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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA — FRESNO DIVISION

ROBERT MARTINEZ, an individual, on behalf of himself, all others similarly situated,

Plaintiff,

v.

KNIGHT TRANSPORTATION, INC. d/b/a ARIZONA KNIGHT TRANSPORTATION, INC.; and DOES 1 thru 50, inclusive,

Defendants.

Case No. 1:16-CV-01730-DAD-SKO
[Class Action]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES & COSTS

Date: September 20, 2023
Time: 9:30 a.m.
Courtroom: 7, 6th Floor
Judge: Hon. Sheila Oberto

Removal Filed: November 14, 2016

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on September 20, 2023 at 9:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 7 of the United States District Court for the Eastern District of California, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), Plaintiff ROBERT MARTINEZ ("Plaintiff") individually and on behalf of all others similarly situated, will move this Court for entry of an Order approving Plaintiff's Counsel's request for 25% of the Gross Settlement Amount ("GSA") as attorneys' fees (i.e., $100,000), an amount that was preliminarily approved by this Court and is substantially lower than Plaintiff's Counsel's lodestar, and reimbursement of litigation costs of $13,298.41, an amount less than the $20,000 amount that was preliminarily approved by this Court.

This Motion will be heard at the same time as Plaintiff's forthcoming Motion for Final Approval of the Settlement in this case. Plaintiff files this Motion at this time, before the deadline for class members to opt-out or object, pursuant to the Ninth Circuit's ruling in the case of *Mercury Interactive Corp. Sec. Lit v. Mercury Interactive Corp.*, 618 F.3d 988, 994-95 (9th Cir. 2010) (fee motions in class actions should be filed before the objection deadline); *Partl v. Volkswagen, AG*, 895 F.3d 597, 615 (9th Cir. 2018). Plaintiff is not submitting a Proposed Order with this Motion, rather he will submit a combined Proposed Order regarding final approval and fees, concurrently with his Motion for Final Approval.

This motion is based upon the supporting Memorandum of Points and Authorities, the Declarations of Craig Ackermann and Julian Hammond submitted herewith, all other papers and records on file in this action, including, without limitation, Plaintiff's Motion for Preliminary Approval of Class Action Settlement and all supporting papers, Plaintiff's Renewed Motion for Preliminary Approval of Class Action Settlement and all supporting papers, the Court's Order Granting Preliminary Approval of Class Action Settlement and Conditional Certification of Settlement Class (Dkt # 80), and on such oral and documentary evidence as may be presented at the hearing on this Motion.

///

Dated: July 14, 2023

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.
HAMMONDLAW, P.C.

By: /s/ Craig J. Ackermann
Craig J. Ackermann, Esq.

Attorneys for Plaintiff and the Settlement Class

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Shirrod v. Dir., OWCP, 809 F.3d 1082 (9th Cir. 2015) 14

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Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301 (9th Cir. 1990) 7

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OTHER AUTHORITY

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Robert Martinez ("Plaintiff") moves for an award of 25% of the $400,000 gross settlement
4 amount (i.e., $100,000 in attorneys' fees) and $13,289.41 in litigation costs. These amounts are allocated
5 by and/or, in the case of the costs, are less than the amount agreed to by the parties in their Stipulation of
6 Class and PAGA Representative Action Settlement and Release ("Settlement," "Settlement Agreement," or
7 "S.A.") and have been noticed to the Class Members, without objection to date.

8 Plaintiff's fee request herein is consistent with the Ninth Circuit's 25% benchmark for fee awards in
9 class actions as well as the U.S. Supreme Court's holding on attorneys' fee awards as a percentage of a
10 common fund on claims-made settlements. *See*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480 (1980)
11 (holding in common fund cases that a percentage of the funds available, rather than funds claimed, is the
12 correct approach when awarding attorneys' fees on the percentage of common fund method). Further,
13 Plaintiff's fee request is less than the 30% to 33.33% often approved in non-Mega fund class action
14 settlements (*see Romero v. Producers Dairy Foods, Inc.*, No. 1:05-cv-00484 DLB, 2007 WL 3492841, at
15 *4 (E.D. Cal. Nov. 14, 2007)); and is justified by the excellent result obtained in the face of a very significant
16 risk of decertification and/or risk of loss on the merits and in light of intervening changes in the law since
17 Plaintiff filed his initial motion for preliminary approval that reduced the value of two of his three main
18 claims to zero. A lodestar cross-check further confirms the reasonableness of the fee request, as the
19 requested award is only <u>29.5%</u> of Class Counsel's total aggregated lodestar. *See* Ackermann Fees Decl. ¶¶
20 13-16; Hammond Fees Decl. ¶¶ 9-14.[1] Class Counsel's litigation cost reimbursement request of $13,289.41
21 is also clearly reasonable because Counsel requests costs in an amount *less than* the amount anticipated by
22 the Settlement, preliminarily approved by this Court, and noticed to the Class ($20,000.00). Ackermann
23 Fees Decl. ¶ 19.

