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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16

17 KRISTINA MCCONVILLE on behalf  
18 of herself, all others similarly situated,  
19 and on behalf of the general public,

20 Plaintiffs,

21 vs.

22 RENZENBERGER, INC., and DOES  
23 1-10,

24 Defendants.

Case No. 2:17-cv-02972-EMO-JS

**PLAINTIFF’S NOTICE OF  
MOTION AND MOTION FOR  
ATTORNEYS’ FEES, COSTS,  
AND CLASS  
REPRESENTATIVE  
ENHANCEMENT**

Date: May 21, 2020

Time: 10:00 a.m.

Judge: Hon. Fernando M. Olguin

Courtroom: 6D

Complaint Filed: April 14, 2016

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on May 21, 2020 at 10:00a.m., or as soon  
3 thereafter as the matter can be heard in Courtroom 3 of the above entitled courthouse  
4 located at 350 W. 1<sup>st</sup> Street, Los Angeles, California 90012, Plaintiff KRISTINA  
5 MCCONVILLE (hereinafter “Plaintiff”), will move this Court for an order granting  
6 Plaintiff’s Motion for Attorneys’ Fees, Costs, and Class Representative  
7 Enhancement Payment: (1) Approval of an award of attorneys’ fees to Class Counsel  
8 in the amount of \$612,500, which is 25% of the GSA and less than the 33.3% allotted  
9 in the Parties’ Stipulation and Settlement of Class Action Claims (hereinafter  
10 “Settlement Agreement” or “Agreement”); (2) Approval of an award of costs to  
11 Class Counsel in the amount of \$26,589.68 (originally estimated not to exceed  
12 \$40,000), as set forth in the Settlement Agreement; and (3) Approval of Plaintiff’s  
13 Enhancement Payment not to exceed \$5,000, as set forth in the Court’s Order  
14 granting Plaintiff’s Motion for Preliminary Approval (See Dkt. #83).

15 This Motion is made pursuant to Federal Rule of Civil Procedure  
16 23(h) and the Court’s Order granting Plaintiff’s Motion for Preliminary Approval of  
17 Class Action Settlement. The basis of Plaintiff’s Motion is that Class Counsel’s  
18 request for attorneys’ fees and costs is fair, reasonable and in accordance with the  
19 Parties’ Settlement Agreement and that Plaintiff’s efforts and assistance in this case  
20 justify the requested enhancement award.

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1 This Motion is based upon this notice, the accompanying Memorandum of  
2 Points & Authorities filed herewith, the accompanying Declaration of David Mara,  
3 Esq. filed herewith, the Declaration of Plaintiff Kristina McConville, the Joint  
4 Stipulation and Settlement Agreement and all exhibits thereto, the Court's Order  
5 Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the  
6 filings on record in this case, and upon such further evidence, both documentary and  
7 oral, that may be presented at the hearing of this motion.

8 Dated: February 14, 2020

**MARA LAW FIRM, PC**

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By: /s/ David Mara  
David Mara, Esq.  
Attorneys for Plaintiff

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1 Plaintiff Kristina McConville (“Plaintiff”), former employee for Defendant  
2 Renzenberger, Inc. (“Defendant”) (collectively the “Parties”), submit this Motion for  
3 Attorney’s Fees, Costs, and Class Representative Enhancement Payment in support  
4 of Final Approval of the Class Action Settlement.

5 **I. INTRODUCTION**

6 Plaintiff respectfully requests that this Court enter an Order granting Class  
7 Counsel’s Attorneys’ Fee Award and Cost Award, as well as the Class  
8 Representative Enhancement Payment in accordance with the Parties’ Stipulation  
9 and Settlement of Class Action Claims (“Settlement Agreement”) for which this  
10 Court granted preliminary approval on December 2, 2019.

11 As set forth in Plaintiff’s Preliminary Approval Motion, this is a \$2,450,000  
12 Gross Settlement Amount (“GSA”) achieved on behalf of approximately 3,426 Class  
13 Members. This Class consists of all persons who are or have been employed by  
14 Renzenberger as Drivers in the State of California at any time between April 14,  
15 2012 through December 2, 2019 (the date of Preliminary Approval). The Settlement  
16 represents a fair, adequate, and reasonable resolution to this litigation, as it provides  
17 definite and significant recovery in light of the risks of further litigation. The Parties  
18 contend the proposed Settlement is reasonable in light of the strengths of Plaintiff’s  
19 case, risks of further litigation, and the estimated values of Plaintiff’s claims at trial.  
20 The fact that none of the funds revert to Defendant further increases the value of this  
21 Settlement.

