
21 LEXIS 60114, at *23 (N.D. Cal. Apr. 26, 2013). Generally speaking, though, "[t]he lodestar
22 method is . . . preferable when calculating statutory attorney fees, whereas the percentage-of-
23 recovery approach is appropriate when the fees will be drawn from a common fund." *Clark v.*
24 *Payless Shoesource, Inc*., 2012 U.S. Dist. LEXIS 105187, at *3-4 (W.D. Wash. July 27, 2012)
25 (citing *In re Bluetooth Headset Prods. Litig*., 654 F.3d at 941).

26 The Ninth Circuit has explained that, "[b]ecause the benefit to the class is easily
27 quantified in common-fund settlements, we have allowed courts to award attorneys a percentage
28 of the common fund in lieu of the often more time-consuming task of calculating the lodestar." *In*
re Bluetooth, 654 F.3d at 942. *See also Elliott v. Rolling Frito-Lay Sales, LP*, 2014 WL 2761316,

at *9, 2014 U.S. Dist. LEXIS 83796, at *25 (C.D. Cal. June 12, 2014) (C.D. Cal. June 12, 2014) (Carter, J.) ("There are significant benefits to the percentage approach, including consistency with contingency fee calculations in the private market, aligning the lawyers' interests with achieving the highest award for the class members, and reducing the burden on the courts that a complex lodestar calculation requires.").

As explained by the Ninth Circuit, a "common fund" exists "when (1) the class of beneficiaries is sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the fee can be shifted with some exactitude to those benefiting." *In re Petition of Hill*, 775 F.2d 1037, 1041 (9th Cir. 1985). According to the Supreme Court, "the[se] criteria are satisfied when each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum [amount]." *Boeing Co. v. Van Gemert*, 444 U.S. 444, 479 (1980). Here, the Settlement Agreement creates a common fund, as the class of beneficiaries is sufficiently identifiable, the benefits can be accurately traced, and the fee can be shifted with some exactitude to those benefiting. As explained in more detail below, Class Counsel's requested fee award amount is reasonable, and is significantly less than the lodestar.

B. The Requested Fees Are Within the Range of Approval

The Ninth Circuit has stated that "25 percent of the fund [i]s the 'benchmark' award that should be given in common fund cases." *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). That said, "the exact percentage varies depending on the facts of the case, and in 'most common fund cases, the award exceeds that benchmark.'" *Johnson v. General Mills, Inc.*, 2013 U.S. Dist. LEXIS 90338, at *20 (C.D. Cal. June 17, 2013) (quoting *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 491 (E.D. Cal. 2010). Thirty percent is within the "usual range." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). *See also In re Activision Sec. Litig*., 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (stating that "nearly all common fund awards range around 30%"). When the Court awards fees above or below the benchmark, the "record must indicate the Court's reasons for doing so." *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *44 (N.D. Cal. Jan. 26, 2007) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000)).

In this case, the gross settlement amount is $135,000. The requested fee award of $33,750 in attorneys' fees represents 25% of that amount.

Among the circumstances the Ninth Circuit has considered relevant in assessing reasonableness are: (1) the results achieved; (2) the riskiness of prosecuting the litigation; (3) whether counsel obtained benefits for the Class above and beyond the cash settlement fund itself; and (4) the financial burden carried by counsel in prosecuting the case on a contingency basis. *Vizcaino*, 290 F.3d 1043 at 1048-50. In this case, all four factors favor a finding that a fee award of more than 25% would be reasonable.

First, Class Counsel have obtained favorable results for the class. It is no exaggeration to predict that without using the class action process, the relief that members of the class were likely to achieve ranged from negligible to zero.

Second, prosecuting the litigation has been risky. This case is not one in which a substantial settlement and a recovery of a large attorneys' fee was a foregone conclusion. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980) (recognizing importance of incentivizing qualified attorneys to devote their time to complex, time-consuming cases in which they risk nonpayment); *Vizcaino*, 290 F.3d at 1048 ("Risk is a relevant circumstance."). Numerous affirmative defenses have been pleaded that, if successful, could bar any recovery. Moreover, there is the risk that no FLSA collective or Rule 23 class would be certified, the risk that an order certifying an FLSA collective or a Rule 23 class would be overturned on appeal, and the risk that a certified class would later be decertified, each of which is a significant risk in a class action and collective action case such as this. Finally, even if a judgment was obtained in favor of the class, the outcome of any appeals from such a judgment, were they to proceed, would be uncertain.

