

1 KRISTINA L. HILLMAN, SBN 208599
2 JANNAH V. MANANSALA, SBN 249376
3 ROBERTA D. PERKINS, SBN 153074
4 ALEXANDER S. NAZAROV, SBN 304922
5 MAXIMILLIAN D. CASILLAS, SBN. 311669
6 WINNIE VIEN, SBN. 347796
7 WEINBERG, ROGER & ROSENFELD
8 A Professional Corporation
9 1375 55th Street
10 Emeryville, CA 94608
11 Telephone: (510) 337-1001
12 courtnotices@unioncounsel.net
13 khillman@unioncounsel.net
14 jmanansala@unioncounsel.net
15 rperkins@unioncounsel.net
16 anazarov@unioncounsel.net
17 mcasillas@unioncounsel.net
18 wvien@unioncounsel.net

11 Attorneys for Plaintiffs MARCO DIMERCURIO
12 CHARLES GAETH, JOHN LANGLITZ and
13 MALCOLM SYNIGAL

14 *Additional Counsel Listed on Following Page*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 MARCO DIMERCURIO, CHARLES
19 GAETH, JOHN LANGLITZ, and MALCOLM
20 SYNIGAL on behalf of themselves and others
21 similarly situated,

21 Plaintiffs,

22 v.

23 EQUILON ENTERPRISES LLC dba SHELL
24 OIL PRODUCTS US, and DOES 1
25 THROUGH AND INCLUDING 25,

25 Defendants.

No. 3:19-cv-04029-JSC

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AWARD OF
ATTORNEYS' FEES AND EXPENSES
AND CLASS REPRESENTATIVE
SERVICE AWARDS AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: May 9, 2024

Time: 10:00 am

Crtrm: E – 15th Floor

Judge: Honorable Jacqueline Scott Corley

Complaint Filed: June 4, 2019

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Additional Counsel:

DAVID POGREL, SBN 203787
AMANDA EATON, SBN 341987
LEONARD CARDER, LLP
1999 Harrison Street, Suite 2700
Oakland, CA 94612
Telephone: (510) 272-0169
dpogrel@leonardcarder.com
aeaton@leonardcarder.com

Co-Counsel for Plaintiffs MARCO DIMERCURIO,
CHARLES GAETH, JOHN LANGLITZ, and
MALCOLM SYNIGAL

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on May 9, 2024 at 10:00am., or as soon thereafter as the matter may be heard, in the courtroom of Judge Jacqueline S. Corley, United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, Plaintiffs/Class Representatives Marco DiMercurio, Charles Gaeth, John Langlitz, and Malcolm Synigal (“Class Representatives”) will and hereby do respectfully move this Court for an order to award class counsel attorneys’ fees and reimbursement for litigation expenses and to award payment to the Class Representatives for their services provided to the Class and risks incurred.

This motion is based on this Notice of Motion; the accompanying Memorandum of Points and Authorities; the Declaration of David Pogrel; the Declaration of Jannah Manansala; the Declaration of Peter Rukin; Declarations of Class Representatives Marco DiMercurio, Charles Gaeth, John Langlitz, and Malcolm Synigal; a Proposed Order, which will be filed with the Motion for Final Approval of the Settlement; the Court’s record of this action; all matters of which the Court may take notice, and any other such evidence, briefing, or argument that may be presented to the court at or before the time of hearing.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On January 12, 2024, the Court issued a Second Further Amendment to Order Granting
4 Preliminary Approval of Class Settlement, and instructed Class Counsel to file the subject motion.
5 Dkt. No. 241. Accordingly, Class Counsel now requests an award of fees in the amount of
6 **\$1,200,000**, which represents one-third of the gross settlement of \$3,600,000, and reimbursement
7 of out-of-pocket litigation expenses of **\$44,617.98**. Each of the four Class Representatives seek a
8 class service award of **\$7,500** each, or **\$30,000** in the aggregate.

9 The fee request is fair and reasonable, as it is less than 67 percent (67%) of Class Counsels’
10 collective lodestar in this case. Use of the lodestar method is appropriate here, given that this case
11 involves a fee-shifting statute, and an unadjusted percentage recovery does not account for the
12 significant motion practice and other work required of counsel in this case. The fee is also
13 reasonable as a percentage of recovery method given the substantial recovery of the potential
14 damages benefiting the class, the litigation risks when the case commenced, the complexity of this
15 case, and Class Counsels’ vigilance in protecting the Class’s interest and success in front of this
16 Court.

17 The class representative service awards are reasonable as well, as they compensate each
18 Class Representative for the time and effort spent assisting Class Counsel in investigating and
19 preparing the case, preparing and sitting for depositions, assisting with written discovery,
20 participating in an all-day mediation, and the risk associated with filing a publicly available lawsuit
21 against their employer.

22 **II. FACTUAL & PROCEDURAL BACKGROUND**

23 In Spring 2019, Counsel began investigating concerns over whether Operators were being
24 adequately compensated for working mandatory standby shifts at Shell’s Martinez Refinery.
25 Declaration of Jannah Manansala in Support of Plaintiffs’ Motion for Attorneys’ Fees ¶ 21
26 (“Manansala Decl”). Counsel reviewed the relevant collective bargaining agreements, interviewed
27 several workers from the Shell refinery site, including multiple interviews with the named plaintiffs
28 Marco DiMercurio, John Langlitz, Charles Gaeth, and Malcolm Synigal, and held other related

1 meetings. Manansala Decl. ¶ 21. Counsel also reviewed public information about Shell’s
2 operations at the Martinez Refinery. Manansala Decl. ¶ 21. At the same time, counsel invested
3 significant resources to research the viability of claims against Shell, including the application of a
4 new legal theory asserting reporting time claims, the likelihood of success in defeating a motion
5 for summary judgment by Shell, and the ability to seek penalties for violations of the Wage Order
6 through California’s Private Attorneys General Act (“PAGA”). Manansala Decl. ¶ 21. Counsel
7 spent at least 38.1 hours on pre-complaint investigation. Manansala Decl. ¶ 45. Throughout the
8 litigation, counsel has spent at least 83.1 additional hours conducting informal investigations.
9 Manansala Decl. ¶ 45, Declaration of David Pogrel in Support of Plaintiffs’ Motion for Attorneys’
10 Fees ¶ 26 (“Pogrel Decl”).

