

1 **MATERN LAW GROUP, PC**  
2 Matthew J. Matern (SBN 159798)  
3 Mikael H. Stahle (SBN 182599)  
4 1230 Rosecrans Avenue, Suite 200  
5 Manhattan Beach, CA 90266  
6 Telephone: (310) 531-1900  
7 Facsimile: (310) 531-1901  
8 mmatern@maternlawgroup.com  
9 mstahle@maternlawgroup.com

10 Attorneys for Plaintiff MAYA PITARRO  
11 and the Settlement Class

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 MAYA PITARRO, individually and on  
15 behalf of others similarly situated,

16 Plaintiff,

17 vs.

18 DSV AIR & SEA, INC., a Delaware  
19 corporation; UTI UNITED STATES,  
20 INC., a New York corporation; and  
21 DOES 1 through 50, inclusive,

22 Defendants.

Case No. 3:19-cv-00849-SK

Hon. Sallie Kim

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION  
FOR ATTORNEY'S FEES, COSTS,  
AND INCENTIVE AWARD**

Date: December 7, 2020

Time: 9:30 a.m.

Courtroom: C

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

2 **PLEASE TAKE NOTICE** that on December 7, 2020 at 9:30 a.m., or as soon  
3 thereafter as counsel may be heard, before the Honorable Sallie Kim, in Courtroom C, 19th  
4 Floor, United States District Court for the Northern District of California, 450 Golden Gate  
5 Avenue, San Francisco, California 94102, Plaintiff Maya Pitarro will and hereby does  
6 move for an Order awarding:

- 7 (1) Attorney's fees in the amount of \$366,666.67 (one-third of the Settlement  
8 Fund);  
9 (2) Costs and litigation expenses in the amount of \$10,173.55; and  
10 (3) An incentive award to Class Representative Maya Pitarro in the amount of  
11 \$7,500.00.

12 This motion is made on the grounds that Plaintiff's requests for attorney's fees,  
13 reimbursement of costs and expenses incurred in prosecuting the case, and the incentive  
14 award are fair, objectively reasonable, and appropriate in light of the results obtained on  
15 behalf of the class and the relevant Ninth Circuit authority. The motion is based on this  
16 Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities;  
17 the Declaration of Matthew J. Matern; the Declaration of Maya Pitarro; and such evidence  
18 and argument as may be presented at the hearing on this motion.

19  
20 Dated: July 22, 2020

**MATERN LAW GROUP, PC**

21 */s/ Mikael H. Stahle*  
22 \_\_\_\_\_  
23 MATTHEW J. MATERN  
24 MIKAEL H. STAHLE

25 Attorneys for Plaintiff MAYA  
26 PITARRO and the Settlement Class  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND**

This Motion for Attorney’s Fees, Costs, and Incentive Payment is made in connection with a class action settlement on behalf of approximately 276 current and former hourly employees of Defendant DSV Air & Sea, Inc. (“Defendant”), as a resolution to the litigation related to Defendant’s compliance with California’s stringent wage and hour laws.

Plaintiff is a former hourly, non-exempt employee of Defendant who worked as an Import Agent at Defendant’s facility in South San Francisco, California from in or about July of 2016 to December 13, 2017. (Matern Decl. ¶4.) Plaintiff earned \$28.00 per hour; other Class Members and the PAGA Group earned an average of \$24.34 per hour. (*Ibid.*) Defendant is a global supplier of transport and logistics services with a presence in over 90 countries. (*Ibid.*)

On November 29, 2018, Plaintiff commenced this putative wage and hour class and representative action against Defendant in the San Francisco County Superior Court, alleging Defendants’ violation of California’s labor laws regarding meal and rest breaks, minimum and overtime wages, waiting time penalties, wage statements, maintaining required records, indemnifying employees for necessary business expenses and for unlawful business practices. (Dkt. 1-4.)

On January 3, 2019, Plaintiff filed a First Amended Complaint (“FAC”) which added a claim for civil penalties under PAGA (“the Action”). (Dkt. 1-4.) Plaintiff’s PAGA notice was submitted to the LWDA and served on Defendant on August 31, 2018. (Ex. 2.)

On February 15, 2019, Defendants removed the case to the United States District Court for the Northern District of California based on diversity of citizenship under 28 U.S.C. section 1441(b). (Dkt. 1.) Defendants filed their answer to the FAC on February 22, 2019. (Dkt. 6.)