Third, Plaintiff's counsel obtained benefits for the Class above and beyond the cash settlement fund itself. Defendant has agreed to change its business practices such that Defendant will offer employment status to all individuals working for Defendant as exotic dancers now and in the future. *See* Settlement Agreement, ECF No. 14, at ECF page 11, § 15.

Fourth, Plaintiff's counsel has carried a financial burden in prosecuting the case on a contingency basis has been substantial. To date, Plaintiff's counsel have received no fees during the pendency of this action, which was filed on December 4, 2017, and they have also advanced all costs, despite the risk of no recovery. *See* Declaration of Steven G. Tidrick, Esq., filed herewith ("Tidrick Decl."), ¶ 17.

The circumstances described above would support an upward adjustment from the Ninth Circuit's benchmark of 25 percent. *See, e.g., Hopkins v. Stryker Sales Corp.*, 2013 U.S. Dist. LEXIS 16939, at *8-9 (N.D. Cal. Feb. 6, 2013) (discussing other wage-and-hour cases in which courts awarded attorneys' fees of 33 1/3% or more, explaining that conducting the case "on an entirely contingent fee basis against a well-represented [d]efendant" supported an upward fee adjustment, and awarding Class Counsel attorneys' fee award of 30 percent of the common fund); *Thieriot v. Celtic Ins. Co.*, 2011 U.S. Dist. LEXIS 44852 (N.D. Cal. Apr. 21, 2011) ("It is common practice to award attorneys' fees at a higher percentage than the 25% benchmark in cases that involve a relatively small — i.e., under $10 million — settlement fund."); *In re Heritage Bond Litig*., 2005 U.S. Dist. LEXIS 13555, at *69 (C.D. Cal. June 10, 2005) ("Here, the Court notes that Plaintiffs' counsel proceeded entirely on contingency basis, while paying for all expenses incurred. There was no guarantee of any recovery, and thus, counsel was subjected to considerable risk of no compensation for time or no reimbursement for expenses."); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880, at *28-29 (C.D. Cal. Nov. 18, 2014) ("Both of the firms representing the Class are small firms with fewer than fifteen attorneys. Firms of this size face even greater risks in litigating large class actions with no guarantee of payment. The Court finds that the considerable risk in this case due to the uncertain legal terrain, coupled with Counsel's contingency fee arrangement, weigh in favor of an increase from the benchmark rate. . . . Decisions in analogous wage and hour suits have found awards of one third of the common fund appropriate.") (citing cases and ordering attorneys' fee award of one-third of the common fund).

Another factor favoring the requested attorneys' fee award is that it equates to an amount that is significantly less than the lodestar, as discussed in more detail below. Thus, the requested

fee award results in a "negative multiplier," which supports a finding that the requested fee award, is reasonable and fair. *See, e.g., Pierce v. Rosetta Stone, Ltd.*, 2013 U.S. Dist. LEXIS 138921, at *18, 2013 WL 5402120, at *6 (N.D. Cal. Sept. 26, 2013) (finding that "the requested fee award results in a so-called negative multiplier, which suggests that the percentage of the fund amount is reasonable and fair"); *Hopkins v. Stryker Sales Corp.,* 2013 U.S. Dist. LEXIS 16939, at *9 (N.D. Cal. Feb. 6, 2013) (stating that in several cases in which courts awarded 33 and 1/3 percent of the common fund, the requested fees were "significantly less than the lodestar," citing cases).

C. The Lodestar "Cross-check" Confirms that the Requested Attorneys' Fees Are Reasonable

When setting a fee award, courts can—and should—apply the alternative lodestar method to provide "perspective on the reasonableness of a given percentage award." *Vizcaino*, 290 F.3d at 1050. According to the Ninth Circuit, "[c]alculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." *Id*. "Lodestar calculations are determined by multiplying the number of hours reasonably expended during the litigation by a reasonable hourly rate." *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *19 (C.D. Cal. June 10, 2005) (citing *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1029 (1998)). It is "common for a counsel's lodestar figure to [then] be adjusted upward by some multiplier reflecting a variety of factors such as the effort expended by counsel, the complexity of the case, and the risks assumed by counsel." *Id*. at *71-72 (citing *In re Linerboard Antitrust Litig*., 2004 U.S. Dist. LEXIS 10532, 2004 WL 1221350, at *16 (E.D. Pa. June 2, 2004) (recognizing that from 2001 to 2003, the average multiplier approved in common fund cases was 4.35, and during the 30 year period from 1973-2003, the average multiplier approved in common fund class actions was 3.89) (citing Stuart J. Logan, et al., Attorney Fee Awards in Common Fund Class Actions, 24 Class Action Reports 167 (2003)), disapproved on other grounds as stated in *In re ATM Fee Antitrust Litig*., 686 F.3d 741, 755 n.7 (9th Cir. 2011)).

