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16 JOSE MARIO MENDOZA

17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA

20 JOSE MARIO MENDOZA,
21
22 Plaintiff,
23 vs.
24 TRANS VALLEY TRANSPORT et al,
25
26 Defendants.

Case No. 22-cv-07164 TLT

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION FOR AN AWARD OF FEES, COSTS
AND ENHANCEMENT PAYMENT IN
CONNECTION WITH FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 8, 2024
Time: 2:00 p.m.
Ctrm: 9

27
28 And Related Cross-Action

21 Please take notice that, on October 8, 2024, at 2:00 p.m. or as soon thereafter as counsel may be
22 heard, in Courtroom 9 of the San Francisco Courthouse for the United States District Court, Northern
23 District of California, located at 450 Golden Gate Avenue, California, plaintiff Jose Mario Mendoza
24 (“Plaintiff”) will and hereby does move for an order awarding him \$233,333.33 in attorney’s fees,
25 \$13,899.60 in litigation costs, and an enhancement payment of \$7,500 in connection with final
26 approval of the class action settlement reached with defendants Trans Valley Transport and FTU Labor
27 Contractors, Inc. (“Defendants”) which was preliminarily approved by the Court on April 17, 2024 (the
28 “Settlement”).

1 Plaintiff's motion is made under Rule 23(h) of the Federal Rules of Civil Procedure on the
2 grounds the amounts for attorney's fees, litigation costs, and enhancement payment requested by
3 Plaintiff are reasonable. This motion is based on this Notice; the Memorandum of Points and
4 Authorities; the Declarations of Gregory N. Karasik, Santos Gomez and Jose Mario Mendoza
5 submitted herewith; all other pleadings and papers on file in this action; and any oral argument or other
6 matter that may be considered by the Court.

7 This motion is made in accordance with the Settlement and Defendants do not intend to oppose
8 Plaintiff's motion.

9
10 Dated: June 18, 2024

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

11
12 By *s/ Gregory N, Karasik*
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13 Attorneys for Plaintiff
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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 JOSE MARIO MENDOZA,

20 Plaintiff,

21 vs.

22 TRANS VALLEY TRANSPORT et al,

23 Defendants.

24 Case No. 22-cv-07164 TLT

25 **MEMORANDUM OF POINTS AND**
26 **AUTHORITIES IN SUPPORT OF AN AWARD**
27 **OF FEES, COSTS AND ENHANCEMENT**
28 **PAYMENT IN CONNECTION WITH FINAL**
APPROVAL OF CLASS ACTION
SETTLEMENT

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1 **I. INTRODUCTION**

2 Plaintiff asserts class action claims against Defendants Trans Valley Transport (“TVT”) and
3 FTU Labor Contractors, Inc. (“FTU”) based on the principal contention that truck drivers who worked
4 for Defendants were paid trip pay that constituted piece rate wages, such that Defendants were required
5 to pay Plaintiff and other truck drivers minimum wages, separately from their piece rate wages, for all
6 their non-driving work activities. Based on that central contention, Plaintiff primarily asserts claims
7 against Defendants for failure to pay minimum wages in violation of Labor Code Section 1197, failure
8 to provide accurate wage statements in violation of Labor Code Section 226, and failure to pay all
9 wages owed upon termination in violation of Labor Code Section 201 or 202. Plaintiff also contends
10 that Defendants’ violations of the Labor Code constitute unfair competition.

11 After more than 8 years of litigation – during most of which the case was pending in state court
12 and delayed by appellate court proceedings following Defendants’ appeal from an order denying their
13 motion to compel arbitration -- the parties reached a settlement (the “Settlement”) on behalf of 200
14 truck drivers who did not sign arbitration agreements and on April 17, 2024 the Court granted
15 Plaintiff’s motion for preliminary approval of the Settlement. In accordance with the Court’s
16 preliminary approval order, Plaintiff now moves under Rule 23(h) of the Federal Rules of Civil
17 Procedure for an award of attorney’s fees, costs and an enhancement payment. For the reasons set
18 forth below, the amounts of fees, costs and enhancement payment requested by Plaintiff are reasonable,
19 and should be awarded in connection with final approval of the Settlement.