///

1 Plaintiff retained Matern Law Group (“Class Counsel” or “MLG”) in August of  
2 2018. (Matern Decl. ¶5.) Upon being retained, MLG investigated and researched  
3 Plaintiff’s claims and Defendants’ anticipated defenses. (*Ibid.*) Plaintiff furnished  
4 relevant information and documents to MLG which MLG reviewed and analyzed. (*Ibid.*)

5 Defendant produced a large volume of documents to Plaintiff, including wage and  
6 hour policies, meal period and rest break policies, payroll information and wage  
7 statements for the Class Members, and other documents related to the Class Members’  
8 employment with Defendant. (Matern Decl. ¶6.) Plaintiff propounded 27 special  
9 interrogatories and 23 categories of documents on both Defendants. (Matern Decl. ¶7.)  
10 Defendants responded to the discovery which Plaintiff reviewed and analyzed. (*Ibid.*)

11 On December 2, 2019, the Parties held an all-day mediation with mediator Marc  
12 Feder, Esq. which extended late into the evening, well after business hours, at the  
13 conclusion of which the Parties agreed to resolve the matter. (Matern Decl. ¶9.) The basic  
14 terms of the Settlement were outlined in a “Memorandum of Understanding” subject to a  
15 long-form agreement. (*Ibid.*) The Memorandum of Understanding was fully executed as  
16 of on December 4, 2019. (*Ibid.*)

17 Prior to the mediation, Plaintiff retained an expert statistician who reviewed and  
18 analyzed Defendant’s time and payroll records and prepared a detailed analysis that was  
19 instrumental in creating a damage model for the mediation. (Matern Decl. ¶8.)

20 The mediation was conducted at arm’s length, and although the negotiations were  
21 conducted in a professional manner, they were adversarial. (Matern Decl. ¶10.) The  
22 Parties went into mediation willing to explore the potential for a settlement of the dispute,  
23 but each side was also prepared to litigate its position through trial and appeal if a  
24 settlement had not been reached. (*Ibid.*)

25 The Settlement is the result of an informed and detailed analysis of Defendant’s  
26 potential liability of total exposure in relation to the costs and risks associated with  
27 continued litigation. Based on MLG’s pre-litigation investigation, discovery, and expert  
28 analysis, MLG was able to act intelligently and effectively in negotiating the proposed



1 Settlement. (*Ibid.*)

2 As Class Counsel, MLG hereby respectfully requests an award of attorneys' fees in  
3 the amount of \$366,666.67 and the reimbursement of \$10,173.55 in litigation costs and  
4 expenses for their efforts in prosecuting and obtaining a settlement that is the subject of  
5 the motion for final approval, which will be filed on or before November 2, 2020 after the  
6 close of the notice period. As explained in more detail herein, and as supported by the  
7 accompanying declarations of Matthew J. Matern and Maya Pitarro, the requested fees,  
8 costs, and incentive award fall within the norm for class actions and are justified by the  
9 results of the settlement and relevant Ninth Circuit authority.

10 The proposed settlement establishes a \$1,100,000 Settlement Fund, which will be  
11 used to pay for attorneys' fees, administrative costs, and class benefits. Significantly,  
12 there is no claim procedure or reversion under the terms of the Settlement Agreement—  
13 that is, the class members need not make a claim to receive their settlement shares and no  
14 part of the \$1,100,000 Settlement Fund will return to Defendant. Given the amount of  
15 legal work done by experienced Class Counsel on behalf of the Settlement Class and the  
16 results obtained in this litigation, the request for \$366,666.67 in attorneys' fees is both  
17 fair and reasonable. The requested fee award is one-third of the \$1,100,000 Settlement  
18 Fund, which represents a 1.76 multiplier under the "lodestar" cross-check.

19 In addition, Plaintiff seeks an incentive award of \$7,500 for Representative  
20 Plaintiff, Maya Pitarro. The requested service award is justified in light of Plaintiff's  
21 willingness to step forward and assert claims on behalf of the Class and in light of  
22 Plaintiff's significant assistance during the prosecution and settlement of this case.

23 Because the requested attorneys' fees, reimbursement of litigation expenses and  
24 incentive payment are objectively reasonable and appropriate, Plaintiff and Class Counsel  
25 respectfully request that the Court approve this motion in full.