24 This Motion will be heard at the same time as Plaintiff's forthcoming Motion for Final Approval of
25 the Class Action Settlement in this Case. Plaintiff files this Motion in advance of the filing deadline so as
26

27 [1] All references to the declarations submitted in support of Plaintiff's Motion for Preliminary Approval shall
28 be cited herein as "[*Declarant's last name*] PAM Decl.", those in support of Plaintiff's Renewed Motion for Preliminary Approval shall be cited herein as ""[*Declarant's last name*] RPAM Decl.", and those in support of this Motion for Attorneys' Fees shall be cited as "[*Declarant's last name*] Fees Decl."

to provide Class Members with an opportunity to review it before their deadline to opt-out or object, pursuant to the Ninth Circuit's ruling in the case of *Mercury Interactive Corp. Sec. Lit v. Mercury Interactive Corp.*, 618 F.3d 988, 994-95 (9th Cir. 2010) (fee motions in class actions should be filed before the objection deadline). *See also Partl v. Volkswagen, AG (In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig)*, 895 F.3d 597, 615 (9th Cir. 2018); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954 (9th Cir. 2015).

II. FACTUAL AND PROCEDURAL BACKGROUND

a. Summary of Facts Leading Up to Preliminary Approval

Plaintiff set forth a detailed account of all relevant facts in his Motion for Preliminary Approval of Class Action Settlement ("PAM") and his Renewed Motion for Preliminary Approval ("RPAM") and will, therefore, avoid belaboring all of the facts and procedural backgrounds set forth therein, which are hereby incorporated herein by reference. *See* PAM, (Dkt. 70) § II; RPAM, (Dkt. 80) § II. Instead, the following is a brief summary of the key facts of the case and new developments pertinent to this Fees and Costs motion since Plaintiff's filing of the RPAM.

On September 27, 2016, Plaintiff submitted his Private Attorney General Act ("PAGA") notice to Defendant and the LWDA. On September 30, 2016, Plaintiff filed this Class and PAGA action in Tulare Superior Court, alleging causes of action for Defendant's (1) failure to provide duty-free meal breaks and pay missed meal break premiums in violation of Labor Code §§ 512 and 226.7 and Wage Order No. 9-2001, § 11; (2) failure to pay separately and hourly for time spent on rest breaks, inspections, and other nondriving tasks in violation of Labor Code §§ 1194 and 226.2; (3) failure to provide paid rest breaks and/or pay missed rest break premiums for unpaid rest breaks in violation of Labor Code § 226.7 and Wage Order No. 9-2001, § 12(A)-(B); (4) failure to pay all wages owed upon termination of employment in violation of Labor Code § 203; (5) failure to issue complete and accurate wage statements in violation of Labor Code § 226(a) and 226.2; (6) unfair, unlawful, and fraudulent business practices, in violation of Business and Professions Code §§ 17200 et seq., and (7) PAGA Penalties pursuant to Labor Code § 2698, et seq. (*Id.* ¶ 7). Ackermann RPAM Decl., (Dkt. 80-1), ¶ 7. On November 14, 2016, Defendant removed the action to the Eastern District of California based on diversity jurisdiction. On March 21, 2017, Defendant filed a motion to change venue seeking transfer of the action to the District of Arizona pursuant to 28 U.S.C. § 1404(a). The motion was denied. (*Id.* ¶ 8).

After exchanges of formal written discovery, the deposition of Knight's Rule 30(B)(6) designee, and the production of numerous documents and a Class list by Defendant, Plaintiff filed a Motion for Class Certification. Plaintiff's Motion was strongly contested by Defendant. Plaintiff narrowed the scope of the Class to a class of non-resident drivers for days worked *entirely* within California. Plaintiff also agreed not to pursue wage statement penalties under Labor Code § 226. On December 3, 2018, the Court certified a class of current and former non-California resident drivers "who were paid in whole or in part on a piece-rate basis, and who drove one or more routes of five hours or more entirely within the State of California for defendant during the "Class Period" from September 30, 2012 through [December 3, 2018]." (Dkt. 35).

The Class was certified as to the four causes of action: (1) the first and third causes of action were for violation of California's meal and rest break laws, while the drivers were driving full days in California; (2) the second cause of action was for violation of California's piece-rate minimum wage laws, while the drivers were driving in California; and (3) the UCL based on the first three causes of action. Knight petitioned the Ninth Circuit to appeal the court's certification decision, which was denied. Ackermann RPAM Decl. ¶ 11.

On December 21, 2018, the Federal Motor Carrier Safety Administration ("FMCSA") issued its Determination that California's meal and rest break laws are preempted for drivers subject to the federal Hours of Service Regulations ("Preemption Order"). Four petitions for review challenging the FMCSA Preemption Order were subsequently filed with the Ninth Circuit. Anticipating that the Ninth Circuit's decision could impact the claims in this case, the parties stipulated to stay this matter pending the Ninth Circuit's decision. On January 15, 2021, the Ninth Circuit panel affirmed the FMCSA's determination that 49 U.S.C. 31141 preempted California's meal and rest break rules. *See Int'l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*, 986 F. 3d 841, 845 (9th Cir. 2021). However, the Ninth Circuit left open the issue of whether the FMCSA's Preemption Order applied retroactively. Ackermann RPAM Decl. ¶ 12. If the Preemption Order was not retroactive, Plaintiff would still have over eight years of potential meal and rest break liability (from September 30, 2012 to January 15, 2021). *Id.*

The parties subsequently agreed to participate in private mediation and to exchange additional informal discovery. Among other data, Defendant provided the number of Class members (4,873 drivers) who spent at least one full day driving in California, and the number of workweeks during the Class period.