20 **II. THE AMOUNT OF ATTORNEY’S FEES REQUESTED BY PLAINTIFF IS**
21 **REASONABLE**

22 Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, a court may award “reasonable
23 attorney’s fees” that are “authorized by law or by the parties’ agreement.” Here, Defendant has agreed
24 not to oppose a request by Plaintiff for fees up to the amount of \$233,333.33 which is equal to 33.3 %
25 of the Gross Settlement Amount of \$700,000. The amount of fees requested by Plaintiff is consistent
26 with the parties’ agreement and, under the circumstances of this case, reasonable.

27 The Ninth Circuit has established the rate of 25% as the “benchmark” for an award of
28 attorney’s fees in common fund cases. *See, e.g., Paul, Johnston, Alston & Hunt v. Grauly* (9th Cir.

1 1989) 886 F.2d 268, 272; *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d
2 1301, 1311. But the Ninth Circuit has identified four factors that warrant an adjustment of the
3 benchmark rate: “the quality of the representation, the benefit obtained for the class, the complexity
4 and novelty of the issues presented, and the risk of non-payment.” *Hanlon*, 150 F.3d at 1029. *See*
5 *also, In re Pacific Enterprises Security Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (33.3% rate justified
6 by “complexity of the issues and the risks”); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
7 1048 (28% rate justified because plaintiff achieved “exceptional results” and case was “extremely risky
8 for class counsel”). Application of these factors typically results in a fees award at a rate higher than
9 the benchmark rate of 25%. *See, e.g., Singer v. Becton Dickinson and Co.* (S.D. Cal. 2010) 2010 WL
10 2196104, at *8 (noting awards in class action cases where fees ranged from 30.3% to 40%); *Craft v.*
11 *County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (25% “is substantially below the
12 average class fund fee nationally”); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D.
13 482, 492 (33.3% rate justified by “good result achieved for Plaintiffs, the risk counsel took in pursuing
14 the matter, and the skill they exhibited in prosecuting the case). Each of the *Hanlon* factors, as well as
15 a lodestar cross check, supports an award of attorney’s fees at the 33.3% rate in this case.

16 Quality of Representation

17 Plaintiff’s counsel exhibited a high level of skill prosecuting this case commensurate with their
18 many years of experience. Plaintiff’s counsel defeated Defendants’ motion to compel arbitration in
19 state court and then prevailed on Defendants’ appeal from the denial of their motion to compel
20 arbitration, which resulted in the published decision *Mendoza v. Trans Valley Transport* (2022) 75
21 Cal.App.5th 748. Plaintiff’s counsel thereafter negotiated a settlement which reflects a recovery of
22 approximately 27.4% of Defendants’ potential liability for unpaid minimum wages (Karasik Decl. ¶ 6)
23 despite, as discussed in more detail below, significant litigation risks posed by the novelty and
24 complexity of the issues and Defendants’ financial condition. The high “quality of the representation”
25 by Plaintiff’s counsel warrants an upwards adjustment of the benchmark rate under *Hanlon*.

26 Benefit Obtained For The Class

27 The Gross Settlement Amount of \$700,000 reflects a gross average recovery per class member
28 of approximately \$3,500 and the expected Net Settlement Amount of approximately \$436,967 reflects

1 an average gross settlement payment of approximately \$2,185 per class member (Karasik Decl. ¶ 6).
 2 As explained in the Supplemental Declaration of Gregory N. Karasik filed on November 30, 2023
 3 (Docket No. 37), the average amount of settlement benefits per class member in this case far exceeds
 4 the amounts recovered in many other class action settlements. (Supplemental Karasik Decl. ¶ 3, Ex. 1).
 5 Especially in light of the risks and complexity of litigation discussed below, Plaintiff’s counsel
 6 achieved not just a “good result” justifying an award of fees at the 33.3% rate but an excellent result.