Here, based on detailed, contemporaneously-kept time records, Plaintiff's counsel's unadjusted lodestar (*i.e.*, with no multiplier) is $50,189.00, computed as a function of the hours

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2 and rates described in the declaration of Steven G. Tidrick, Esq., filed herewith. Both the hourly
3 rates and the associated hours are reasonable. As to the rates, "'[t]he proper reference point in
4 determining an appropriate fee award is the rates charged by private attorneys in the same legal
5 market as prevailing counsel.'" *Rutti v. Lojack Corp.*, 2012 U.S. Dist. LEXIS 107677, at *30
6 (C.D. Cal. July 31, 2012) (quoting *Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir. 1996)). The rates
7 charged by private attorneys in the same legal market, in turn, are the "prevailing market rate[s]
8 in the relevant community" for lodestar purposes. *Davis v. City of San Francisco*, 976 F.2d 1536,
9 1547 (9th Cir. Cal. 1992) (quoting *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991), cert.
10 denied, 112 S.Ct. 640 (1991), and citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984), vacated in
11 part on other grounds by 984 F.2d 345 (9th Cir. 1993)). When setting rates, courts should use the
12 attorneys' "current" rates, *i.e.*, their rates at the time of the fee application. *See In re HPL Techs.,*
13 *Inc. Sec. Litig*., 366 F. Supp. 2d 912, 919–20 (N.D. Cal. 2005) (explaining that the use of current
14 rates "simplifies the calculation and accounts for the time value of money in that lead counsel
15 ha[ve] not been paid contemporaneously").
16 The requested hourly rates are within the range of rates that federal courts in California
17 have recently approved in employment class actions. For example, in *Nitsch v. DreamWorks*
18 *Animation SKG Inc.*, 2017 WL 2423161, at *9 (N.D. Cal. June 5, 2017), the court found that
19 hourly rates of up to $1,200—far above Class Counsel's requested hourly rates here—were "fair,
20 reasonable, and market-based, particularly for the 'relevant community' in which counsel work."
21 Similarly, in *Koz v. Kellogg Co.*, 2013 U.S. Dist. LEXIS 129205 (C.D. Cal. Sept. 10, 2013), the
22 court approved attorney hourly rates of up to $950. *See id.* at *23–24. *See also Pierce v. County*
23 *of Orange*, 905 F. Supp. 2d 1017, 1036 & n.16 (C.D. Cal. 2012) (approving rates of up to $850
24 per hour).
25 Other courts have approved The Tidrick Law Firm's hours and hourly rates, including
26 the hourly rates requested here. *See Kinney v. National Express Transit Servs. Corp.*, 2018
27 U.S. Dist. LEXIS 10808, at *11 (E.D. Cal. January 23, 2018) (Nunley, J.) (finding Mr.
28 Tidrick's hours and hourly rate of $825/hour to be reasonable, and likewise with respect to
Mr. Young's hours and hourly rate of $740/hour, stating "The Court finds that Class

Counsel's hours and hourly rates are reasonable."); *Jones v. San Diego Metropolitan Transit System*, 2017 WL 5992360, at *5 (S.D. Cal. Nov. 30, 2017) (Crawford, J.) (finding Mr. Tidrick's hours and hourly rate of $825/hour to be reasonable, and likewise with respect to Mr. Young's hours and hourly rate of $740/hour, stating "The Court finds that counsel's hours and hourly rates are reasonable."); *Munoz v. Big Bus Tours Limited*, Civil Case No. 3:18-cv-05761-SK (N.D. Cal. Feb. 12, 2020) (Kim, J.), ECF No. 40 (finding Mr. Tidrick's hours hours and hourly rate of $825/hour to be reasonable, and likewise with respect to Mr. Young's hours and hourly rate of $740/hour, stating "the court finds that Class Counsel's hours and hourly rates are reasonable").

The attorneys' fees request here, $33,750, is about 67% of the lodestar, which is $50,189.00. Thus, the requested fee award results in a "negative multiplier," which supports a finding that the requested percentage of the fund is reasonable and fair. *See, e.g., Pierce v. Rosetta Stone, Ltd.*, 2013 U.S. Dist. LEXIS 138921, at *18, 2013 WL 5402120, at *6 (N.D. Cal. Sept. 26, 2013) ("the requested fee award results in a so-called negative multiplier, which suggests that the percentage of the fund amount is reasonable and fair").