1 On June 10, 2021, the parties attended an all-day mediation facilitated by well-respected mediator, Mark S.
2 Rudy. During the mediation, the Ninth Circuit heard oral argument in the appeal of *Ayala v. U.S. Xpress*
3 *Enterprises, Inc.*, 851 Fed. Appx. 53 (9th Cir. 2021), which concerned whether the California Supreme
4 Court's decision in *Oman v. Delta Air Lines*, 9 Cal. 5th 762 (2020), essentially eliminated minimum wage
5 claims regarding piece-rate in the trucking industry. Plaintiff was aware that if the Ninth Circuit ruled in the
6 defendant's favor, then Defendant would have a strong argument that its compensation policy complied
7 with California minimum-wage law. Because of the significance of the case, the parties took a break from
8 the mediation to watch the live-streamed Ninth Circuit oral argument. The parties were still unable to settle
9 after they came back to the mediation. The Ninth Circuit decided *Ayala* in favor of the trucking company
10 on June 22, 2021, thus all but eliminating Plaintiff's minimum wage/piece rate claim. Mr. Rudy continued
11 to facilitate settlement discussions over the following months, which eventually culminated in a settlement
12 in late September 2021. Ackermann RPAM Decl. ¶ 13.

13 Under the terms of the Settlement, Defendant must pay a Gross Settlement Amount ("GSA") of up
14 to $400,000, including the requested deductions for attorneys' fees (up to $100,000.00), litigation costs (up
15 to $20,000.00), settlement administration expenses, the PAGA payment to the LWDA ($15,000.00), and
16 Plaintiff's proposed incentive award ($10,000.00), as set forth in the S.A. § 17.[2] The Settlement is partially
17 reversionary; only Participating Class Members (those Class Members who submit a claim form) will
18 receive Settlement Payments (S.A. § 18) and only PAGA Claims Members will be allocated and forwarded
19 Individual PAGA Claim Payments (S.A. § 22). Those amounts not claimed will remain the property of
20 Defendant, subject to a floor on distribution of at least 50% of the NSA. Except for the Individual PAGA
21 Claim Payments, the settlement will be on a claims-made basis. Regardless of the specific amount or
22 percentage of the NSA that is actually claimed, at least 50% of the NSA shall be distributed to Class
23 members who submit timely claims. If more than 50% of the NSA is claimed, then the actual amount
24 claimed shall be distributed to the timely claimants, and only the amount of the NSA that remains unclaimed
25 shall revert to Defendant. (S.A. §§ 16, 18).

26 On November 10, 2021, Plaintiff filed his motion for preliminary approval of the Settlement. (Dkt.
27 70). On October 25, 2022, the Court denied Plaintiff's motion without prejudice. (Dkt. 79).

28

[2] The Parties' Stipulation of Class and PAGA Representative Action Settlement and Release ("Settlement", "Settlement Agreement," or "S.A.") is Dkt. 82-1.

1 Prior to settlement, the Ninth Circuit had not decided whether the Preemption Order was retroactive.
2 As noted above, if the Preemption Order was only prospective, Plaintiff would still have more than eight
3 years of liability of a potential nine-year meal and rest break claim. Although the retroactivity issue was
4 before the Ninth Circuit in *Valiente v. Swift Transportation,* oral argument had not taken place prior to
5 Plaintiff filing the motion for preliminary approval on November 10, 2021. Consequently, when drafting
6 the motion for preliminary approval, Plaintiff assigned considerable value to these claims in calculating
7 both the theoretical maximum value of Defendant's exposure and the realistic expected value of Plaintiff's
8 claims. (Dkt. 70, pp. 19-20). Defendant, however, based its valuation of the case on *Valiente* being decided
9 in its favor, and it was willing to hold out until it was decided. Both sides compromised, with Defendant
10 settling before *Valiente* was decided, and Plaintiff compromising his meal and rest break claims.
11 This Court denied Plaintiff's motion for preliminary approval on October 25, 2022. Approximately
12 two weeks after this Court denied the motion for preliminary approval, the Ninth Circuit held the Preemption
13 Order was retroactive. *See Valiente,* 54 F.4th 581 (9th Cir. 2022). The *Valiente* decision completely
14 eviscerated Plaintiff's second and third causes of action for violations of California's meal and rest break
15 laws and, with it, nine years of potential liability. This fundamentally changed the status of the action, as
16 Plaintiff was left with only a claim for Defendant's alleged failure to pay separately for inspection time and
17 detention time, which was subject to strong defenses based on the *Ayala* case; and UCL and PAGA claims
18 that were entirely based on the viability of the other three causes of action. Ackermann RPAM Decl. ¶ 16.
19 Plaintiff subsequently filed a Renewed Motion for Preliminary Approval of the Settlement on
20 January 30, 2023. (Dkt. 80). In this renewed motion, Plaintiff addressed a number of issues which the Court
21 had identified in its Order Denying Preliminary Approval. Having reviewed Plaintiff's Renewed Motion for
22 Preliminary Approval, the Court identified a potential ambiguity in the release language contained in the
23 Settlement Agreement. (Dkt. 81). Plaintiff submitted a supplemental brief and revised the Settlement
24 Agreement in order to address the Court's concern. (Dkt. 82). Subsequently, on March 27, 2023, the Court
25 entered an order preliminarily approving the Settlement (the "PA Order") (Dkt. 84). In the PA Order, the
26 Court preliminarily approved the Settlement, including Class Counsel's request for $100,000 in attorneys'
27 fees, and scheduled a final fairness hearing.
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b. Relevant Facts Since Preliminary Approval