11 Between May and June 2019, counsel drafted the initial complaint and PAGA letter
12 describing the facts of the case to the Labor Workforce Development Agency (“LWDA”) and to
13 Defendant. Manansala Decl. ¶ 22. On June 4, 2019, Plaintiffs filed this action in state court,
14 asserting claims for failure to pay reporting time pay in violation of Industrial Welfare Commission
15 (“IWC”) Wage Order 1-2001 (“Wage Order”) and derivative claims. Dkt. No. 1. Class Counsel
16 spent roughly 8.6 hours drafting the initial Complaint and the PAGA notice. Manansala Decl. ¶
17 45.

18 Plaintiffs subsequently filed the operative First Amended Complaint in October 2019,
19 asserting their previous claims and adding a claim under PAGA, Labor Code section 2698. Dkt.
20 No. 18. Class Counsel spent roughly 13.3 hours drafting the First Amended Complaint. Manansala
21 Decl. ¶ 45.

22 Shell filed a motion to dismiss Plaintiffs’ First Amended Complaint on November 8, 2019
23 on the grounds that Section 301 of the Federal Labor Management Relations Act, 29 U.S.C. 185(a),
24 preempted Plaintiffs’ claims and Plaintiffs failed to state a claim for relief. Dkt. No. 19. Counsel
25 drafted an opposition to the motion to dismiss in November 2019 and prepared for oral argument
26 in January 2020. Dkt. No. 20. Counsel expended approximately 145.9 hours drafting the
27 opposition and preparing for the oral argument. Manansala Decl. ¶ 45. On January 15, 2020, the
28 Court denied Shell’s motion. Dkt. No. 26.

1 Throughout the case, the parties have completed extensive discovery. Plaintiffs propounded
2 at least 26 requests for production, 90 interrogatories, and 34 requests for admission. Manansala
3 Decl. ¶ 25. In response to Plaintiffs' discovery requests, and after numerous discovery disputes,
4 Defendants ultimately produced almost 1,000 pages of documents, which Class Counsel then
5 carefully reviewed. Manansala Decl. ¶ 25. To obtain these documents, counsel engaged in
6 substantial meet and confer efforts with Shell, including sending multiple, lengthy meet and confer
7 letters, preparing letter briefs for and attending discovery conferences with the Court, and filing a
8 motion for sanctions. Manansala Decl. ¶ 25; Dkt. Nos. 40, 49, 50, 60, 64, 65, 67, 73, 79. Counsel
9 also encountered difficulties in scheduling the depositions of Shell's Federal Rule of Civil
10 Procedure 30(b)(6) witness and refinery supervisors, eventually requiring court intervention. Dkt.
11 Nos. 73, 79. Shell also propounded their share of written discovery to each of the plaintiffs.
12 Manansala Decl. ¶ 25. Between reviewing documents, preparing discovery, engaging in meet and
13 confer efforts, and drafting the motion for sanctions, Counsel estimates that it spent approximately
14 425.7 hours on formal discovery items. Manansala Decl. ¶ 45, Pogrel Decl. ¶ 26.

15 In March 2021, Class Counsel deposed Shell's corporate designee and three Shell
16 supervisory and management personnel. Manansala Decl. ¶ 26. Counsel also defended the
17 depositions of the four named plaintiffs. Manansala Decl. ¶ 26. Counsel spent at least 270.9 hours
18 preparing for, taking and defending these eight depositions. Manansala Decl. ¶ 45.

19 In March 2021, Weinberg, Roger & Rosenfeld brought in Leonard Carder to help prosecute
20 this matter. Manansala Decl. ¶ 27.

21 From fall 2020 to April 2021, counsel engaged in significant outreach to potential class
22 members to garner additional information to support the motion for class certification. Manansala
23 Decl. ¶ 28. Counsel spoke with approximately 30 class members. Manansala Decl. ¶ 28. After
24 conducting these interviews, counsel prepared 20 detailed, individualized declarations supporting
25 the asserted claims. Manansala Decl. ¶ 28. Counsel then prepared Plaintiffs' Motion for Class
26 Certification and filed that motion with the Court in April 2021. Dkt. No. 90; Manansala Decl.
27 ¶ 28. The Court granted Plaintiffs' motion, in part, on August 30, 2021. Dkt. No. 116. At the
28 Court's request, Counsel submitted two supplemental briefs regarding class certification in

1 September 2021 and January 2022. Dkt. Nos. 123. 141. In September 2021, Shell petitioned for
2 Rule 23(f) appellate review of this Court’s order regarding class certification. *DiMercurio v.*
3 *Equilon Enterprises LLC*, Ninth Circuit Case No. 21-80098, ECF No. 1. On September 23, 2021,
4 Plaintiffs filed their opposition. *Id.*, ECF No. 2. On December 10, 2021, the Ninth Circuit denied
5 Shell’s petition. *Id.*, Dkt. No. 3. Counsel spent approximately 1277.8 hours on the class
6 certification briefing and argument to this Court and the Ninth Circuit. Manansala Decl. ¶ 45;
7 Pogrel Decl. ¶ 26.