The facts here would warrant a positive multiplier. Indeed, the circumstances described above that support an upward adjustment from the Ninth Circuit's benchmark of 25 percent would also support a positive multiplier. For example, in *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014), the court considered those same factors in approving a 30% award where the lodestar was significantly less than the amount requested, such that the court accepted a multiplier of 2.58. *See id.* at *31 (finding that a multiplier of 2.58 is "not out of the range of fees awarded for class action settlements" and citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) for its "finding [that] multiples ranging from one to four are frequently applied in common fund cases").

Alternatively, in assessing reasonableness, courts often refer to the "*Laffey*" matrix, "[a] widely recognized compilation of attorney . . . rate data" for the District of Columbia, "so named because of the case that generated the index," *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983). *In re Chiron Corp. Sec. Litig.*, 2007 U.S. Dist. LEXIS 91140, at *18-19, 2007

WL 4249902, *6 (N.D. Cal. Nov. 30, 2007). *See also Langer v. Dodaiton, Inc.*, 2015 U.S. Dist. LEXIS 64805, at *36-39 & n.53 (C.D. Cal. May 18, 2015) (noting that the court "looks to the the Laffey Matrix as merely another factor bearing on reasonableness").

Of course, several years have passed since the *In re Chiron* decision, and, as noted above, when setting rates, courts should use attorneys' current rates. In addition, since the time that *In re Chiron* was decided, an "adjusted" *Laffey* matrix has been published "using a methodology advocated by economist Dr. Michael Kavanaugh" that "has been used by the United States District Court for the District of Columbia to determine the amount of a reasonable fee." *Bywaters v. United States*, 670 F.3d 1221, 1226 n.4 (Fed. Cir. 2012). As explained by the Federal Circuit, the adjusted *Laffey* matrix "more accurately reflects the prevailing rates for legal services." *Id. See also Hash v. United States*, 2012 U.S. Dist. LEXIS 53098, at *62, 2012 WL 1252624, at *22 (D. Idaho Apr. 13, 2012) (agreeing that the "adjusted" Laffey matrix "is the most accurate representation of rates for legal services . . . giv[ing] weight to the Federal Circuit's recent statement implying acceptance of the use of the Updated Laffey Matrix") (citing *Bywaters*, 670 F.3d at 1226 n.4). A copy of the current, adjusted Laffey matrix is attached as Exhibit 1 to the Declaration of Steven G. Tidrick, Esq. filed herewith.

Furthermore, according to an article reporting on a survey of law firm billing rates published in the August 10, 2012 edition of the *San Francisco Daily Journal*, reasonable hourly rates for attorneys in the San Francisco Bay Area are significantly higher than the rates indicated by the *Laffey* Matrix. According to that survey, the 2012 average billing rate in the San Francisco market was $675 for a partner, up from $654 in 2011, and $482/hour for an associate, up from $449/hour in 2011. A true and correct copy of that article is attached as Exhibit 3 to the Declaration of Steven G. Tidrick, Esq. filed herewith.

The hourly rates set forth in the *San Francisco Daily Journal* reflect those charged where full payment is expected promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be contingent or deferred for any substantial period of time, the fee arrangement would typically be adjusted so as to compensate the attorneys for those factors. Fee awards are almost always determined based on

current rates, *i.e.*, the attorney's rate at the time when a motion for fees is made, rather than the historical rate at the time the work was performed. This is a common and accepted practice that compensates attorneys for the delay in being paid.

In cases where compensation is contingent on success, attorneys reasonably expect to receive significantly higher effective hourly rates, particularly where, as in this case, the result is uncertain. As the case law recognizes, this does not result in any undue "bonus" or "windfall." In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client reasonably expects that his or her compensation will be significantly greater than if no risk was involved (for example, if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fees cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor makes those fee awards consistent with the legal marketplace, and thus helps to ensure that meritorious cases will be prosecuted, important public policies will be enforced, and individuals with meritorious legal claims will be better able to obtain qualified attorneys.

For all these reasons, Class Counsel's attorneys' fee request of $33,750—substantially lower than their lodestar—is therefore reasonable.