The Court-approved Notice of Proposed Class Action Settlement and Hearing Date for Court Approval was mailed out by the Settlement Administrator to all Class Members on May 26, 2023, and Class Members have until July 25, 2023 to respond to the settlement, including by submitting a claim, requesting exclusion from the Settlement, or objecting thereto. Ackermann Fees Decl., ¶ 4. Class Counsel has received reports from the Settlement Administrator that, as of the date of this filing, there have been no opt-outs and no objections. *Id*. Upon the expiration of the response deadline, the Settlement Administrator will submit a declaration summarizing the results of Settlement administration and whether any responses or objections were received. That information will be included with Plaintiff's motion for final approval. *Id.*

III. THE REQUESTED ATTORNEYS' FEE AWARD SHOULD BE GRANTED UNDER THE COMMON FUND DOCTRINE

"[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorneys' fees *from the fund as a whole*." *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980) (emphasis added). The doctrine is founded on the understanding that attorneys should normally be paid by their clients, and that unless attorneys' fees are paid out of the common fund where the attorneys' unnamed class member "clients" have no retainer agreement, those who benefited from the fund without contributing to those who created it would be unjustly enriched. *Boeing*, 444 U.S. at 478.

It is critical to understand that fees in common fund cases are calculated as a percentage of the total amount made available for the class to claim, not as a percentage of the actual amount claimed. In *Boeing*, 444 U.S. at 472, 475-6, 480-1, the SCOTUS concluded that the attorneys for a successful class may recover a fee based on the entire fund created for the class, even if some class members make no claims against the fund so that money remains in it that will be returned to the defendant, explaining that: "[t]heir [class members'] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel." *Id.*; *see also Williams v. MGM-Pathe Communs. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (trial court "abused its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or on the lodestar").

Under *Boeing* and *Williams*, it would be error for the court to award fees based on a percentage of the amount claimed, rather than the amount made available. That attorneys' fees should be calculated as a percentage of the total amount obtained for the class, rather than the total amount distributed to class

claimants, is logical for the additional reason that each member of the class should share proportionally in paying Class Counsel's attorneys' fees, even if they elect not to claim their portion of the settlement amount. *See generally* Dawson, Lawyers and Involuntary Clients in Public Interest Litigation, 88 Harv. L.Rev. 849, 916-922 (1975) (a fee awarded against the entire common fund, rather than the amount claimed, will shift the costs of litigation to each class member in the exact proportion that the value of his claim bears to the total recovery); *see also*, *In re Coordinated Pretrial Proc. in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997) ("those who have benefitted from litigation should share in its costs").

The Ninth Circuit has developed a strong preference for using the common fund method, also known as the "percentage-of-the-recovery" method. *See Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The California Supreme Court also recognized in *Laffitte v. Robert Half Internat., Inc*., 1 Cal. 5th 480, 503 (Cal. 2016) that the common fund method whereby a percentage of the common fund is selected to award fees is the primary method of awarding fees in class actions:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Class Counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

Id. Explaining its ruling, the Court further held that "[t]he recognized advantages of the percentage method – including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging litigation – convince us the percentage method is a valuable tool that should not be denied by our trial courts." *Id.* (internal citations omitted). The U.S. Supreme Court has also specifically endorsed the percentage method, stating that "under the 'common fund doctrine' . . .a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

In prosecuting this action diligently and efficiently, Class Counsel has created a substantial and ascertainable fund for the benefit of Class members from which reasonable attorneys' fees can be easily calculated and awarded. Notably, the Gross Settlement Amount of $400,000 is almost three times greater than the realistic expected value of Plaintiff's claims ($135,578.50). Ackerman RPMA Decl. ¶ 30a. The NSA ($225,442) is 66% greater than the expected value of Plaintiff's claims. *Id.* And, the minimum amount

that will be received by Class Members ($112,721) is 83.14% of the expected value of Plaintiff's claims. As shown below, these results are excellent given the numerous litigation risks, including the substantial risk of decertification and the merits in light of recent changes in the law.

a. The Circumstances of This Case Support A 25% Fee Award

The ultimate goal in determining fees is to reasonably compensate counsel for their efforts in creating the common fund. *In re Omnivision*, 559 F.Supp.2d 1036, 1046 (N.D. Cal. 2008) (citing *Paul, Johnson*, *Alston, & Hunt v. Graulty*, 886 F.2d 268, 271-72 (9th Cir. 1989)). "The Ninth Circuit has approved a number of factors which may be relevant to the district court's determination: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases." *Id*. (citing *Vizcaino*, 290 F.3d at 1048-50). As discussed below, an analysis of these factors demonstrates that Class Counsel's fee request is justified.

1. A Common Fund Fee Award Of 25% Of the Total Settlement Amount Is the Benchmark Award of Fees Typically Awarded in This Circuit

Class Counsel only seeks 25% of the Gross Settlement Amount as attorneys' fees. The Ninth Circuit and this Court have held that 25% of the gross settlement amount is the benchmark for attorneys' fees awarded under the percentage method. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *Rodriguez v. M.J. Brothers, Inc.*, No. 1:18-cv-00252-SAB, 2019 WL 3943856 (E.D. Cal. Aug. 21, 2019). Prior to *In re Bluetooth*, the Ninth Circuit noted the usual range for common fund attorneys' fees is between twenty to thirty percent. *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1037 (9th Cir. 2002). The exact percentage varies depending on the facts of the case, and in "most common fund cases the award exceeds that benchmark [of 25%]." *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367 (N.D. Cal. 2009).