7 The Complexity And Novelty Of The Issues

8 This case involved numerous complex and novel issues. First, as illustrated by the Court of
 9 Appeal’s decision in this case, Defendants’ motion to compel arbitration at the outset of litigation in
 10 and of itself raised complex and novel issues about formation of arbitration agreements, delegation
 11 clauses in arbitration agreements and forfeiture of legal arguments.

12 Second, changes in the law that had a significant impact on Plaintiff’s claims for failure to
 13 provide meal periods and rest periods illustrate how Plaintiff’s meal and rest period claims raised
 14 complex and novel issues. Although those claims were viable when the complaint was filed in May
 15 2015, on January 15, 2021 the Ninth Circuit, in *International Brotherhood of Teamsters, Local 2785 v.*
 16 *Federal Motor Carrier Safety Administration* (9th Cir. 2021) 986 F.3d 841 upheld the FMCSA’s
 17 determination that federal law preempts California’s meal and rest break laws as applied to truck
 18 drivers engaged in interstate commerce. Subsequently, on June 21, 2022, the California Court of
 19 Appeal held in *Garcia v. Superior Court* (2022) 80 Cal.App.5th 63, that the FMCSA’s preemption
 20 decision did not apply retroactively. But the law changed again when, on November 23, 2022, the
 21 Ninth Circuit in *Valiente v. Swift Transp. Co. of Arizona, LLC* (9th Cir. 2022) 54 F.4th 581 ruled that the
 22 FMCSA’s preemption decision did apply retroactively.

23 Third, the issues raised by Plaintiff’s claims for unpaid minimum wages are also complex and
 24 because case law regarding piece rate wages for truck drivers is mixed and arguably inconsistent. On
 25 the one hand, cases like *Cardenas v. McLane Food Services, Inc.* (C.D. Cal. 2011) 796 F.Supp.2d 1246
 26 and *Quezada v. Con-Way Freight, Inc.* (N.D. Cal. 2012) 2012 WL 2847609 support Plaintiff’s
 27 contention that Defendants’ compensation system is, on its face, unlawful. *Cardenas* holds that “a
 28 **piece-rate** formula that does not compensate directly for all **time** worked does not comply with

1 California Labor Codes, even if, average out, it would **pay** at least minimum wage for all hours
 2 worked.” *Cardenas*, 796 F.Supp.2d at 1251 (emphasis in the original). Adopting the reasoning of
 3 *Cardenas*, the court in *Quezada* ruled that an employer may not “‘build in’ time for non-driving tasks
 4 into a piece rate compensation system.” *Quezada*, 2012 WL 2847609, at *6. The reasoning of
 5 *Cardenas* was also followed in *Ridgeway v. Wal-Mart Stores, Inc.* (N.D. Cal. 2015) 107 F.Supp.3d
 6 1044, 1052-1053, where the court ruled that “a piece rate formula that does not compensate directly for
 7 all time worked does not comply with California Labor Codes.”

8 On the other hand, *Salter v. Quality Carriers* (C.D. Cal. 2021) 2021 WL 5049054 and *Ayala v.*
 9 *U.S. Express Enterprises* (C.D. Cal 2020) 2020 WL 3071707 arguably support Defendants’ contention
 10 that their compensation system is lawful because it is permissible to compensate a driver for non-
 11 driving tasks by a piece rate system that pays a driver for all tasks (driving and non-driving) in
 12 connection with delivering a load. *Salter* and *Ayala* are premised on the notion than an employer and
 13 employee can agree on what tasks are to be compensated for by a “piece” rate. The legal analysis of
 14 *Salter* and *Ayala* appears to conflict with the legal analysis in *Cardenas*, under which “it is irrelevant
 15 whether a pay formula was *intended* to compensate” for all non-driving activities “or even if
 16 employees believed it covered those activities.” *Cardenas*, 796 F.Supp.2d at 1253.