26 ///

27 ///

28

1 **II. THE \$366,667 IN REQUESTED ATTORNEY’S FEES IS FAIR AND**  
2 **REASONABLE IN LIGHT OF THE RESULTS OBTAINED FOR THE**  
3 **CLASS**

4 Rule 23(h) of the Federal Rules of Civil Procedure provides that, “[i]n a certified  
5 class action, the court may award reasonable attorney’s fees and nontaxable costs that are  
6 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The Ninth  
7 Circuit has long-recognized that “[w]hen counsel recover a common fund which confers  
8 a ‘substantial benefit’ upon a class of beneficiaries, they are entitled to recover their  
9 attorney’s fees from the fund.” *Fishel v. Equitable Life Assur. Society of U.S.*, 307 F.3d  
10 997, 1006 (9th Cir. 2002) (citing *Lewis v. Anderson*, 692 F.2d 1267, 1270 (9th Cir.  
11 1982)). Fairness mandates the application of this rule—known as the “common fund  
12 doctrine”—because “those who benefit from the creation of a fund should share the  
13 wealth with the lawyers whose skill and effort helped create it.” *In re Washington Public*  
14 *Power Supply System Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). In short, “the  
15 ‘common fund doctrine,’ is designed to prevent unjust enrichment by distributing the  
16 costs of litigation among those who benefit from the efforts of the litigants and their  
17 counsel.” *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal.  
18 2008) (citing *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir.  
19 1989)).

20 Within the Ninth Circuit “courts have discretion to employ either the lodestar  
21 method or the percentage-of-recovery method” to establish the reasonable amount of  
22 attorneys’ fees to award. See *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d  
23 935, 942 (9th Cir. 2011) (citing *In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th  
24 Cir. 2010)). Regardless of the method used, however, the goal is the same: to reasonably  
25 compensate counsel for their efforts in creating the common fund. See *Paul, Johnson*,  
26 886 F.2d at 271-272. Here, both methods for calculating attorneys’ fees support  
27 awarding Class Counsel \$366,666.67 in fees.  
28

1           **A. Class Counsel’s Fee Request Is Reasonable Under the Percentage-of-**  
 2           **Recovery Method**

3           The Ninth Circuit has expressly approved the use of the percentage method in  
 4 common fund cases. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.  
 5 2002); *Paul, Johnson*, 886 F.2d at 272; *Six (6) Mexican Workers v. Arizona Citrus*  
 6 *Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d  
 7 1370 (9th Cir. 1993). Indeed, while courts have discretion to use either method, “use of  
 8 the percentage method in common fund cases appears to be dominant.” *Omnivision*  
 9 *Technologies*, 559 F. Supp. 2d at 1046 (citing *Vizcaino*, 290 F.3d at 1047; *Six Mexican*  
 10 *Workers*, 904 F.2d at 1311; and *Paul, Johnson*, 886 F.2d at 272).<sup>1</sup>

11           The Ninth Circuit has held that 25 percent of the gross settlement amount is the  
 12 benchmark for attorneys’ fees awarded under the percentage method. *See Vizcaino*, 290  
 13 F.3d at 1047; *Six Mexican Workers*, 904 F.2d at 1311. However, district courts have often  
 14 granted—and the Ninth Circuit has affirmed—awards of attorneys’ fees at or above a 30  
 15 percent fee. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457 (9th Cir.  
 16 2000) (affirming fee award of 33.3% of fund); *In re Pacific Enterprises Sec. Litig.*, 47  
 17 F.3d 373, 379 (9th Cir. 1995) (awarding attorneys’ fees equal to 33% of settlement fund);  
 18 *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG-JMA, 2009 WL  
 19 839841, at \*7 (S.D. Cal. Mar. 30, 2009) (awarding attorneys’ fees of 30% for first \$10  
 20 million of the settlement fund and 25% for the remaining \$2 million). Indeed, in cases  
 21 where the common fund is relatively small—as is the case here—courts routinely award  
 22 attorneys’ fees above the 25-percent benchmark. *See Craft v. County of San Bernardino*,

23  
 24  
 25           <sup>1</sup> The advantages of the percentage method were detailed by this Court in *In re*  
 26 *Activision*, 723 F. Supp. 1373, 1378-79 (N.D. Cal. 1989). After reviewing case law from  
 27 this and other circuits, the court concluded that “in class action common fund cases the  
 28 better practice is to set a percentage fee,” which it concluded would “encourage plaintiffs’  
 attorneys to move for early settlement, provide predictability for the attorneys and the class  
 members, and reduce the time consumed by counsel and court in dealing with voluminous  
 fee petitions.”