Notably, fees as high as 30-50% are commonly awarded in cases in which the common fund obtained is under $10 million. *See* Rubenstein, Conte and Newberg, *Newberg on Class Actions* at § 14:6; *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (1998); *Staton*, 327 F.3d at 952. A review of recent California district court cases "reveals that courts usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund

1 under $10 million." *Cicero v. DirecTV, Inc.,* 2010 WL 2991486, at *6 (C.D. Cal. 2010).[3] Despite the
2 reasonableness of fees in the 30%-50% range, Class Counsel in this case seeks attorneys' fees in an amount
3 equal to the Ninth Circuit's 25% benchmark of the non-reversionary common fund generated for the benefit
4 of the Class. *See*, *In re Consumer Privacy Cases*, 275 Cal.App.4th 545, 557 (Cal. 2009) ("a fee award of 25
5 percent is the benchmark award that should be given in common fund cases."); *see also*, *Paul, Johnson,*
6 *Alston & Hunt v. Graulty*, 886 F.2d at 272 (nothing that the "bench mark" percentage for the fee award
7 should be 25 percent. The fee request here is therefore patently reasonable.

8 2. *The Results Achieved are Excellent*

9 In addition to the fact that the fee request is consistent with the Ninth Circuit's benchmark and less
10 than the percentage of common funds approved in settlements of other similar class action cases, Plaintiff's
11 fee request here is also justified because the results obtained here are excellent when considered against the
12 realistic value of Plaintiff's claims. As explained in Plaintiff's RPAM, had *Valiente v. Swift*, *Oman*,
13

14 [3] *See e.g., Fernandez v. Victoria's Secret Stores, LLC*, No. CV 06-04149 MMH (SHx), 2008 WL 8150856
15 (C.D. Cal. July 21, 2008) (awarding 34% of $8.5 million common fund as attorneys' fees in a wage and
hour class action settlement); *Hightower v. JPMorgan Chase Bank, N.A.*, No. CV111802PSGPLAX, 2015
16 WL 9664959, at *11 (C.D. Cal. Aug. 4, 2015) (awarding 30% of common fund as attorneys' fees in a wage
and hour class action settlement); *Elliott v. Rolling Frito-Lay Sales, LP*, No. SACV 11-01730 DOC, 2014
17 WL 2761316, at *10 (C.D. Cal. June 12, 2014) (finding that "[a]lthough the case was resolved very early in
the litigation, the Court finds that the requested 30 percent is a reasonable fee award" given Class Counsel's
18 "willingness to accept difficult legal challenges and the risk of nonpayment."); *Rippee v. Boston Mkt. Corp.,*
No. 05cv1359 BTM (JMA), Doc. No. 70, at 7–8 (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee in a wage
19 and hour class action); *Bond v. Ferguson Enterprises, Inc.*, 2011 WL 26488879, Dkt No. 59 at *38
20 (awarding attorneys' fees of 30% of the $2.25 million common fund in wage and hour class action); *Romero
v. Producers Dairy Foods, Inc*. 2007 WL 3492841, at *4 (noting that "fee awards in class actions average
21 around one-third of the recovery"); *Wren v. RGIS Inventory Specialists*, No. C-06-05778, JCS, 2011 WL
1230826, at *29 (N.D. Cal. Apr. 1, 2011) (approving fee award that constituted 42% of the common fund
22 in wage and hour class and collective action); *Birch v. Office Depot, Inc*., No. 06cv1690 DMS, 2007 WL
9776717 at *2 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a $16,000,000 wage and hour class action
23 settlement); *Stuart v. Radioshack Corp*., No. C-07-4499 EMC, 2010 WL 3155645 at *5-7 (N.D. Cal. Aug.
24 9, 2010) (awarding one-third of $4.5 million settlement fund as fees in class case alleging failure to
reimburse employees for expenses); *Quezada v. Con-Way Freight, Inc.,* No. 09-cv-3670, Dkt. 214 at ¶ 9
25 (N.D. Cal. Jan. 15, 2015) (awarding one-third of $2 million settlement fund as fees in class case alleging
failure to pay wages for all hours worked); *Singer v. Becton Dickinson and Co.,* No. 08-CV-821-IEG (BLM)
26 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (approving fee award of 1/3 of the common fund; award
27 was similar to awards in three other cited wage and hour class action cases where fees ranged from 30% to
40%); *Martin v. FedEx Ground Package Sys., Inc.,* No. C 06-6883 VRW, 2008 WL 5478576, at *8 (N.D.
28 Cal. Decl. 31, 2008) (approving fee award of 1/3 of the common fund in a trucker meal break class action);
Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. at 491-92 (citing five recent wage and hour class actions
where federal district courts approved attorney fee awards ranging from 30% to 33%).

Bernstein, and *Ayala*, been decided earlier, this case would likely not have been initiated. And, had *Valiente v. Swift* been decided before the parties reached a settlement agreement, the settlement achieved would have been significantly lower than that currently presented to the Court. (Ackermann RPAM Decl. ¶ 30b). Put simply, with two of Plaintiff's three main claims utterly eviscerated, and with the remaining claims subject to numerous solid defenses on the merits and the threat of a motion to de-certify with a material likelihood of success, the Settlement presented to the Court represents a superb result for the Class.