22 The Settlement represents a substantial recovery for the Class, and a well-  
23 crafted compromise of the divergent positions of the Parties. Further, the parties did  
24 not reach the Settlement until after the parties exchanged significant data and  
25 documents regarding the claims, reviewed Defendant’s financial documents, and  
26 engaged in considerable settlement negotiations. Each side evaluated the strengths  
27 and weaknesses of the claims, and the defenses thereto, and independently  
28 concluded that this Settlement represents a responsible means of addressing the  
Plaintiff’s claims and the Defendant’s defenses.

1 This recovery represents a positive outcome for the Class Members, all of  
 2 whom may normally not possess the means to individually pursue his or her own  
 3 claims. The class members in this case received the benefit of working with  
 4 experienced and knowledgeable wage and hour attorneys who vigorously pursued,  
 5 litigated, negotiated, and eventually settled this highly contested matter to reach a  
 6 successful resolution.

7 Therefore, for all the of the foregoing reasons, Plaintiff respectfully requests  
 8 that the Court award Class Counsel attorneys' fees in the amount of \$612,500,  
 9 representing 25% of the GSA<sup>1</sup>, and costs in the amount of \$26,589.68 (originally  
 10 estimated not to exceed \$40,000). Plaintiff also request that the Court award Plaintiff  
 11 the requested Class Representative Enhancement Payment of \$5,000.<sup>2</sup>

12 **II. THE COURT SHOULD GRANT PLAINTIFF'S REQUEST FOR  
 ATTORNEY'S FEES AND COSTS, AS BOTH ARE REASONABLE**

13 **a. Class Counsel Has Extensive Experience Acting as Class Counsel**

14 Class Counsel's experience in complex class action matters is extensive.  
 15 Declaration of David Mara, Esq. ("Mara Decl."), ¶¶ 1-8, 11, 14. Indeed, Mr. Mara  
 16 from the Mara Law Firm, PC was class counsel in *Hohnbaum et al. v. Brinker*  
 17 *Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker*  
 18 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Mara Decl. ¶ 4. Class  
 19 Counsel have prosecuted numerous cases on behalf of employees for California  
 20 Labor Code violations and thus are experienced and qualified to evaluate the class  
 21 claims present in this case, and the defenses thereto, and to evaluate settlement versus  
 22 trial on a fully informed basis. Mara Decl. ¶¶ 1-8, 11, 14. This experience instructed  
 23 Class Counsel on the risks and uncertainties of further litigation and guided their  
 24 determination to endorse the proposed settlement.

25 <sup>1</sup> Although the Settlement Agreement allots 33.3% of the GSA for attorneys' fees, Class Counsel  
 only requests 25% of the GSA, which is in line with the federal benchmark.

26 <sup>2</sup> Plaintiff set forth the detailed history and underlying facts of this matter in Plaintiff's Motion for  
 27 Preliminary Approval of Class Action Settlement and will again detail the facts in Plaintiff's  
 forthcoming Motion for Final Approval of Class Action Settlement.

1                   **b. The Requested Attorney’s Fees and Costs are Reasonable**

2                           **i. The Fee Request is Reasonable Under the “Common**  
3                                   **Fund/Percentage” Analysis**

4                   One can trace the genesis of the common fund doctrine to the United States  
5                   Supreme Court decision of *Central Railroad and Banking of Georgia v. Petus*, 113  
6                   U.S. 116 (1885), where the Court explained: “The lawyer who creates a common  
7                   fund is allowed an extra reward, beyond that which he has arranged with his client,  
8                   so that he might share the wealth of those upon whom he has conferred a benefit.”  
9                   The Supreme Court never changed this basic pronouncement, outlining that the  
10                  common fund rule “rests upon the perception that persons who obtain the benefit of  
11                  a lawsuit without contributing to its costs are unjustly enriched at the successful  
12                  litigant’s expense.” *Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980). The Ninth  
13                  Circuit continues to follow this approach, instructing that “the common fund theory  
14                  comes from equity. The purpose of this doctrine is to avoid unjust enrichment and  
15                  to ‘spread litigation costs proportionately among all the beneficiaries so that the  
16                  active beneficiary does not bear the entire burden alone...” *Vincent v. Hughes Air*  
17                  *West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1977).

18                                   **1. The Common Fund Doctrine**

19                  As the Ninth Circuit explained: “a lawyer who recovers a common fund for  
20                  the benefit of persons other than himself or his client is entitled to a reasonable  
21                  attorney’s fee from the fund as a whole.” *Staton v. Boeing Co.*, 327 F.3d 938, 972  
22                  (9<sup>th</sup> Cir. 2003) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The  
23                  *Staton* court also explained that awarding a percentage of the common fund is  
24                  particularly appropriate “when each member of a certified class has an undisputed  
25                  and mathematically ascertainable claim to part of a lump-sum judgment recovered  
26                  on his behalf.” 327 F.3d at 972 (quoting *Boeing Co.*, 444 U.S. at 478-479.)