8 In September 2021, Plaintiffs filed their Second Amended Complaint, clarifying the waiting
9 time penalty subclasses. Dkt. No. 122. Counsel spent approximately 14.5 hours preparing the
10 Second Amended Complaint. Manansala Decl. ¶ 45; Pogrel Decl. ¶ 26.

11 In January 2021, counsel prepared an amended PAGA notice, clarifying the basis of
12 Plaintiffs’ PAGA claims. Manansala Decl. ¶ 29. Subsequently, in April 2022, Plaintiffs filed their
13 Third Amended Complaint, clarifying the basis of their PAGA claims. Dkt. No. 157. Counsel
14 spent approximately 8.8 hours preparing the amended PAGA notice and Third Amended
15 Complaint. Manansala Decl. ¶ 45; Pogrel Decl. ¶ 26.

16 Since January 2020, counsel attempted to coordinate and prepared extensively for private
17 mediation, as ordered by the Court. Manansala Decl. ¶ 30. In March 2021, after failed attempts to
18 proceed with private mediation, the Court ordered the parties to attend a mandatory settlement
19 conference with Chief Magistrate Judge Joseph Spero. *Id.* The parties ultimately held three
20 settlement conferences with Judge Spero on May 26, 2021, November 30, 2021, and June 14, 2022.
21 Dkt. Nos. 98, 133, 161. All four Plaintiffs attended the three settlement conferences. *DiMercurio*
22 Decl. ¶ 12; Langlitz Decl. ¶ 12; Gaeth Decl. ¶ 12; Synigal Decl. ¶ 12.

23 Prior to the first settlement conference, Shell provided Plaintiffs with a large volume of
24 damages data regarding the hours worked by the putative Class Members, from which Class
25 Counsel built a damages model (including determining number of days worked, hours each day
26 worked, number of pay periods worked, days with multiple standby shifts, etc.). Manansala Decl.
27 ¶ 32. Counsel also drafted a detailed settlement conference statement for the initial conference and
28 supplemental statements for the second and third conference and prepared each of the Plaintiffs for

1 each conference. Manansala Decl. ¶ 32. After the June 14, 2022 conference, the parties accepted
2 Chief Magistrate Judge Spero’s initial proposal to settle the case for \$3.2 million. Manansala Decl.
3 ¶ 32. Counsel spent roughly 333.1 hours preparing for the mediation attempts, settlement
4 conferences, and related negotiations. Manansala Decl. ¶ 45; Pogrel Decl. ¶ 26.

5 The parties engaged in further efforts to prepare a written settlement agreement, which was
6 primarily drafted by Class Counsel. Manansala Decl. ¶ 32. The parties finalized that agreement
7 on September 8, 2022 after continued negotiations over several provisions in the agreement. Dkt.
8 No. 172. Class Counsel spent roughly 86.7 hours on the settlement agreement drafting and
9 negotiations after the mediator’s proposal was accepted. Manansala Decl. ¶ 45; Pogrel Decl. ¶ 26.

10 On August 30, 2022, Plaintiffs filed a motion for preliminary approval of the class action
11 settlement and conditional class certification. Dkt. No. 171. The motion was heard on October 20,
12 2022, at which time the Court required the parties to meet and confer regarding the class notice and
13 submit an amended notice. Dkt. No. 177. The parties were subsequently required to submit a
14 second amended notice. Dkt. Nos. 179. 180. Class Counsel spent approximately 96.9 hours on
15 this motion and subsequent amended class notices. Manansala Decl. ¶ 45; Pogrel Decl. ¶ 26.

16 In addition to the work detailed above, counsel approximates that it has spent 217.5 hours
17 on case management, client communications and administrative tasks throughout the course of this
18 litigation. Manansala Decl. ¶ 45; Pogrel Decl. ¶ 26.

19 On December 14, 2022, the Court granted preliminary approval of the initial class action
20 settlement and initially scheduled a final approval hearing for April 13, 2023. Dkt. No. 181.

21 On January 12, 2023, Class Counsel filed an initial Motion for Attorney Fees and Class
22 Representative Awards. Dkt. No. 181. On February 19, 2023, court-approved settlement
23 administrator CPT Group, Inc. distributed the class settlement notice to approximately 291 class
24 members. Pogrel Decl. ¶ 15.

25 Following distribution of the class settlement notice, Class Counsel heard from dozens of
26 Operators/Class Members who either (1) did not receive the notice because their names did not
27 appear on the class list that Defendant provided to the Settlement Administrator, or (2) claimed the
28 number of standby shifts reported in their notice and used to calculate their settlement shares is

1 woefully short. Pogrel Decl. ¶16. Following a lengthy investigation on our investigation into these
2 issues, Class Counsel concluded that the class data (which included both names of Operators and
3 the standby shifts for which they were scheduled during the class period) that Shell shared with the
4 settlement administrator failed to include data from one of the refinery facility’s larger units and
5 some other Operators who met the class definition were also left off of the class list that was used
6 by the Settlement Administrator. Pogrel Decl. ¶ 17. Class Counsel also concluded that a significant
7 number of Class Members, who received the class settlement notice, were not credited in their
8 settlement notices with all of the standby shifts for which they were scheduled during the class
9 period. Pogrel Decl. ¶ 18.