As the Court concluded in its Preliminary Approval Order, "considering the particular facts of this case, the approximately 82 percent discount on the verdict value of Plaintiff's class claims is reasonable. Defendant has robust legal and factual defenses that present enormous risks on the merits (as well as on the continued certifiability of a class action) to Plaintiff. Under these circumstances, Plaintiff's counsel reasonably concluded that the sharply discounted settlement presented the best possibility for recovery on behalf of the class—'in short, a deeply discounted recovery is better than the substantial likelihood of recovering nothing.' *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *8 (N.D. Cal. Oct. 11, 2016) (approving settlement representing 8.1 percent of full verdict value in recognition of 'daunting' risks plaintiffs faced in proving their case). *See also In re Uber FCRA Litig.*, No. 14-CV-05200-EMC, 2017 WL 2806698, at *7 (N.D. Cal. June 29, 2017) (approving settlement worth less than 7.5% of possible verdict where class faced 'substantial risks and obstacles' to prevailing at trial, as well as 'the inevitable expense of litigating a large, complex case through trial.')." PA Order, (Dkt. 84), 18:18-19:2.

3. The Risks of Litigation and of Losing Were Significant

As noted, the merits of this action were hotly disputed insofar as Defendant vigorously opposed Plaintiff's claims and denied the legal and factual basis for Plaintiff's claims, and Defendant would have continued to do so had this matter not settled.

Moreover, this action faced serious risks that could have precluded the Class from obtaining **any** recovery. Briefly, these included, *inter alia*, (1) that, under *Oman v. Delta Air Lines*, 9 Cal. 5th 762 (2020) and *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013), Defendant was not required to pays eparately for non-driving tasks and that its pay policies were compliant throughout the relevant period; (2) the risk that California law does not apply to the certified class which is defined as comprising only *non-California resident* drivers that spend entire days driving within California (in granting Class Certification, the Court found that at least some relevant factors weighed against a finding that California law applies)

(Dkt. 35, pp. 10-11); (3) the threat of decertification, particularly on the basis that the determination of whether California law applied to any given driver would require individual inquiries into the amounts of time they spent in California, and (4) the risk that a court would award a lesser amount than the maximum civil penalty specified under PAGA, as the statute allows, if to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory". *See* RPAM, § V.B.

Despite the foregoing sizable and significant risks posed to any potential recovery, and the numerous legal issues that were or are open, unclear, unresolved, and even resolved unfavorably to the Class in the relevant case law, Plaintiff and Class Counsel recovered a very significant settlement fund on behalf of the Class; an amount that the Class Members would not have recovered independently of this action. Given the uncertainty associated with decertification, trial, and the overall risks and significant possibility of non-recovery on any of the claims here, Plaintiff obtained an outstanding settlement for the Class.

4. Skills of Counsel and the Quality of Work

In granting Class Certification, the Court found that "the attorneys at Ackermann & Tilajef, P.C., and HammondLaw, P.C. are qualified and adequate counsel, and hereby appoints Ackermann & Tilajef, P.C., and HammondLaw, P.C. as Co-Class Counsel for the aforementioned Class." *See* Class Certification Order (Dkt. 35), p. 19. The Preliminary Approval Order states that "Craig J. Ackermann of Ackermann & Tilajef, P.C. and Julian Hammond of HammondLaw, P.C., are appointed as class counsel for settlement purposes." PA Order, p. 30. As illustrated above, Class Counsel showed great skill, thoroughness, and conscientiousness in investigating and developing the claims, liability theories, and estimated possible recoveries in the litigation, and otherwise expended great effort on behalf of the Class, ultimately reaching the Settlement after a contested class certification motion and considerable formal and informal discovery.

Furthermore, as discussed in Plaintiff's Preliminary Approval papers and as recognized by the Court, Class Counsel is experienced in representing employees in similar actions and has successfully litigated hundreds of similar wage and hour class actions on behalf of employees alleging similar violations. See Ackermann RPAM Decl. ¶ 43; Hammond RPAM Decl. ¶¶ 7-10; Ackermann Class Cert. Decl. (Dkt. 25-1) ¶ 22.

5. Class Counsel Represented the Class on a Contingency Fee Basis

Class Counsel took this case on a contingency basis despite the many risk factors that could have precluded recovery and result in a net loss for Counsel. "It must be kept in mind that lawyers are not likely

to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee." *Moreno v. City of Sacramento,* 534 F.3d 1106, 1112 (9th Cir. 2008).

6. The 25% Fee Request Here is Consistent with Awards in Similar Cases

In similar class action cases, both firms have been awarded fees in the range from 25% of the gross settlement amount to as high as 40% of the settlement amount obtained. *See, e.g., Liggins v. ESA Management, LLC*, No. 30-2018-01005614-CU-OE-CXC (Orange County Superior Court) (awarding attorneys' fees representing 1/3 of $4.45 million Gross Settlement Amount); *Cahilig, et al. v. Ikea U.S. Retail, LLC*, No. 19-cv-01182 (C.D. Cal. June 17, 2020) (awarding attorneys' fees representing approximately 25% of $7.5 million Gross Settlement Amount); *Castillo v. Holy Names University,* No. HG21097245 (Cal. Sup. Ct. Alameda Cnty., May 2, 2023) (approving fees of 1/3 of $907,701 wage and hour class settlement); *Glor, et al v. iHeartMedia + Entm't, Inc.,* No. 22CV005286 (Cal. Sup. Ct. Alameda Cnty. February 14, 2023) (approving fees of 1/3 of $1,220,000 in a wage and hour class settlement); *Burleigh v. National University*, No. MSC21-00939 (Cal. Sup. Ct. Contra Costa Cnty.) (Aug. 26, 2022) (approving fees of 40% of $925,000 class settlement); *Mayton et al v. Konica Minolta Business Solutions USA, Inc.,* No. RG12657116 (Cal. Sup. Ct. Alameda Cnty. June 22, 2015) (approving fees of 40% of $1,225,000 class wage and hour settlement).