27                  The purpose of the common fund/percentage approach is to “spread litigation  
28                  costs proportionally among all the beneficiaries so that the active beneficiary does  
29                  not bear the entire burden alone.” *Vincent*, 557 F.2d 759. In *Quinn v. State of*

1 *California*, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit  
2 which creates a fund from which others derive benefits may require those passive  
3 beneficiaries to bear a fair share of the litigation costs.” 15 Cal.3d 162, 167 (1995).  
4 Similarly, in *City and County of San Francisco v. Sweet*, the California Supreme  
5 Court recognized that the common fund doctrine has been applied “consistently in  
6 California when an action brought by one party creates a fund in which other persons  
7 are entitled to share.” 12 Cal.4th 105, 110 (1995).

8 The reasons for applying the common fund doctrine include:  
9 ...fairness to the successful litigant, who might otherwise receive no  
10 benefit because his recovery might be consumed by the expenses;  
11 correlative prevention of an unfair advantage to the others who are  
12 entitled to share in the fund and who should bear their share of the  
burden of its recovery; encouragement of the attorney for the successful  
litigant, who will be more willing to undertake and diligently prosecute  
proper litigation for the protection or recovery of the fund if he is assured  
that he will be properly and directly compensated should his efforts be  
successful. *Id.*

13 The common fund approach continues to be a preferred method of awarding  
14 fees. Since *Serrano v. Priest*, 20 Cal.3d 25, 48 (1977) (“*Serrano III*”), there has been  
15 a “ground swell of support for mandating the percentage-of-the-fund approach in  
16 common fund cases.” *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27  
17 (2000). *Lealao* discusses at length the judicial perception of the lodestar method as  
18 unfair and arbitrary for fostering collusively low settlements for a high fee award  
19 and for placing the trial court in the unfavorable position of determining reasonable  
20 hours and billing rates. *Id.* at 29-30.

21 When approving attorneys’ fees in common fund cases, courts in the Ninth  
22 Circuit have discretion to apply the percentage-of-the-fund method or the lodestar  
23 method to determine reasonable attorneys’ fees. See *Powers v. Eichen*, 229 F.3d  
24 1249, 1256 (9th Cir. 2000). If employing the percentage-of-the-fund method, the  
25 “starting point” or “benchmark” award is 25 percent of the total settlement value.  
26 See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002); *Torrisi v.*  
*Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

1 Class Counsel undertook this representation at their own expense, with  
2 compensation contingent on providing a benefit to the Class. Class Members will  
3 substantially benefit by the terms of the Settlement. Because there is a defined and  
4 clearly traceable monetary benefit to the Class, the Court can base an award of  
5 attorneys' fees on the Class Members' benefit, using a common fund approach. Class  
6 Counsel's request for 25% of the common fund is fair compensation for obtaining  
7 an excellent result for the Class Members and, in doing so, undertaking complex,  
8 risky, expensive, and time-consuming litigation purely on a contingent basis. Mara  
9 Decl. ¶ 23.

## 10 **2. The Percentage Requested is Reasonable**

11 The attorneys' fees here were wholly contingent, and the case presented far  
12 more risk than the usual contingent fee case. There was the prospect of the enormous  
13 cost inherent in class action litigation, as well as a long battle with Defendants who  
14 retained experienced, reputable legal counsel. That prospect has previously become  
15 reality, in both trial courts and the Court of Appeals, and in other wage and hour class  
16 litigation. Class Counsel risked not only a great deal of time, but also a great deal of  
17 expense, to ensure the successful litigation of this action on behalf of all Class  
18 Members. Mara Decl. ¶ 24.

19 Per Newberg on Class Actions, "no general rule can be articulated on what is  
20 a reasonable percentage of a common fund. Usually 50% of the fund is the upper  
21 limit on a reasonable fee award from a common fund in order to assure that the fees  
22 do not consume a disproportionate part of the recovery obtained for the Class,  
23 although somewhat larger percentages are not unprecedented." Newberg on Class  
24 Actions, 3rd Ed., 1992, §14.03. Regarding percentage fee awards, Newberg states:  
25 "[A]chievement of a substantial recovery with modest hours expended should not be  
26 penalized but should be rewarded for considerations of time saved by superior  
27 services performed." *Id.* at § 14.01.

## 28 **3. The Fee Requested is Within the Range of Fees Approved in Comparable Cases**



1 The requested attorneys' fees of \$612,500 is 25% of the GSA. A review of  
2 class action settlements over the past several years shows that courts historically  
3 award fees in the range of 20% to 50%, depending on the circumstances of the case.