10 Class counsel initiated meet and confer efforts with Shell’s starting in late February 2023
11 to alert them to the above-described issues. Following initial discussions, Class Counsel concluded
12 that a revised class settlement notice should be distributed to all Class Members stating revised
13 settlement share calculations. Pogrel Decl. ¶ 19. Accordingly, Plaintiffs requested that the Court
14 vacate both (1) the hearing on the motion for final approval of class action settlement and motion
15 for attorneys’ fees and class representatives’ award, and (2) the deadline for the filing of the initial
16 motion for final approval. Pogrel Decl. ¶ 19. Plaintiffs then conducted an extensive investigation
17 into the data issues and missing class members, conclusion that the original \$3.2 million settlement
18 was no longer sufficient and initiating further negotiations and data gathering with Defendant.
19 Pogrel Decl. ¶ 20.

20 On September 7, 2023, following extensive discussions, record review and in-person
21 meetings, the parties attended a fourth settlement conference with Magistrate Judge Spero and
22 agreed to a revised settlement that increased the settlement fund to \$3.6 million. Pogrel Decl. ¶ 21.
23 Once the parties agreed to this higher settlement amount, Class Counsel continued to work on
24 preparation of the parties’ long form settlement agreement and subsequent class notice. Pogrel
25 Decl. ¶ 21. In addition, Class Counsel worked to sort through data and record issues in anticipation
26 of potential issues that may have been raised by Class Members upon mailing of the subsequent
27 class notice. Pogrel Decl. ¶ 21. Class Counsel also worked with the settlement administrator in the
28 administration of the new settlement and distribution of the new class notice. Pogrel Decl. ¶ 21.

1 On January 12, 2024, the Court issued its Second Further Amendment to Order Granting
2 Preliminary Approval of Settlement and ordered (1) mailing of a revised notice to the settlement
3 class, and (2) deadlines for filing and hearing on this motion and plaintiffs' motion for final
4 approval. Dkt. No. 241. The Court scheduled the final approval hearing for May 9, 2024 and
5 ordered Plaintiffs to file this motion on or before January 27, 2024. Dkt. No. 241.

6 **III. THE SETTLEMENT AGREEMENT**

7 The details of the Revised Settlement are set forth in the Class Action Settlement Agreement
8 and Release. Dkt. 236, Ex. A (hereinafter the "Settlement Agreement" or "SA"). In sum, the
9 Revised Settlement allocates to class members a net settlement fund of at least \$2,250,000, which
10 is \$3,600,000 less payments made to resolve the PAGA penalty claims; attorneys' fees and costs;
11 class representative service awards; and settlement administration fees. Dkt. 171-1, ¶¶ 7-8. The
12 Settlement Agreement permits Class Counsel to submit an application for an award of attorneys'
13 fees of \$1,200,000 and litigation expense reimbursement of up to \$45,000. SA § III.C.2. The
14 Settlement also provides that the court-appointed Class Representative may petition the Court for
15 service awards of up to \$7,500 each, representing \$30,000 in the aggregate. SA § III.C.1.

16 **IV. CLASS COUNSELS' ATTORNEYS' FEES & LITIGATION EXPENSE**
17 **REIMBURSEMENT REQUESTS SHOULD BE APPROVED**

18 **A. A REQUEST FOR ATTORNEYS' FEES IS EVALUATED UNDER A**
19 **DEFERENTIAL STANDARD**

20 "Attorneys' fees provisions included in proposed class action settlement agreements are,
21 like every other aspect of such agreements, subject to the determination of whether the settlement
22 is 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th
23 Cir. 2003) (citing Fed. R. Civ. P. 23(e)). When the proposed class action settlement includes a
24 proposed amount for attorneys' fees, "the fee award must be evaluated in the overall context of the
25 settlement." *Foster v. Adams & Assocs.*, Case No. 18-cv-02723-JSC, 2022 WL 425559, at *8
(N.D. Cal. Feb. 11, 2022).

26 When evaluating the reasonableness of a fee request, courts show deference to the
27 agreement entered into between the parties. *Staton*, 327 F.3d at 966. In considering unopposed
28 fee applications, district courts should account for the fact that "the parties are compromising

1 precisely to avoid litigation.” *Laguna v. Coverall N.A.*, 753 F.3d 918, 922 (9th Cir. 2014), vacated
2 on other grounds, 772 F.3d 608 (9th Cir. 2014) (quoting *Staton*, 327 F.3d at 966). This deference
3 is consistent with the strong public policy of encouraging and approving non-collusive settlements,
4 including those in class actions, and avoiding unnecessary disputes from a request for attorneys’
5 fees after the matter has been resolved. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“Ideally,
6 of course, litigants will settle the amount of a fee.”); *see also*, *In re M.D.C. Holdings Sec. Litig.*,
7 No. CV 89-0090, 1990 WL 454747, at *4 (S.D. Cal. Aug. 30, 1990) (“Because this Court believes
8 the parties should be encouraged to settle all their disputes as part of the settlement . . . including
9 the amount of the fee . . . if the agreed-to fee falls within a range of reasonableness, it should be
10 approved as part of the negotiated settlement.”).