IV. A Lodestar Cross-Check Indicates the Reasonableness of the Fee Request: Class Counsel's Lodestar is Significantly Higher than the Fee Award Requested

While the common fund percentage is the preferred method for determining the reasonableness of attorneys' fees, courts can use a lodestar cross-check method to confirm that the percentage requested is reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 1050 (9th Cir. 2002) ("while the primary basis of the fee award remains the percentage method, the lodestar may provide a perspective on the reasonableness of a given percentage award"). In determining the reasonableness of the fee under the lodestar method, the Court must begin with the "lodestar" figure, which "is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *See Hensley v. Eckerhart,* 461 U.S. 424, 433 (1983). "That figure may then be increased or reduced by the application of a 'multiplier' after the trial court has considered other factors concerning the lawsuit." *Id.*

1 Here, Class Counsel has spent and will spend (including a reasonable estimate of time needed to
2 draft and edit the final approval motion) no less than 548.07 hours on this case by the conclusion of this
3 litigation. Ackermann Fees Decl. ¶¶ 12, 15; Hammond Fees Decl., ¶ 10. Taking only the hours spent so far
4 (**533.07**) results in a total lodestar of **$339,135.12** at Class Counsel's reasonable hourly rates. Ackermann
5 Fees Decl. ¶¶ 12, 15; Hammond Fees Decl., ¶ 13.

6 The total lodestar amount is documented by detailed and contemporaneous billing records
7 maintained by Plaintiff's Counsel and provided with their respective declarations. Ackermann Fees Decl. ¶
8 16; Hammond Fees Decl., ¶ 10. The time summaries and descriptions included in Class Counsel's
9 declarations filed herewith also accurately reflect the extensive work Class Counsel necessarily performed
10 in this complex litigation and are evidence of the time that this case has required. See *Perkins v. Mobile*
11 *Housing Bd.,* 847 F.2d 735, 738 (11th Cir. 1988) (counsel's "[s]worn testimony that, in fact, it took the time
12 claimed is evidence of considerable weight on the issue of the time required in the usual case"). Indeed, trial
13 courts may even use "rough" estimations, so long as they apply the correct standard. *Fox v. Vice,* 563 U.S.
14 826, 838 (2011).[4]

15 Class Counsel's hours were spent on numerous tasks from pre-filing research, drafting of pleadings,
16 informal discovery, formal discovery, drafting the motion for class certification, preparing for and attending
17 mediation, negotiating the Settlement, and obtaining preliminary approval, and are described in Class
18 Counsel's declarations filed herewith. Class Counsel investigated and researched the facts and
19 circumstances underlying the pertinent issues and applicable law prior to filing the Complaint. After
20 Plaintiff filed the Complaint, the Parties entered an exchange of formal discovery, took Defendant's 30(b)(6)
21 deposition, and litigated a contested class certification motion. Subsequently, having agreed to mediation,
22 Plaintiff analyzed highly relevant documents and information produced by Defendant and drafted a detailed
23 mediation brief including an extensive discussion of the applicable case law and a thorough damages
24 analyses. Class Counsel then attended a full-day mediation with an experienced wage-and-hour class action
25 employment law mediator serving as the neutral. Ultimately, the parties reached a settlement, facilitated by
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27
28

[4] As the Supreme Court has stated, "The fee applicant ... must, of course, submit appropriate documentation to meet 'the burden of establishing entitlement to an award.' But trial courts need not, and indeed should not, become green-eye-shade accountants. The essential goal in shifting fees ... is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Fox,* 563 U.S. at 838 (citations omitted).

the mediator after negotiations continued for weeks after the mediation, and Class Counsel undertook the process of drafting and negotiating the long-form Settlement Agreement. Having reached a Settlement, Class Counsel then drafted a Motion for Preliminary Approval, a subsequent Renewed Motion for Preliminary Approval, and a Supplemental Brief, as request by the Court. Ackermann RPAM Decl., ¶¶ 7-14; Ackermann Fees Decl, ¶¶ 9-12; Hammond Fees Decl., ¶ 10.

Further, as discussed above, Class Counsel took this case on a contingency basis despite the many risk factors that could have precluded recovery and result in a net loss for Counsel. "It must be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee." *Moreno v. City of Sacramento,* 534 F.3d 1106, 1112 (9th Cir. 2008).

a. Class Counsel's Hourly Rates Are Reasonable

Reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum*, 465 U.S. at 895. Typically, the forum where the district court sits is recognized as the "relevant community." *Shirrod v. Dir., OWCP*, 809 F.3d 1082, 1087 (9th Cir. 2015) (citing *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1053 (9th Cir. 2009)). Thus, Plaintiff's Counsel are entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001) *See also Serrano v. Unruh*, 32 Cal. 3d 621, 640 n.31 (1982) ("The formula by which 'reasonable market value' is reached is variously phrased" as "comparable salaries earned by private attorneys with similar experience and expertise in equivalent litigation," and the "hourly amount to which attorneys of like skill in the area would typically be entitled.") (citations omitted). However, "to insist on awarding significantly-lower hourly rates in the Eastern District than those in the other judicial districts in California would discourage attorneys from bringing meritorious lawsuits in this [Eastern] district." *See Adoma v. The University of Phoenix, Inc.*, No. CIV-S-10-0059 LKK/GGH, 913 F. Supp. 2d 964, 984 (E.D. Cal. Dec. 20, 2012) (emphasis added). The court may apply rates from outside the forum "if local counsel was unavailable, either because they are unwilling or unable to perform because they lack the degree of experience, expertise, or specialization required to handle properly the case." *Barjon v. Dalton*, 132 F.3d 496 (9th Cir. 1997) (internal citation and quotation marks omitted).