4 As courts recognize, the percentage can range, and courts have awarded more  
5 than 25% of the fund as attorneys' fees when they deemed a higher award to be  
6 reasonable. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)  
7 (upholding district court's award of 33 1/3 percent of the settlement fund); *Knight v.*  
8 *Red Door Salons, Inc.*, 2009 WL 248367, at \*17 (N.D. Cal. Feb. 2, 2009) (“[N]early  
9 all common fund awards range around 30%.”); *Gardner v. GC Services, LP*, 2012  
10 WL 1119534, at \*7 (S.D. Cal. Apr. 2, 2012) (finding as reasonable a departure from  
11 the 25 percent benchmark where the results achieved were favorable, the risks of  
12 litigation were substantial, and the case was complex). See also *Flo & Eddie*, 2017  
13 U.S. Dist. LEXIS 199172, \*21, (citing *Singer v. Becton Dickinson and Co.*, 2010  
14 U.S. Dist. LEXIS 53416 (S.D. Cal. 2010)(finding as reasonable an award of 33.3%  
15 of the common fund because Class Counsel took the case on a contingent basis and  
16 litigated for two years, finding that awards usually range from 20 percent to 50  
17 percent); *Luna v. Universal City Studios, LLC*, 2016 WL 10646310, \*7 (C.D. Cal.  
18 Sept. 13, 2016)(citing *Singer* and *Gardner*).

18 Citing *Powers*, 229 F.3d at 1256, *Hanlon v. Chrysler Corporation*, 150 F.3d  
19 at 1029, and *Staton v. Boeing Co.*, 327 F.3d at 952, the court in *Alvarado, et al. v.*  
20 *Nederend, et al.*, recognized that the “the exact percentage varies depending on the  
21 facts of the case, and in ‘most common fund cases, the award exceeds that  
22 benchmark.’” 2011 U.S. Dist. LEXIS 52793, \*22-23 (E.D. Cal. May 17,  
23 2011)(quoting *Knight*, 2009 U.S. Dist. LEXIS 11149 (N.D. Cal. 2009)). See also *In*  
24 *re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (“nearly all  
25 common fund awards range around 30%). In *Alvarado*, the court awarded counsel  
26 33 1/3 of the \$500,000 settlement amount for attorneys' fees for 308 attorney hours  
27 worked. 2011 U.S. LEXIS 52793, \*23-24. So doing, at \*27, the court cited to several  
28 other decisions where courts awarded similar amounts: *Vasquez v. Coast Valley*



1 *Roofing*, 266 F.R.D. 482 (E.D. Cal. 2010)(33.3%); *Willis, et al. v. Cal-Western*  
2 *Transport*, 2003 U.S. Dist. LEXIS 28606 (E.D. Cal. July 25, 2003) (33.3%); *Benitez,*  
3 *et al. v. Wilbur, et al.*, 2009 U.S. Dist. LEXIS 15018 (E.D. Cal. Feb. 26,  
4 2009)(33.3%); *Chavez, et al. v. Petrissans*, 2008 U.S. Dist. LEXIS 111596 (E.D.  
5 Cal. Sept. 5, 2008)(33.3%).

6 In *Cicero v. DirecTV, Inc.*, 2010 U.S. Dist. LEXIS 86920, at \*17-18, the court  
7 explained that a review of California cases in other districts reveals that courts  
8 usually award attorneys' fees in the 30-40% range in wage and hour class actions  
9 that result in recovery of a common fund under \$10 million. See *Vasquez v. Coast*  
10 *Valley Roofing, Inc.*, 266 F.R.D at 491-9 (citing to five recent wage and hour class  
11 actions where federal district courts approved attorney fee awards ranging from 30  
12 to 33%); *Singer*, 2010 WL 2196104, \* 8 (approving attorney fee award of 33.33%  
13 of the common fund and holding that award was similar to awards in three other  
14 wage and hour class action cases where fees ranged from 30.3% to 40%); *Romero v.*  
15 *Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841  
16 (E.D. Ca. Nov. 14, 2007); *Woo v. Home Loan Group, L.P.*, 2008 U.S. Dist. LEXIS  
17 65144 (S.D. Cal. Aug. 25, 2008) (awarded 33% of the fund); *Barbosa v. Cargill*  
18 *Meal Solutions Corp.*, 2013 U.S. Dist. LEXIS 93194 (E.D. Ca. July 1, 2013) (1/3 of  
19 fund); *Van Vranken*, supra, 901 F. Supp. at 297-298 ("cited 73 opinions in which  
20 fees in the range of 30-50 percent of the common fund were awarded."); *In Re Pacific*  
21 *Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (33% fee award); *Williams v.*  
22 *MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (33% of  
23 total fund awarded); *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25067,  
24 \*57, \*58 (D.D.C. July 16, 2001) (34.06% of \$365 million recovery).

25 Class action surveys also confirm that the fee Class Counsel requests is  
26 reasonable. A 1999 analysis of 1,349 shareholder class actions conducted by  
27 National Economic Research Associates concluded that "[f]ee amounts average  
28 approximately 32 percent of the settlement award." (D. Martin, V. Juneja, T. Foster  
and F. Dunbar, *Recent Trends IV: What Explains Filings and Settlements in*

1 *Shareholder Class Actions*, 5 Stan. J. L. Bus. & Fin. 121, 141.)