17 In light of the numerous issues with respect to which the law was or remains uncertain, this
 18 case did not present “garden variety” wage and hour claims but raised complex and novel issues that
 19 were either resolved by appellate courts during the pendency of the litigation or still await clarification
 20 by the appellate courts. Under, *Hanlon*, the “complexity and novelty” of the issues in this case
 21 warrants a fee award significantly higher than the benchmark rate.

22 The Risks Of Non-payment

23 Plaintiff’s counsel faced several risks of non-payment, including: 1) the risk that Plaintiff would
 24 not prevail on a contested motion for class certification; 2) the risk that Defendant would prevail on a
 25 motion for decertification despite Plaintiff prevailing on a motion for class certification; 3) the risk that
 26 Plaintiff would lose on the merits of his claims at the trial level; 4) the risk that Defendants would
 27 prevail on an appeal from a judgment in Plaintiff’s favor; and 5) the risk that Plaintiff would not be
 28 able to collect on a judgment because Defendants’ financial condition made it likely that a judgment

1 would force Defendants into bankruptcy. In light of Defendant's precarious financial condition and the
 2 novelty of the legal issues presented by Plaintiff's claims, the risk of non-payment in this case, which
 3 was much higher than in typical wage and hour class action claims against well-heeled defendants,
 4 justifies an award of fees at the 33.3% rate under *Hanlon*.

5 Lodestar Cross-Check

6 A lodestar analysis in this case also supports the conclusion that the amount of fees requested
 7 by Plaintiff is reasonable. As set forth in the declaration of Plaintiff's counsel, a lodestar calculation
 8 reflects that Plaintiff's request for fees results in a negative lodestar multiplier of approximately 0.67
 9 (Karasik Decl. ¶ 7-9). A negative lodestar multiplier of 0.67 falls well below the range of lodestar
 10 multipliers typically applicable to attorney's fees award in wage and hour class actions, which are
 11 usually between 1 and 3 and sometimes greater than 4. (Karasik Decl. ¶ 9). *See, e.g., Craft v. County*
 12 *of San Bernardino* (C.D. Cal. 2008) 628 F.Supp.2d 1113, 1125 (multiplier of 5.2); *In re Merry-Go-*
 13 *Round Enterprises, Inc.* (Bankry. D. Md. 2000) 244 B.R. 327 (multiplier of 19.6); *Stop & Shop*
 14 *Supermarket Co. v. SmithKline Beecham Corp.* (E.D. Pa. 2005) 2005 WL 123926 (multiplier of 15.6);
 15 *In re Rite Aid Corp. Sec. Litigation* (E.D. Pa. 2001) 146 F.Supp.2d 706 (multiplier of 4.5 – 8.5); *In re*
 16 *Cendent Corp. PRIDES Litigation* (3d Cir. 2001) 243 F.3d 722, 732 (multiplier of 7); *In re Rite Aid*
 17 *Corp. Sec. Litigation* (E.D. Pa. 2005) 362 F.Supp.2d 587 (multiplier of 6.96); *In re Charter*
 18 *Communications, Inc. Securities Litigation* (E.D. Mo. 2005) 2005 WL 4045741 (multiplier of 5.61); *In*
 19 *re Beverly Hills Fire Litigation* (E.D. Ky. 1986) 639 F.Supp. 915 (multiplier of 5); *Steiner v. American*
 20 *Broadcasting Co.* (9th Cir. 2007) 248 Fed.Appx. 780, 783 (multiplier of 6.85).

21 Considering all the *Hanlon* factors, as well as how much time Plaintiff's counsel has devoted to
 22 this case, Plaintiff's request for \$233,333.33 in attorney's fees, which is equal to 33.3% of the Gross
 23 Settlement Amount, is reasonable under the circumstances of this case.

24 **III. THE AMOUNT OF LITIGATION COSTS REQUESTED BY PLAINTIFFS IS** 25 **REASONABLE**

26 Plaintiff requests an award of costs in the amount of \$13,899.60 which is less than the limit of
 27 \$15,000 set forth in the Settlement. The declarations from Plaintiff's counsel substantiate that these
 28 costs were incurred and there is no basis for disputing their reasonableness.