11 In diversity actions, such as this one, the Court is to apply state law to determine the right
12 to and method for calculating attorneys’ fees. *Dixon v. Cushman & Wakefield Western, Inc.*, No.
13 18-cv-05813-JSC, 2022 WL 1189883, at *9 (N.D. Cal. April 21, 2022), *citing* *Mangold v.*
14 *California Pub. Utils. Comm’n*, 67 F.3d 1470, 1478-79 (9th Cir. 1995). As the present case
15 presents California state law claims, California law applies to this fee request. *See Dixon*, 2022
16 WL 1189883, *9, *citing* *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

17 Where the settlement creates a common fund, California law affords courts discretion to
18 evaluate the reasonableness of the fees requested under either of two methods: the lodestar method,
19 also known as the “lodestar-multiplier” method, and the percentage method. *Dixon*, 2022 WL
20 1189883, at *9, *citing* *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 504 (2016); *see also* *In re*
21 *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941–42 (9th Cir. 2011) (same under federal
22 law); *Foster*, 2022 WL 425559, at *8 (same). But that “discretion must be exercised so as to
23 achieve a reasonable result.” *In re Bluetooth*, 654 F.3d at 942. The lodestar method is appropriate
24 in class actions brought under fee-shifting statutes, such as the sections of the California Labor
25 Code litigated here, as “the legislature has authorized the award of fees to ensure compensation for
26 counsel undertaking socially beneficial litigation.” *Id.*; 29 U.S.C. § 216(b); Cal. Labor Code
27 §§ 218.5, 226(e), 2802(c). *See also Staton*, 327 F.3d at 965–66 (recognizing that where parties
28 negotiate a fee under a fee-shifting statute, Courts should apply the lodestar method); *Hanlon v.*

1 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

2 California and federal law counsel that whether a lodestar or percentage-of-the fund method
3 is used in the first instance, courts should cross-check using the other method to ensure the
4 reasonableness of the fee award. *Dixon*, 2022 WL 1189883, at *9, citing *Bluetooth*, 654 3d at 944-
5 45 and *Laffitte*, 1 Cal. 5th at 504. Here, both the lodestar and the common fund methods support
6 the reasonableness of counsels' fee request.

7 **1. Class Counsels' Request for Attorneys' Fees is Reasonable Under**
8 **the Lodestar Method**

9 Class Counsel request a total of \$1,200,000 in attorneys' fees and \$44,617.98 in expense
10 reimbursement. Class Counsels' actual lodestar is \$1,809,105 after exercising billing judgment,
11 which means the fee requested marks a negative multiplier of approximately 34%. The lodestar
12 method well-supports the request here.

13 The lodestar-multiplier method is calculated by multiplying the number of hours reasonably
14 expended on the litigation by a reasonable hourly rate. *Bluetooth*, 654 F.3d at 941; *Lealao v.*
15 *Beneficial Calif., Inc.*, 82 Cal. App. 4th 19, 26 (2000); *Dixon*, 2022 WL 1189883, at *9 (applying
16 California law). It is appropriate to use counsels' current rates in determining the lodestar. *In re*
17 *Washington Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) ("The district
18 court has discretion to compensate delay in payment in one of two ways: (1) by applying the
19 attorneys' current rates to all hours billed during the course of litigation; or (2) by using the
20 attorneys' historical rates and adding a prime rate enhancement."); *Brown v. Hain Celestial Grp.,*
21 *Inc.*, No. 3:11-CV-03082-LB, 2016 WL 631880, at *8 (N.D. Cal. Feb. 17, 2016). The product is
22 then increased or decreased by a multiplier depending on a variety of factors, including the quality
23 of the representation, novelty and complexity of the issues, results obtained, and contingent risk
24 borne by counsel. *Lealao*, 82 Cal. App. 4th at 26; *Dixon*, 2022 WL 1189883, at *9.

25 Here, Class Counsel have spent more than 3,579.6 hours (after exercising billing judgment)
26 on the litigation since its inception in June 2019. Pogrel Decl. ¶¶ 24-26; Manansala Decl. ¶¶ 43,45.
27 This time was spent on numerous essential litigation tasks, including: (1) conducting pre-filing
28 investigation, including legal research, witness interviews, and factual research based on publicly

1 available sources; (2) drafting the initial complaint and PAGA notice; (3) conducting informal
2 investigations, including interviewing class members; (4) preparing the First Amended Complaint;
3 (5) preparing and arguing an opposition to the Shell's Removal to Federal Court and Shell's Motion
4 to Dismiss the First Amended Complaint; (6) propounding written discovery, including requests
5 for production of documents, interrogatories and third-party subpoenas for documents, reviewing
6 voluminous documents produced in discovery; (7) engaging in extensive discovery meet and confer
7 efforts, ultimately requiring a motion for sanctions and court guidance; (8) preparing and taking the
8 depositions of Shell's Federal Rule of Civil Procedure 30(b)(6) witness and three refinery
9 supervisors; (9) preparing and defending the depositions of the named Plaintiffs, Marco
10 DiMercurio, John Langlitz, Malcolm Synigal, and Charles Gaeth; (10) preparing and arguing the
11 motion for class certification, including preparing the initial briefing and two supplemental briefs,
12 interviewing approximately 30 class members and preparing 20 class member declarations, and
13 preparing related administrative motions; (11) preparing an opposition to Shell's 23(f) petition to
14 appeal the granting of class certification; (12) preparing and coordinating the mailing of the class
15 notice; (13) preparing the Second Amended Complaint; (14) preparing the amended PAGA notice
16 and Third Amended Complaint; (14) drafting statement for mediation; (15) drafting multiple
17 settlement conference statements, including creating damages model using documents produced in
18 discovery, and attending the initial three settlement conferences and follow up appearances with
19 Chief Magistrate Judge Spero; (16) drafting and negotiating the original Memorandum of
20 Understanding and superseding initial Settlement Agreement; (17) drafting the motion for
21 preliminary approval and prior motion for attorneys fees; (18) overseeing notice, raising new issues
22 of missing data and class members with Defendant's Counsel; (19) initiating follow up
23 negotiations, preparing for and attending fourth settlement conference with Chief Magistrate Judge
24 Spero; (20) drafting and negotiating the Revised Settlement Agreement; and (20) drafting the
25 present motion. Manansala Decl. ¶¶ 20,45; Pogrel Decl. ¶¶ 24-26.