2 As the Ninth Circuit noted, the percentage awarded must take into account the  
3 risks counsel faced. There is a substantial difference between the risk assumed by  
4 attorneys paid by the hour and attorneys working on a contingent fee basis. The  
5 attorney paid by the hour can go to the bank with his or her fee. *Powers v. Eichen*,  
6 229 F.3d at 1256. The attorney working on a contingent basis can only log hours  
7 while working without pay towards a result that will hopefully entitle him or her to  
8 a market place contingent fee taking into account the risk and other factors of the  
9 undertaking. *Id.* at 1257. Otherwise, the contingent fee attorney receives nothing. *Id.*

10 In this case, Class Counsel subjected themselves to this contingent fee market  
11 risk in this all or nothing contingent fee case where the necessity and financial burden  
12 of private enforcement makes the requested award appropriate. The simple fact is  
13 that despite the most vigorous and competent of efforts, success is never guaranteed.  
14 *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967). If counsel is not  
15 adequately compensated for the risks inherent in difficult class actions, competent  
16 attorneys will be discouraged from prosecuting similar cases. *Steiner v. BOC*  
*Financial Corp.*, 1980 U.S. Dist. LEXIS 14561 at \*6- \*7 (S.D.N.Y. 1980).

17 Other district courts are in accord. For example: *Birch v. Office Depot*, S.D.  
18 Cal. 2007, USDC, Case No. 06 CV 1690 (Hon. Dana M. Sabraw--awarding  
19 attorney's fees of 40% of \$16,000,000 settlement in pre-certification meal/rest period  
20 class action); *Watson v. Raytheon Company*, USDC Southern District, Case No. CV-  
21 10-cv-00634 LAB RBB (Hon. Larry B. Burns – awarding attorneys’ fees of  
22 \$666,666.67, 33-1/3% of a \$2,000,000 settlement in a certified misclassification  
23 class action); *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No.  
24 CV-09-2745 DMS JMA, (Hon. Dana M. Sabraw – awarding attorneys’ fees of  
25 \$500,000, 33-1/3% of \$1,500,000 settlement in a pre-certification expense  
26 reimbursement, rest and meal period class action); *Mayville, et al. v. Kor Hotel*  
27 *Group, L.L.C., et al.*, USDC Central District, Case No. CV-04-8461 ABC (RCx)  
28 (Hon. Audrey B. Collins -- awarding attorneys’ fees of \$480,000, 30% of \$1,600,000

1 settlement in pre-certification meal and rest period class action); *Albrecht v. Rite-*  
2 *Aid*, San Diego Superior Court Case No. 729298 (Hon. J. Richard Haden -- awarding  
3 attorney's fees of 33% of \$25,000,000 settlement in certified overtime class action);  
4 *Domino's Pizza Overtime Cases*, Orange County Superior Court Case No. JCCP  
5 4498 (Hon. Gail A. Andler -- awarding attorneys' fees of \$1,500,000, 30% of  
6 \$5,000,000 settlement in pre-certification meal and rest period class action); *Wilcox*  
7 *v Albertsons*, San Diego Superior Court Case No. GIC833922 (Hon. Linda B. Quinn  
8 -- awarding attorneys' fees of 33% of \$22,500,000 settlement in certified rest and  
9 meal class action); *Konica Minolta Wage Cases*, Orange County Superior Court  
10 Case No. J.C.C.P. 4527 (Hon. David C. Velasquez—awarding attorneys' fees of  
11 33% of \$6,000,000 settlement in pre-certification expense reimbursement class  
12 action); *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District,  
13 Case No. CV-09-0069 DMS (CAB) (Hon. Dana M. Sabraw – awarding attorneys'  
14 fees of 33% of a \$500,000 settlement in a pre-certification vacation policy class  
15 action); *Gardner v. GC Services, LP.*, USDC Southern District, Case No. 10-cv-  
16 0997-IEG (CAB) – (Chief Justice Irma E. Gonzalez – awarding attorneys' fees of  
17 30% of a \$975,000 settlement in a pre-certification failure to pay straight and  
18 overtime wages class action); *Gallen v. Gambro Healthcare, Inc.*, Orange County  
19 Superior Court, Case No. 04 CC 00571 (Hon. Nancy Wieben Stock – approving  
20 award of attorneys' fees 30% of a \$17,500,000 settlement in a pre-certification  
21 overtime wages class action); *Dunn v. The Kroger Company, et al.*, Los Angeles  
22 Superior Court, Case No. BC 323252 (Hon. Elihu M. Berle – approving attorneys'  
23 fees of 30% of a \$19,500,000 in a pre-certification meal and rest break class action);  
24 *Jones v. Casual Male Retail Group, Inc.*, San Diego Superior Court, Case No. 37-  
25 2009-00089721 (Hon. Kevin A. Enright – approving attorneys' fees of 33% of a  
26 \$299,500 in a pre-certification misclassification class action).