1 As far back as 2012, for purposes of the lodestar cross-check, the Eastern District approved rates of
2 $650 to $675 for partners and senior associates. *See Franco v. Ruiz Food Products, Inc.*, No. 1:10-cv-02354-
3 SKO, 2012 WL 5941801, *20 (E.D. Cal. Nov. 27, 2012) (citing *Garcia v. Gordon Trucking, Inc.*, No. 1:10-
4 cv-0324 AWI SKO, 2012 WL 5364575, *9 (E.D. Cal. Oct. 31, 2012) and *Bond v. Ferguson Enterprises,*
5 *Inc.*, No. 1:09-cv-01662-OWW-MSJ, 2011 WL 2648879, *11-13 (E.D. June 30, 2011) (A&T was co-
6 counsel for the Class in the *Ferguson* case)). In *Franco*, although the court adjusted the rates to be in keeping
7 with those found reasonable in *Bond*, the court approved attorney rates between $652.50 per hour for a
8 partner to $405 per hour for associate attorneys. *Franco*, 2012 WL 5941801 at *21; *see also Schiller v.*
9 *David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 U.S. Dist. LEXIS 80776, at *22 (E.D. Cal. June
10 11, 2012) (citing to *Bond* and approving adjusted attorney rates between $264 to $556 per hour depending
11 on experience); *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491 n.1 (E.D. Cal. 2010) (approving
12 partner rates in the amount of $525 per hour for a partner with more than 10 years of experience and an
13 associate rate of $350 per hour for an associate with four years of experience). The reasonable hourly rates
14 for attorneys in this district have certainly increased since 2012.

15 Class Counsel's 2023 rates are reasonable and consistent with attorneys of comparable experience
16 and qualifications in their areas of practice. Ackermann Fees Decl. ¶¶ 11, 15, 17; Hammond Fees Decl. ¶¶
17 11-12. As demonstrated by their hundreds of successful wage and hour employment law actions, including
18 in this particular area of law, both Ackermann & Tilajef P.C. and HammondLaw P.C. are experienced and
19 highly-skilled law firms with expertise in representing employees in California wage and hour class actions.
20 Ackermann Fees Decl. ¶¶ 6, 8; Hammond Fees Decl. ¶ 7. Their ability to secure a favorable Settlement for
21 the class in this case despite the many challenges Plaintiff faced is a further testament to their expertise.

22 **V. <u>CLASS COUNSEL'S REQUESTED COST REIMBURSEMENT SHOULD BE APPROVED</u>**

23 Under the common fund doctrine, the attorneys whose efforts helped to create the fund are entitled
24 to recover "the costs of . . . [the] litigation" from the fund, in addition to attorneys' fees. *Vincent v. Hughes*
25 *Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). "In common fund cases, counsel is entitled to reimbursement
26 of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution
27 of the case." *Chemi v. Champion Mortg.* No. 05-1238, 2009 WL 1470429 (D.N.J. May 26, 2009); *see In re*
28 *Omnivision*, 559 F.Supp.2d at 1048-49 (awarding payment for reimbursement of expenses, plus interest
from settlement fund; discussing that attorneys may recover reasonable expenses that would typically be

1 billed to paying clients in non-contingency matters, including expenses for photocopying, printing, postage,
2 messenger services, legal research in electronic databases, experts and consultants, and travel costs).
3 Here, the cost request is undoubtedly reasonable because Class Counsel is seeking reimbursement
4 in an amount less than what was anticipated by the Settlement Agreement, preliminarily approved by this
5 Court, and notice to the Class, and an amount that is the actual litigation costs expended to date. The Parties
6 agreed to cap the costs allocation in the Settlement at $20,000. However, Class Counsel has spent
7 **$13,289.41**. Ackermann Fees Decl., ¶ 19 ($13,289.41 incurred by Ackermann & Tilajef, PC). Therefore,
8 Class Counsel will only be reimbursed for their actual costs incurred to date.
9 Each of the costs incurred are reasonable for a contested wage and hour class case. The majority of
10 the costs were incurred in connection with mediation, transcripts from the 30(b)(6) deposition, and post-
11 class-certification notice administration. Given the nature of the litigation, Class Counsel's request for costs
12 is reasonable and reflects necessary expenditures needed to obtain the favorable Settlement achieved on
13 behalf of the Class.
14 **VI. CONCLUSION**
15 For the foregoing reasons, it is respectfully requested that, in its Order finally approving the
16 Settlement, the Court include an award granting Class Counsel **$100,000.00** in attorneys' fees, constituting
17 25% of the common fund obtained for the Class, and an additional **$13,289.41** for reimbursement of actual
18 litigation costs incurred.
19 Dated: July 14, 2023 Respectfully submitted,
20
21 ACKERMANN & TILAJEF, P.C.
HAMMONDLAW, P.C.
22
23 By: /s/Craig J. Ackermann
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24 Julian Hammond, Esq.
Attorneys for Plaintiff and the Settlement Class
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