26 In addition, Class Counsel expect to spend additional hours drafting the motion for final
27 approval and ensuring the settlement is administered appropriately. Pogrel Decl. ¶ 25; Manansala
28 Decl. ¶ 44.

1 The rates used by Class Counsel to calculate their lodestar reflect “the prevailing
2 market rates in the relevant community” for attorneys of like skill, experience, and ability. *Blum*
3 *v. Stenson*, 465 U.S. 886, 895 (1984). In support of these market rates, Class Counsel offer both
4 their own testimony and that of a third-party attorney familiar with wage and hour and class
5 litigation and the firms who worked up this case. *See* Pogrel Decl. ¶¶ 4-13; 24-26; Manansala Decl.
6 ¶¶ 2-17; 40-43; Declaration of Peter M. Rukin In Support of Plaintiffs’ Motion for Attorneys’ Fees
7 ¶¶ 5-6 (“Rukin Decl.”). The rates used here are comparable to ones used for awards in prior cases.
8 Pogrel Decl. ¶¶ 23-25; Manansala Decl. ¶¶ 40-43; Rukin Decl. ¶ 6. Such showing is sufficient to
9 establish the prevailing market rates. *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 896
10 F.2d 403, 407 (9th Cir. 1990) (noting sufficient evidence of market rates shown through counsel’s
11 own testimony, prior awards, and testimony from other attorneys in the community); *Dixon*, 2022
12 WL 1189883, *11 (same) (*quoting Phelps Dodge*). Further, the rates claimed here are within the
13 rates that have been approved in this district for similar work. *See Dixon*, 2022 WL 1189883, *11;
14 *Moreno v. Cap. Bldg. Maint. & Cleaning Servs., Inc.*, No. 19-CV-07087-DMR, 2021 WL 4133860,
15 at *6 (N.D. Cal. Sept. 10, 2021) (approving rates of \$600 to \$800 for attorneys and \$200 for a law
16 clerk); *Franco v. E-3 Sys.*, No. 19-cv-01453-HSG, 2021 WL 2333851, at *7 (N.D. Cal. June 8,
17 2021) (approving rates of \$700 and \$550 for attorneys with 18 and 9 years’ experience,
18 respectively); *Joh v. Am. Income Life Ins. Co.*, No. 18-cv-06364-TSH, 2021 WL 66305, at *8 (N.D.
19 Cal. Jan. 7, 2021) (approving rates between \$415 and \$800 in a wage and hour class action case).
20 While the court need not and does not decide that the exact rates requested by counsel are
21 reasonable, they are at least within the range of reasonableness required to use the lodestar figure
22 as a cross check. *See Joh*, 2021 WL 66305, at *7 (“Where a lodestar is merely being used as a
23 cross-check, the court may use a rough calculation of the lodestar.” (internal quotation marks and
24 citation omitted)). Class Counsels’ experience, reputation, and ability more than justify the hourly
25 rates used in calculating counsels’ lodestar (which are their current rates). Pogrel Decl. ¶¶ 4-13;
26 Manansala Decl. ¶¶ 2-17; Rukin Decl. ¶¶ 5-6.

27 An enhancing multiplier on the lodestar would be well-warranted here, as detailed below,
28 the result for the class is excellent, the quality of the representation has been high, the case has

1 presented novel and complex issues, and counsel bore contingent risk. Here, however, counsel
2 only asks for just over 66 percent of their lodestar; such a negative multiplier, underscores the
3 reasonableness of the requested fee award. *See Dixon v. Cushman & Wakefield Western, Inc.*, No.
4 18-cv-05813-JSC, 2022 WL 1189883, at *12 (N.D. Cal. April 21, 2022) (finding .92 multiplier of
5 lodestar supported awarding a 30 percent of common fund award); *Parker v. Cherne Contracting*
6 *Corp.*, No. 18-CV-01912-HSG, 2021 WL 5834227, at *8 (N.D. Cal. Dec. 9, 2021) (finding
7 reasonable a fee request of \$750,000 that was roughly 66 percent of expected lodestar); *Moreno v.*
8 *Cap. Bldg. Maint. & Cleaning Servs.*, No. 19-CV-,07087-DMR, 2021 WL 4133860, at *6 (negative
9 multiplier of lodestar strongly suggests reasonableness of negotiated fee) (N.D. Cal. Sept. 10,
10 2021); *Gong-Chun v. Aetna Inc.*, No. 1:09-CV-01995-SKO, 2012 WL 2872788, at *23 (E.D. Cal.
11 July 12, 2012) (recognizing requested fee that is below the lodestar “suggests that the negotiated
12 fee award is reasonable”).

13 **2. The Percentage-of-the-Fund Method Confirms the Request for**
14 **Attorneys’ Fees is Reasonable**

15 The fee requested here is also reasonable under the percentage-of-the fund method.

16 The Ninth Circuit has generally established 25 percent of a common fund as a “benchmark”
17 award for attorney fees, with 20 to 30 percent as the usual range. *Vizcaino v. Microsoft Corp.*, 290
18 F.3d 1043, 1047 (9th Cir. 2002); *Deaver v. Compass Bank*, No. 13-cv-00222-JSC, 2015 WL
19 8526982, at *10 (N.D. Cal. December 11, 2015). However, the “exact percentage [awarded] varies
20 depending on the facts of the case, and in ‘most common fund cases, the award exceeds that
21 benchmark.’” *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010). In
22 large cases, it makes sense to reduce the benchmark award to prevent windfall profits. *Bluetooth*,
23 654 F.3d at 942. Conversely, Courts have observed “cases with relatively small fund of under \$10
24 million will ‘often result in fees above 25%.’” *Dixon*, 2022 WL 1189883, *10 (quoting *Craft v.*
25 *Cnty. of San Bernardino*, 642 F. Sup.2d 1113, 1127 (C.D. Cal. 2008); *see also Greko v. Diesel,*
26 *U.S.A., Inc.*, 10-cv-02576-NC, 2013 WL 1789602, at *11 (N.D. Cal. Apr. 26, 2013) (“it is common
27 practice to award attorney’s fees at a higher percentage than the twenty-five percent (25%)
28 benchmark in cases that involve a relatively small—i.e., under \$10 million dollar—settlement