26 As the cited authorities establish, the requested attorneys' fees award is both  
27 reasonable and well within the range of awards attorneys' fees routinely awarded in  
28 class action litigation and is in line with the federal benchmark. Plaintiff therefore

1 requests that the Court approve her request. A cross-check of the requested  
2 attorneys' fees against the Lodestar Method confirms the reasonableness of the  
3 request.

4 **ii. A Lodestar Cross-Check Confirms the Reasonableness of the**  
5 **Requested Attorney's Fees**

6 Class Counsel's fee request is also reasonable when calculated using the  
7 lodestar method. Employing the lodestar method, the Court calculates a base fee  
8 amount from a compilation of time reasonably spent on the case and the reasonable  
9 hourly compensation of the attorney. The Court then adjusts the base amount in light  
10 of various factors articulated in decisions. *Luna*, 2016 WL 10646310, \*7 (citing *In*  
11 *re Washington Public Power Supply Syst. Securities Litig.*, 19 F.3d 1291, 1294 n.2  
12 (9<sup>th</sup> Cir. 1994)). See also *Serrano III*, 20 Cal.3d at 48; *Ketchum v. Moses*, Cal.4th  
13 1122, 1132-36 (2001); *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084 (2000);  
14 *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 834 (2001), (“[t] there is no ...  
15 rule limiting the factors that may justify an exercise of judicial discretion to [adjust  
16 the] lodestar”).

17 To date, Class Counsel worked 1,094 hours on this case. Applying Class  
18 Counsel's hourly rates to the total hours worked results in a lodestar fee of \$620,800.  
19 Mara Decl. ¶ 17; **Exh. 1**. Class Counsel respectfully request that the Court award  
20 attorneys' fees in the amount of \$612,500 (25% of the GSA). All of the work and  
21 tasks performed by Class Counsel were reasonable and necessary to the prosecution  
22 of this case. Mara Decl. ¶¶ 9, 12, 15; **Exh. 1**. As Class Counsel's lodestar fee is in  
23 excess of their fee request, a multiplier on their lodestar fee is not sought herein. IN  
24 fact, the requested fee results in a so-called “negative multiplier” which suggests the  
25 percentage of the fund amount is reasonable and fair. See *Chun-Hoon v. McKee*  
26 *Foods Corp.*, 716 F.Supp.2d 848, 854 (N.D. Cal. 2010); *In re Portal Software, Inc.*  
27 *Securities Litigation*, 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at \*16  
28 (N.D. Cal. 2007).

### 1. Counsel's Hourly Rates are Reasonable

1  
2 Class Counsel's hourly rates are between \$400 and \$750 and are in line with  
3 rates approved for wage and hour class action attorneys in this jurisdiction. A  
4 reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
5 experience in the relevant community. *Luna*, 2016 WL 10646310, \*8; *PLCM Group,*  
6 *Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). When determining a reasonable hourly  
7 rate, courts may consider factors such as the attorney's skill and experience, the  
8 nature of the work performed, the relevant area of expertise, and the attorney's  
9 customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th  
10 629, 632 (1998).

11 Counsel's own billing rates have a presumption of reasonableness. See, e.g.,  
12 *Russell v. Foglio*, 160 Cal. App. 4th 653, 6611 (2008); *United Steelworkers v.*  
13 *Retirement Income Plan*, 512 F.3d 555, 565 (9th Cir. 2008). The rates awarded to  
14 attorneys of comparable experience in other cases in the same market are relevant  
15 when determining what is the reasonable rate. *Children's Hosp. & Med. Ctr. v.*  
16 *Bonta*, 97 Cal. App. 4th 740, 783 (2002); *United Steelworkers v. Retirement Income*  
17 *Plan*, 512 F.3d 555, 564 (9th Cir. 2008). This comparison further illustrates the  
18 reasonableness of the rates requested. For example, in *Hopson v. Hanesbrands, Inc.*,  
19 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. April 3, 2009), a misclassification class  
20 action, the court approved an hourly rate of \$675.

21 The National Law Journal's 2008 survey of rates charged by firms in the  
22 nation for both partners and associates establishes the reasonableness of Class  
23 Counsel's hourly rate, reflecting partners' rates up to \$1,260 per hour and associates'  
24 rates up to \$920 per hour. These rates were reported in a 2014 article in The National  
25 Law Journal and a survey by The Recorder. These publications establish the  
26 reasonableness of the rates requested. Courts routinely rely on these types of surveys  
27 in determining the reasonableness of the hourly rates requested. See, e.g., *Berberena*  
28 *v. Coler*, 753 F.2d 629, 633 (7th Cir. 1985)(National Law Journal survey); *Dameron*  
*v. Sinai Hosp. of Baltimore, Inc.*, 644 F. Supp. 551, 558 (D. Md. 1986)(court referred



1 survey).