1 **IV. THE AMOUNTS OF ENHANCEMENT PAYMENT REQUESTED BY PLAINTIFF IS**
2 **REASONABLE**

3 Plaintiff requests an enhancement payment in the amount of \$7,500. This request comports
4 with ample precedent. “It is well established in this circuit that named plaintiffs in a class action are
5 eligible for reasonable incentive payments, also known as service payments.” *Wren v. RGIS Inventory*
6 *Specialists* (N.D. Cal. 2011) 2011 WL 1230826, at *31. As the Ninth Circuit has observed, incentive
7 payments to named plaintiffs are now “fairly typical.” *Rodriguez v. West Publishing Corp.* (9th Cir.
8 2009) 563 F.3d 948, 958.

9 The amount of enhancement sought by Plaintiff is well deserved in light of the risks of
10 litigation he faced, the substantial length of time he has devoted to this case since its inception in May
11 2015, and the excellent result reflected by the Settlement. (Karasik Decl. ¶ 11). In light of the above,
12 the request for an enhancement of \$7,500 which is only 1.07% of the Gross Settlement Amount, is
13 very reasonable. Indeed, courts commonly award enhancement payments that reflect a much higher
14 percentage of the gross settlement amount. For example, in *Frank v. Eastman Kodak Co.* (W.D. N.Y.
15 2005) 228 F.R.D. 174, the court awarded an enhancement of \$10,523.37 to the named plaintiff, which
16 was equal to 8.4% of the gross settlement amount of \$125,000.

17 Plaintiff acknowledges that the Court has suggested that, in the Northern District of California,
18 enhancement awards typically do not exceed \$5,000. But Plaintiff respectfully maintains that two
19 considerations justify a higher award in this case.

20 First, Plaintiff has devoted an extraordinarily long time to the litigation of his claims against
21 Defendants. It has now been more than nine years since Plaintiff filed his complaint against
22 Defendants in May 2015. Throughout almost a decade, Plaintiff has faithfully remained in contact
23 with his counsel and helped them prosecute this case. Plaintiff deserves a reward that is higher than
24 typical for spending such an atypically long time litigating this case.

25 Second, the amount of enhancement (\$7,500) is only about 3.5 times the average amount of
26 settlement benefits (\$2,185) payable to class members. The moderate ratio between the amount of
27 enhancement payment and settlement benefits is lower than reflected by enhancement payments
28 awarded in many other cases. For example, in the case of *Julio C. Marroquin v. Premium Packing,*

1 *Inc.*, United States District Court, Northern District of California, Case No. 5:16-CV-06472, Judge
2 Lucy Koh awarded the plaintiff an enhancement of \$7,500 where the average amount of settlement
3 benefits was only \$254 per class member. Similarly, in the case of *Regina Gonzales Gomez et al v.*
4 *Fernandez Brothers, Inc.*, United States District Court, Northern District of California, Case No. 5:17-
5 CV-01863, Judge Edward Davila awarded each of the two plaintiffs an enhancement payment of
6 \$10,000 where the average amount of settlement benefits payable to class members was \$1,163.
7 (Karasik Decl. ¶ 11).

8 These cases illustrate that enhancement payments of more than \$5,000 have been awarded in
9 the Northern District of California even when the ratio between the amount of the enhancement
10 payment and the amount of average settlement benefits (29.5 in the *Premium Packing* case and 8.6 in
11 the *Fernandez Brothers* case) was much higher than the ratio of 3.5 in this case. Plaintiff respectfully
12 maintains that, under the particular circumstances of this case, his request for an enhancement of
13 \$7,500 is reasonable.

14 **CONCLUSION**

15 Plaintiff respectfully requests the Court, in connection with final approval of the Settlement, to
16 award Plaintiff the full amounts of costs, fees and enhancement payment requested.

17
18 Dated: June 18, 2024

KARASIK LAW FIRM
LAW OFFICES OF SANTOS GOMEZ

19
20 By *s/ Gregory N, Karasik*
21 Gregory N. Karasik
22 Attorneys for Plaintiff
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