1 624 F.Supp.2d 1113, 1127 (C.D.Cal. 2008) (holding attorneys’ fees for large fund cases  
2 are typically under 25% and cases below \$10 million are often more than the 25%  
3 benchmark).)

4 In *Vizcaino*, the Ninth Circuit found that a 28-percent fee award in a class action  
5 was reasonable under the percentage method when considering the relevant  
6 circumstances. *Vizcaino*, 290 F.3d at 1050. In reaching its decision, the Ninth Circuit  
7 held that the district court may consider the following factors when analyzing a request  
8 for fees: (i) the results obtained for the class, including whether counsel’s performance  
9 generated benefits beyond the cash settlement fund; (ii) the risk undertaken by counsel;  
10 (iii) the skill required and the quality of work; (iv) the contingent nature of the fee and the  
11 financial burden carried; (v) the market rate; and (vi) awards in similar cases. *Vizcaino*,  
12 *supra*, 290 F.3d at 1048-1050; *Six Mexican Workers*, *supra*, 904 F.2d at 1311.

13 Each of these factors supports approval of Class Counsel’s \$366,666.67 fee  
14 request.

#### 15 1. Class Counsel Obtained an Exceptional Result for the Class

16 The benefit achieved for the class is an important factor to be considered in  
17 awarding attorneys’ fees. *See Vizcaino*, 290 F.3d at 1048; *see Torrissi*, 8 F.3d. at 1377  
18 (considering counsel’s “expert handling of the case”); *Six Mexican Workers*, 904 F.2d at  
19 1311 (noting plaintiffs’ “substantial success”).)

20 Here, Class Counsel achieved an exceptional result for the settlement class.  
21 Pursuant to the settlement, Defendant will establish a \$1,100,000 Settlement Fund for the  
22 benefit of the Settlement Class, out of which each Settlement Class Member will receive  
23 his or her pro rata share, averaging at least \$2,400, based on his or her length of  
24 employment.

#### 25 2. Class Counsel Assumed Significant Risks in Undertaking This 26 Litigation

27 In determining the reasonableness of the requested fees, a court should not only  
28 consider the recovery obtained for the class, but also the risks taken by class counsel in

1 pursuing the litigation. The Ninth Circuit recognizes that risk is an important factor in  
 2 determining a reasonable fee award. *Vizcaino*, 290 F.3d at 1048. Uncertainty that an  
 3 ultimate recovery would be obtained is highly relevant in determining such risk. As one  
 4 court observed:

5 In evaluating the services rendered in this case, appropriate consideration  
 6 must be given to the risks assumed by plaintiffs' counsel in undertaking the  
 7 litigation. The prospects of success were by no means certain at the outset,  
 and indeed, the chances of success were highly speculative and problem-  
 atical.

8 *In re King Resources Co. Sec. Litigation*, 420 F. Supp. 610, 632, 636-37 (D. Colo. 1976).

9 From the initiation of this case, Class Counsel undertook considerable risk. These  
 10 risks involved everything from certification issues, pleading and proof issues, to  
 11 establish-ing the extent of Defendant's liability, to prevailing at trial. (See Matern Decl.,  
 12 ¶¶ 30-31.) During the prosecution of this case, Class Counsel incurred significant  
 13 expenses and expended significant resources knowing that the results in the case were  
 14 uncertain, but confident that justice would be served by continuing to prosecute the case.

15 Accordingly, Class Counsels' contingency risk supports the requested attorneys'  
 16 fees.

### 17 **3. This Case Involved Complex Issues of Fact and Law That** 18 **Required Class Action Attorneys With Specific Experience and** 19 **Expertise**

20 The "prosecution and management of a complex national class action requires  
 21 unique legal skills and abilities." *Edmonds v. United States*, 658 F. Supp. 1126, 1137  
 22 (D.S.C. 1987). Class Counsel are experienced class action litigators. Furthermore, this  
 23 case involved a relatively novel and complex area of law, which required specific skills  
 24 and experience, namely the statutory and regulatory environment in California governing  
 25 electronic wage statements, which retailers and other employers have only fairly recently  
 26 adopted as the technology to do so has become available. Class Counsel bringing to  
 27 bear its significant expertise and experience in complex class actions on this issues  
 28 deserves to be rewarded.