D. Class Counsel's Requested Expense Reimbursement Is Proper

"The prevailing view is that expenses are awarded in addition to the fee percentage.'" *Jefferson v. H&M Hennes & Mauritz*, L.P., 2013 U.S. Dist. LEXIS 2875, at *9 (C.D. Cal. Jan. 7, 2013) (quoting 1 Alba Conte, Attorney Fee Awards § 2:08 at 50–51). To date, Plaintiff's counsel have advanced all costs incurred in this case. As reflected in the declaration of Steven G. Tidrick, the total incurred litigation expenses are $5,875.75, and do not include the modest, but real, expenses that will be incurred in the future. These costs are reasonable. *See* Tidrick Decl. ¶ 17 & Ex. 4. *See generally Odrick v. UnionBanCal Corp.*, 2012 WL 6019495, at *6, 2012 U.S. Dist. LEXIS 171413, at *17 (N.D. Cal. Dec. 3, 2012) (in a common-fund settlement, noting that class counsel were seeking reimbursement of "costs for a retained expert, mediation, travel, copying, mailing, legal research, and other litigation-related costs," and concluding that "reimbursement of these costs and expenses in their entirety is justified"); *Knight v. Red Door Salons, Inc.*, 2009

U.S. Dist. LEXIS 11149, at *20 (N.D. Cal. Feb. 2, 2009) (in a common-fund settlement, stating that class counsel's expenses "relate to online legal research, travel, postage and messenger services, phone and fax charges, court costs, and the costs of travel"; that "[a]ttorneys routinely bill clients for all of these expenses"; and that "it is therefore appropriate for counsel here to recover these costs from the [s]ettlement [f]und").

Because the settlement limits payment of Class Counsel's attorney's fees and costs to a maximum of $38,750, see Settlement Agreement § 7, an award of that maximum amount ($38,750) means that Class Counsel will actually receive less than full reimbursement of the incurred costs or fees of less than 25% of the $135,000 cash pool.

E. The Requested Enhancement Payment Is Reasonable

The court has discretion to award "enhancement," "incentive," or "service" awards to compensate plaintiffs for work done on behalf of the class and in consideration of the risk undertaken in prosecuting the action. *Rodriguez v. West Publ'g Corp*., 563 F.3d 948, 958-59 (9th Cir. 2009). Courts often assess the reasonableness of the award by taking into consideration: "(1) the risk to the class representative in commencing a suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (approving incentive award of fifty thousand dollars ($50,000)). *See also Graham v. Overland Solutions, Inc.*, 2012 U.S. Dist. LEXIS 130113, at *22-23 (S.D. Cal. Sept. 12, 2012) (preliminarily approving settlement that requested service awards of $25,000 each for class representatives). Some courts have held that an incentive award of five thousand dollars ($5,000) is presumptively reasonable. *See, e.g., Pierce,* 2013 WL 5402120, at *6 (citations omitted).

Enhancement awards serve a function more than just reimbursement for time; they are to overcome the fear of reprisal, real or perceived. *See, e.g., Rodriguez,* 563 F.3d at 958-59 (such awards "are intended to compensate class representatives for work done on behalf of [a] 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"), vacated on other grounds, 688 F.3d 645, 660 (9th Cir. 2012). 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." *Smith v. CRST Van Expedited, Inc.*, 2013 U.S. Dist. LEXIS 6049, at *16, 2013 WL 163293 at *6 (S.D. Cal. Jan. 14, 2013).

The enhancement payment requested for the Plaintiff, Jane Roe, in the amount of $10,000, is reasonable and warranted. The amount requested is justified by her service to the class. Plaintiff spent at least 45 hours of her personal time assisting in the prosecution of the lawsuit, including time spent gathering and reviewing documents, identifying witnesses, and conferring with counsel throughout the litigation, including during the settlement negotiations. *See* Tidrick Decl. ¶ 18.

The enhancement payment requested is also justified because, in addition to spending time on the case, Plaintiff also incurred personal risk, including risks undertaken for payment of costs and stigma in connection with future employment opportunities. *See, e.g., Graham v. Overland Solutions, Inc.*, 2012 U.S. Dist. LEXIS 130113, at *22-23 (S.D. Cal. Sept. 12, 2012) (preliminarily approving settlement that requested service awards of $25,000 each for class representatives in part because "risks undertaken for the payment of costs in the event this action had been unsuccessful" and "stigma upon future employment opportunities for having initiated an action against a former employer"); *Koehl v. Verio*, 142 Cal. App. 4th 1313, 1328 (2006) (in wage and hour action where defendant prevailed at trial, named plaintiffs were held liable, jointly and severally, for defendant's attorneys' fees). Even though Plaintiff prosecuted this action under a pseudonym, her true identity is known to the Defendants, so such risks are real.

In light of the foregoing, the requested enhancement payment is reasonable.

V. CONCLUSION

Plaintiff respectfully requests that the Court grant Plaintiff's motion.

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Respectfully submitted,

THE TIDRICK LAW FIRM LLP

By: /s/ Steven G. Tidrick
STEVEN G. TIDRICK, SBN 224760

Attorneys for Individual and Representative Plaintiff JANE ROE