1 fund.” This Court has awarded 30 to 33.3 percent in relatively small wage and hour and ERISA
2 matters. *See, e.g., Dixon*, 2022 WL 1189883 (awarding fee equal to 30% of possible \$4.9 million
3 settlement amount where only \$3.8 million was paid out to settle wage and hour claims); *Foster*,
4 2022 WL 425559 (fee award of 33.3% of \$3 million settlement in ERISA case); *Deaver*, 2015 WL
5 8526982 (fee award of 33.3% of \$500,000 settlement of wage and hour claims); *see also Moreno*,
6 2021 WL 4133860, *4-7 (awarding 3.33% fee). And when using the percentage method to cross-
7 check a lodestar-based award, courts in this district have awarded fee amounts that approach or
8 exceed 40 percent of a common fund in class actions, including within the wage and hour context.
9 *Wren*, 2011 WL 1230826, at *28 (concluding that court would award 42% of common fund in wage
10 and hour class action if percentage of fund approach was used); *Brown v. Hain Celestial Grp., Inc.*,
11 No. 3:11-CV-03082-LB, 2016 WL 631880, at *8-9 (N.D. Cal. Feb. 17, 2016) (awarding fee
12 equivalent to approximately 47% of cash in common fund and approximately 38% when coupons
13 included with cash).

14 The Court cannot simply “use[] a mechanical or formulaic approach that results in an
15 unreasonable reward”; it must consider whether special circumstances warrant a departure from the
16 normal percentage. *Bluetooth*, 654 F.3d at 944 (quoting *In re Mercury Interactive Corp.*, 618 F.3d
17 at 992 (9th Cir. 2000)). Those special circumstances include: “(1) the result obtained for the class;
18 (2) the effort expended by counsel; (3) counsel’s experience; (4) counsel’s skill; (5) the complexity
19 of the issues; (6) the risks of non-payment assumed by counsel; (7) the reaction of the class; and
20 (8) the comparison of the benchmark with counsel’s lodestar.” *Wren v. RGIS Inventory Specialists*,
21 No. C-06-05778 JCS, 2011 WL 1230826, at *27 (N.D. Cal. Apr. 1, 2011); *Vizcaino*, 290 F.3d at
22 1048–50.

23 The overall result and benefit the settlement affords the class is “most critical factor in
24 granting a fee award.” *Deaver*, 2015 WL 8526982, *11; *see also Vataj v. Johnson*, No. 19-CV-
25 06996-HSG, 2021 WL 5161927, at *9 (N.D. Cal. Nov. 5, 2021) (same, citing *Hensley*, 461 U.S. at
26 436). Here, the success obtained warrants an upward adjustment from the benchmark award. The
27 *net* settlement fund will provide the class members with approximately 70 percentage recovery of
28 their reporting pay time claim—the gravamen of the litigation here, assuming the Court grants the

1 request for \$1,200,000 fees and \$30,000 for class representative awards. This recovery provides
2 for an exceptional result for the class members and aggrieved employees. In addition, the State of
3 California will receive \$37,500 in funds, through the settlement of the PAGA claim, and the
4 aggrieved employees will receive another \$12,500. SA § III.B.3.a.

5 As in other cases where awards have been granted above the benchmark, “th[is] litigation
6 has been protracted, contentious, and intensely fought.” *Brown*, 2016 WL 631880, at *9. Over the
7 course of the litigation, Class Counsel successfully defeated Shell’s motion to dismiss and then
8 won class certification, Dkt. Nos. 26, 116, 144; a loss at any of these junctures could have defeated
9 the case in whole. While this motion practice proceeded, Class Counsel also engaged in significant
10 discovery efforts, including propounding at least 26 requests for production, 34 requests for
11 admission and 90 interrogatories; responding to 152 production requests and 80 interrogatories;
12 taking 4 depositions; defending 4 depositions; participating in numerous meet and confer letters,
13 related emails and telephone calls; and reviewing almost 1,000 pages of documents. Manansala
14 Decl. ¶ 25. Class Counsel also interviewed approximately 30 class members and ultimately
15 obtained declarations from 20 of them in support of the motion for class certification. Manansala
16 Decl. ¶ 28.

17 An increase from the benchmark rate is also warranted because of the complexity of the
18 legal issues raised by this case, the associated risk in litigating such a complex case, and the skill
19 involved in prevailing on important motions and obtaining a sizeable settlement. Here, the Class
20 Representatives, through their counsel, pursued a theory for reporting time pay that extending
21 application of existing law to workers required to be available for set periods of time and, if needed,
22 be able to report promptly to the refinery to work a shift. Defendant asserted at every juncture,
23 including on its motion to dismiss, that the case theory was not supported by existing law. Because
24 Class Counsel took this case on a contingency basis, their time and out-of-pocket expenses would
25 have been a lost had defendant succeeded here. Thus, as in other cases, the risks and counsel skill
26 and work quality in overcoming those risks, support an upward departure from the 25 percent
27 benchmark. *See Foster*, 2022 WL 425559, at *10 (noting counsel’s skill and quality of work and
28 contingent nature of the action supported a 33.3% fee award); *Deaver*, 2015 WL 8526982, at *11

1 (noting skill and experience of counsel and contingent nature of case supported 33.3% award).