1 Class Counsel conducted extensive factual investigation, discovery, and analysis of  
2 voluminous documents and time and payroll records. (Matern Decl., ¶¶ 5-7.) Class  
3 Counsel also participated in a full-day mediation lasting into the late evening at which  
4 time an agreement to settle the litigation was reached. (Matern Decl., ¶¶ 8-10). From the  
5 outset, Class Counsel litigated this action vigorously and skillfully, maximizing recovery  
6 for the benefit of the Class. As a result of Class Counsel’s skill and diligence, they  
7 reached an excellent settlement result for the Class. The quality of Class Counsel’s work,  
8 and the efficiency and dedication with which it was performed, should be rewarded.

9 Moreover, the quality of opposing counsel is also an important factor when  
10 evaluating the quality of the work done by Class Counsel. *See In re Equity Funding*  
11 *Corp. Sec. Litigation*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Here, Class Counsel  
12 were opposed by skilled and respected counsel from Fisher & Phillips, which had  
13 significant resources and experience with which to represent and defend Defendant’s  
14 interests. This factor also strongly supports the fees requested.

15 In summary, the factual and legal complexity of this action combined with Fisher  
16 & Phillips’ vigorous defense of Defendant weigh strongly in favor of awarding the  
17 requested attorneys’ fees.

#### 18 **4. Class Counsel Carried the Financial Burden in Pursuing This** 19 **Litigation on a Contingency Fee Basis**

20 A determination of a fair attorneys’ fee award must also include consideration of  
21 the contingent nature of the fee and the difficulties that were overcome in obtaining the  
22 settlement. *Vizcaino*, 290 F.2d at 1049-50. “Attorneys whose compensation depends on  
23 their winning the case must make up in compensation in the cases they win for the lack of  
24 compensation in the cases they lose.” *Vizcaino*, 290 F. 3d at 1051.

25 Here, Class Counsel undertook this litigation on a purely contingency basis, with  
26 no assurance of recovering any attorneys’ fees or reimbursement of costs. Class Counsel  
27 initiated potentially complex, expensive and lengthy litigation, with no guarantee of  
28 compensation for the significant amount of time, money and effort that they were

1 prepared to and did invest to prosecute this case. (Matern Decl., ¶¶ 30-31.) Class  
2 Counsel dedicated ample resources of attorneys and other personnel to this action and  
3 paid out-of-pocket expenses necessary to prosecute the case, further supporting the fees  
4 requested. (Matern Decl., ¶¶ 21-26, 32.)

5 In light of the burden that Class Counsel undertook in this action on a purely  
6 contingency fee basis, their request for attorneys' fees is justified.

7 **B. The Requested Fees Are Reasonable Using the Lodestar Method As a**  
8 **Cross-Check**

9 The Ninth Circuit encourages district courts to cross-check one method of  
10 awarding fees against another method to ensure that the requested fees are reasonable.  
11 (*In re Bluetooth*, 654 F.3d at 944. In *Vizcaino*, for example, the court found that the  
12 lodestar cross-check validated the percentage fee award because the latter methodology  
13 resulted in a lodestar multiplier of 3.65. Here, the lodestar methodology validates the  
14 percentage fee award because it results in a lodestar of 1.76. (Matern Decl., ¶ 22.)

15 The "lodestar method" calculates attorneys' fees by multiplying the number of  
16 hours that class counsel reasonably expended on the litigation by an hourly rate that takes  
17 into consideration the region and the experience of the lawyers. *Staton v. Boeing Co.*,  
18 327 F.3d 938, 965 (9th Cir. 2003). Mathematical precision is not required when  
19 performing a lodestar cross-check. *See Young v. Polo Retail, LLC*, No. C-02-4546-VRW,  
20 2007 WL 951821, at \*6 (N.D. Cal., Mar. 28, 2007) ("In contrast to the use of the lodestar  
21 method as a primary tool for setting a fee award, the lodestar cross-check can be  
22 performed with a less exhaustive cataloging and review of counsel's hours."); *In Re Rite*  
23 *Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) ("The lodestar cross-check  
24 calculation need entail neither mathematical precision nor bean-counting.").