2 Class Counsel's skill and experience support their hourly rates. Furthermore,  
3 other wage and hour attorneys working as class counsel before California courts  
4 charge comparable, if not higher, rates. *See* Mara Declaration **Exh. 2** (Westlaw Court  
5 Express's Legal Billing Report, Volume 14, Number 3, California Region for  
6 December 2012 and 2012 National Law Journal survey of hourly billing rates for  
7 Partners and Associates); **Exh. 3** (2012 Richard Pearl Declaration in *Hohnbaum v.*  
8 *Brinker Restaurant Corp.*, SDSC No. GIC834348).

## 9 **2. Counsel's Total Hours are Reasonable**

10 In determining a lodestar, reasonable hours include, in addition to time spent  
11 during litigation, the time spent before the action is filed, including time spent  
12 interviewing the clients, investigating the facts and the law, and preparing the initial  
13 pleadings. *See New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). "An  
14 attorneys' fees award should include compensation for all hours reasonably  
15 expended prosecuting the matter. . ." *Luna*, 2016 WL 10646310, \*9. "[T]he standard  
16 is whether a reasonable attorney would have believed the work to be reasonably  
17 expended in pursuit of success at the point in time when the work was performed."  
18 *Id.* (quoting *Moore v. Jas H. Matthews & Co.*, 682 F.2d 830, 839 (9<sup>th</sup> Cir. 1982)).  
19 The fee award should include fees incurred to establish and defend the attorneys' fee  
20 claim. *Serrano v. Priest*, 32 Cal.3d 621, 639 (1982) ("*Serrano IV*").

21 To date, Class Counsel work a total of 1,094 hours on this case. Mara Decl. ¶  
22 17, **Exh. 1**. The work performed by Class Counsel was justified in order to achieve  
23 a Settlement that will provide valuable consideration to the Class Members.

## 24 **3. The Costs of Litigation are Reasonable**

25 Class Counsel seek reimbursement of their actual litigation costs and expenses  
26 in the sum of \$26,589.68. Mara Decl. ¶ 18, **Exh. 1**. These costs were all reasonable  
27 and necessary to the prosecution of this case and are fair and reasonable by  
28 Defendants. Mara Decl. ¶ 18.

1                   **III. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**  
2                   **REASONABLE AND SHOULD BE GRANTED**

3                   As the Ninth Circuit explains, “[i]ncentive *awards* are fairly typical in class  
4                   action cases.” They “are intended to compensate class representatives for work done  
5                   on behalf of the class, to make up for financial or reputation risk undertaken in  
6                   bringing the action, and, sometimes, to recognize their willingness to act as a private  
7                   attorney general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir.  
8                   2009)). Consistent with this understanding, the court noted in *Flo & Eddie, Inc. v.*  
9                   *Sirius XM Radio, Inc.*, 2017 U.S. Dist. LEXIS 199172, \*30-31 (C.D. Cal. May 8,  
10                  2017), that courts routinely approve incentive awards to compensate named  
11                  plaintiffs for the services they provided and the risks they incurred during the course  
12                  of the class action litigation.

13                  Plaintiff/Class Representative requests an enhancement payment in the  
14                  amount of \$5,000, which is allowed under the parameters set by the Settlement  
15                  Agreement and is in line with the Court’s Order Granting Preliminary Approval. The  
16                  requested enhancement is appropriate and reasonable and unopposed by Defendant.  
17                  This payment is made, in part, to compensate Plaintiff for the work she performed  
18                  on this case. Plaintiff submitted a declaration detailing the efforts she expended on  
19                  behalf of the Class in order to advance this case to its successful conclusion. *See*  
20                  Dkt.# 74-5 (Declaration of Kristina McConville). There is no question that this case  
21                  would not have reached the same result but for Plaintiff’s involvement and input at  
22                  all stages of the litigation.