2 Finally, a comparison with the lodestar suggests a benchmark award would significantly
3 undercompensate counsel for its efforts. A benchmark award, which would result in fees of
4 \$900,000, would significantly undercompensate counsel for its efforts, providing counsel with
5 compensation for less than half of its collective lodestar. See Pogrel Decl. ¶¶ 24-25; Manansala
6 Decl. ¶¶ 43,45. Thus, if the percentage method is used, an upward adjustment is warranted. The
7 factor that the one-third fee request here would still result in a negative multiplier—34 percent
8 discount—strongly suggests the award requested is reasonable. *Foster*, 2022 WL 425559, at *11
9 (noting a negative multiplier supports reasonableness of the negotiated fee) (citing cases).

10 In sum, each factor used to consider the reasonableness of a benchmark percentage award—
11 and adjust such percentage accordingly—militates in favor of an upward adjustment of the
12 benchmark percentage. Considering these factors together, an award of 33.3 percent of the
13 common fund is reasonable and puts such request in line with awards this Court has awarded in
14 similar settings. Cf. *Foster*, 2022 WL 425559, at *11; *Deaver*, 2015 WL 8526982, at *12 (citing
15 cases awarding 30 to 33.3 percent).

16 **B. CLASS COUNSEL SHOULD BE REIMBURSED THEIR OUT-OF-
17 POCKET EXPENSES IN LITIGATING THE CASE**

18 Counsel that has created a common fund for the benefit of the class is entitled to be
19 reimbursed from that fund for their reasonable litigation expenses. *Dixon*, 2022 WL 1189883, *12.

20 Class Counsels’ aggregate out-of-pocket expenses totals \$44,617.98 through December 31,
21 2023 and will increase slightly for expenses related to preparation, filing and appearing to argue
22 this motion and the motion for final approval. Pogrel Decl. ¶27; Manansala Decl. ¶¶ 48,49. A
23 summary of litigation expenses by type is contained in Counsels’ declarations in support of this
24 motion, and will likely be just below the negotiated cap of \$45,000 at the conclusion of the
25 litigation. *Id.* The request here is thus reasonable and should be granted.

26 **V. CLASS REPRESENTATIVE SERVICE AWARDS ARE WARRANTED**

27 Plaintiffs request service \$7,500 for Plaintiffs Marco DiMercurio, Charles Gaeth, John
28 Langlitz and Malcolm Synigal. Service awards “are designed to ‘compensate class representatives
for work done on behalf of the class, to make up for financial or reputational risk undertaken in

1 bringing the action, and, sometimes, to recognize their willingness to act as a private attorney
2 general.” *Parker*, 2021 WL 5834227, at *8 (quoting *Rodriguez v. West Publishing Corp.*, 563 F.3d
3 948, 958–59 (9th Cir. 2009).) “Service awards as high as \$5,000 are presumptively reasonable in”
4 the Northern District. *Vataj*, 2021 WL 5161927, at *10. This Court has granted higher award where
5 plaintiffs face a reputational risk by filing suit against an employer, *Baird v. BlackRock Institutional*
6 *Tr. Co., N.A.*, No. 17-CV-01892-HSG, 2021 WL 5113030, at *9 (N.D. Cal. Nov. 3, 2021) (granting
7 award of \$10,000), and has recognized that “[i]ncentive awards may also be especially appropriate
8 in wage-and-hour class actions,” because of the risk plaintiffs’ face to their reputation. *Franco v.*
9 *E-3 Sys.*, No. 19-CV-01453-HSG, 2021 WL 2333851, at *8 (N.D. Cal. June 8, 2021).

10 Nonetheless, district courts “must scrutinize carefully the awards so that they do not
11 undermine the adequacy of the class representatives.” *Radcliffe v. Experian Info. Solutions Inc.*,
12 715 F.3d 1157, 1163 (9th Cir. 2013). And, when evaluating proposed awards, this Court has
13 considered the “the actions the plaintiff has taken to protect the interests of the class, the degree to
14 which the class has benefitted from those actions . . . and the amount of time and effort the plaintiff
15 expended in pursuing the litigation.” *Parker*, 2021 WL 5834227, at *9. This Court has also
16 considered the extent to which the service awards are “disproportionate to the monetary award that
17 other class members would receive.” *Der-Hacopian v. DarkTrace, Inc.*, No. 18-CV-06726-HSG,
18 2020 WL 7260054, at *8 (N.D. Cal. Dec. 10, 2020) (granting incentive payment that was five times
19 average payment to class member, but denying requested payment, which would have been fifty
20 times more than average payment received).

21 Messrs. DiMercurio, Gaeth, Langlitz and Synigal each deserve an award of \$7,500 because
22 of the assistance that they provided throughout the case. Manansala Decl. ¶ 39; DiMercurio Decl.;
23 Gaeth Decl. ¶¶ 6-13; Langlitz Decl. ¶¶ 6-13; Synigal Decl. ¶¶ 6-13. All four Plaintiffs provided
24 counsel extensive assistance in developing this case before the litigation occurred, and continued
25 to provide assistance as the case progressed, by among other things, providing declarations in
26 support of motions, and attending three settlement conferences in this lawsuit. Manansala Decl. ¶
27 39; DiMercurio Decl. ¶¶ 6-13; Gaeth Decl. ¶¶ 6-13; Langlitz Decl. ¶¶ 6-13; Synigal Decl. ¶¶ 6-13.
28 Each Plaintiff also prepared for and sat for their deposition in March 2021. Manansala Decl. ¶ 39;