23                  The requested service award is also reasonable in light of the reputational risk  
24                  that the Plaintiff assumed in bringing this action against her employer. Plaintiff put  
25                  her future employment prospects at risk by becoming a class representative, as the  
26                  fact that she filed a lawsuit “is searchable on the internet and may become known to  
27                  prospective employers when evaluating” her for future employment. *Guippone v.*  
28                  *BH S&B Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, \*20 (S.D.N.Y. Oct. 28,  
2011). Employers routinely screen employee candidates to determine whether they  
have ever filed a suit against other employers, allowing them to screen out the

1 litigious candidates. An entire industry exists that allows employers to run extensive  
2 background searches on potential employees. Companies who provide these services  
3 specifically highlight the fact that their services allow employers to weed out  
4 litigious employment candidates. Reliable Plant outlines ways that employers can  
5 “get a sense of whether a prospective employee is likely to sue” the employer,  
6 through background checks and other means, to screen out these employees.  
7 [www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-](http://www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-employees)  
8 employees. Onicra Credit Rating Agency of India states: “Background screening has  
9 become a necessity in today’s litigious society.” Back Track Screening also  
10 represents: “In today’s litigious culture, employers simply cannot afford to hire  
11 employees who will put their company at risk.” [http://www.btscreening.com/wp-](http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf)  
12 content/uploads/2012/09/Screening-101.pdf. PreciseHire also offers employment  
13 screening and similarly warns: “with today’s business climate being extremely  
14 competitive and highly litigious, conducting pre-employment background checks  
15 has become a necessity.” [https://precisehireblog.wordpress.com/2013/11/21/pre-](https://precisehireblog.wordpress.com/2013/11/21/pre-employment-background-checks-have-become-a-business-necessity/)

16 As representative for the absent class members, Plaintiff also risked a  
17 potential judgment taken against them for attorneys’ fees and costs if this matter had  
18 not been successfully concluded. Courts affirm that a losing party is liable for the  
19 prevailing party’s costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000),  
20 and in some wage and hour actions, such as this case, pursuant to California Labor  
21 Code § 218.5, for attorneys’ fees as well. Unfortunately, courts have entered several  
22 judgments against class representatives. See e.g. *Koehl v. Verio, Inc.* 142  
23 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant  
24 prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the  
25 Defendant’s attorneys’ fees, in an amount exceeding \$500,000); *Whiteway v. Fedex*  
26 *Kinkos Office & Print Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007)  
27 (a wage and hour misclassification case lost on summary judgment, after the case  
28 was certified, the court assessed costs against the named Plaintiff in the sum of  
\$56,788.). The risk of payment of Defendants’ costs, in itself alone, is a sufficient



1 basis for an award of the requested enhancement sum. Few individuals are willing  
2 to take this risk, and it is clear that the appointed Class Representative here  
3 championed a cause on behalf of others with potentially huge monetary risks.

4 Courts regularly and routinely granted approval of settlements containing such  
5 enhancements. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir. 2003); *Cook*  
6 *v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185  
7 (S.D.N.Y. 1997) (“present or past employee whose present position or employment  
8 credentials or recommendation may be at risk by reason of having prosecuted the  
9 suit, who therefore lends his or her name and efforts to the prosecution of litigation  
10 at some personal peril, a substantial enhancement award is justified”); *Thornton v.*  
11 *East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) (“We also think there  
12 is something to be said for rewarding those drivers who protect and help to bring  
13 rights to a group of employees who have been the victims of discrimination.”). The  
14 typical enhancement award in wage and hour class action settlements ranges from  
15 \$5,000 to \$75,000, although some awards may be higher. *See, e.g., Glass v. UBS*  
16 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, \*50-52 (N.D. Cal. Jan. 27, 2007) (district  
17 court awarded each class representative in an overtime wages class action a service  
18 award of \$25,000); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga.  
19 2001)(quoting *In Re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D.  
20 Ohio 1997)(approving \$300,000 payment to each class representative in  
21 employment case settling before class certification ); *Van Vranken v. Atlantic*  
22 *Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995)(approving \$50,000 service  
23 payments); *Willis, et al. v. Cal-Western Transport*, 2003 U.S. Dist. LEXIS 28606,  
24 \*5 (E.D. Cal. July 25, 2003) (approved incentive awards in the amounts of \$30,000  
25 and \$34,000, respectively.) As these cases reflect, very commonly there is more than  
26 one class representative who receive awards in the above range.

27 The enhancement request is modest for the work performed, risks undertaken  
28 for payment of fees and costs if this case had not been successfully concluded, stigma  
on future employment opportunities, and the benefits all members of the class, as

1 well as all current and future class members, will enjoy as a result of Plaintiff's  
2 efforts.

3 **IV. CONCLUSION**

4 In light of the foregoing, Plaintiffs request the Court find the Settlement fair,  
5 reasonable, and adequate and grant this motion and award attorneys' fees in the  
6 amount of \$612,500 (25% of the GSA), and litigation costs in the amount of  
7 \$26,589.68, the costs Class Counsel incurred in litigating this matter, and approve  
8 Plaintiffs' enhancement requests. These terms will be included in the proposed order  
9 accompanying the forthcoming Plaintiff's Motion for Final Approval of Class  
10 Action Settlement.

11 Dated: February 14, 2020

**MARA LAW FIRM, PC**

12 /s/ Jamie Serb

13 David Mara, Esq.

14 Jamie Serb, Esq.