25 It is well-settled that a positive multiplier is appropriate in common fund cases to  
26 reward attorneys for the risk assumed in taking and litigating the case. "[C]ourts have  
27 routinely enhanced the lodestar to reflect the risk of non-payment in common fund  
28 cases." *Washington Public Power*, *supra*, 19 F.3d at 1300. "This mirrors the established

1 practice in the private legal market of rewarding attorneys for taking the risk of  
2 nonpayment by paying them a premium over their normal hourly rates for winning  
3 contingency cases.” *Vizcaino*, 290 F.3d at 1051. In *Vizcaino*, the court examined a  
4 survey of multipliers in common fund cases, and found that they ranged from “0.6-19.6  
5 with most (20 of 24, or 83%) from 1.0-4.0 and a bare majority (13 of 24, or 54%) in the  
6 1.5-3.0 range)” *Id.* at 1051.

7 Class Counsel expended 236.5 hours to achieve this class settlement. At their  
8 regular and reasonable hourly rates, those hours result in a lodestar base of \$208,170.  
9 (Matern Decl., ¶ 25.)

10 Moreover, Class Counsel’s hourly billing are within the range accepted by courts  
11 in the Ninth Circuit when awarding attorneys’ fees on a lodestar basis, particularly in a  
12 complex class action. *See Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS,  
13 2011 WL 1230826, at \*18-19 (N.D. Cal. 2011) supplemented, 2011 WL 1838562 (N.D.  
14 Cal. 2011) (approving hourly rates of \$650 and \$675); *Kanawi v. Bechtel Corp.*, No. C  
15 06-05566 CRB, 2011 WL 782244, at \*2 (N.D. Cal. 2011) (approving a blended hourly  
16 rate of \$514.60 in an ERISA class action); *Californians for Disability Rights v.*  
17 *California Dept. of Transp.*, No. C 06-05125 SBA (MEJ), 2010 WL 8746910, at \*13  
18 (N.D. Cal. 2010) report and recommendation adopted sub nom., *Californians for*  
19 *Disability Rights, Inc. v. California Dept. of Transp.*, 2011 WL 8180376 (N.D. Cal. 2011)  
20 (finding hourly rates of \$835 for attorney with 49 years of experience, \$730 for 25 years,  
21 \$650 for 18 years, \$640 for 23 years; \$570 for 10 years, \$560 for 9 years, \$535 for 7  
22 years, \$500 for 6 years, \$475 for 5 years, \$350 for 3 years, \$290 for 2 years, \$260 for 1  
23 year, and between \$165 and \$265 for paralegals appropriate in an ADA class action);  
24 *Lortez v. Regal Stone, Ltd.*, 756 F. Supp. 2d 1203, 1211 (N.D. Cal. 2010) (finding hourly  
25 rates of \$775 for a partner, \$350 for an associate and \$225 for a paralegal all reasonable  
26 in a class action brought, in part, under California’s UCL); *Suzuki v. Hitachi Global*  
27 *Storage Technologies, Inc.*, No. C 06-7289 MHP, 2010 WL 956896, at \*4 (N.D. Cal.  
28 2010) aff’d, 434 F. App’x 695 (9th Cir. 2011) (finding hourly rates of \$650 for a partner,



1 \$500 for an associate and \$150 for paralegals appropriate in a consumer product  
2 misrepresentation class action).

3 Accordingly, in light of the foregoing, Class Counsel's fee request is reasonable.

4 **III. CLASS COUNSEL SHOULD BE REIMBURSED FOR THEIR REASON-**  
5 **ABLE COSTS AND EXPENSES INCURRED IN PROSECUTING THE**  
6 **ACTION**

7 Plaintiff also requests that Class Counsel be reimbursed \$10,173.55 for the  
8 litigation costs and expenses that they incurred in prosecuting this action. (Matern Decl.,  
9 ¶ 32.) Attorneys who create a common fund are entitled to the reimbursement of  
10 expenses they advanced for the benefit of the class. *See In re Media Vision Tech. Sec.*  
11 *Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) ("Reasonable costs and expenses  
12 incurred by an attorney who creates or preserves a common fund are reimbursed  
13 proportionally by those class members who benefit from the settlement."). Expenses that  
14 are of the type normally charged to hourly paying clients are reimbursable. *Harris v.*  
15 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (recovery of "those out-of-pocket expenses  
16 that 'would normally be charged to a fee paying client'" are reimbursable); *see also In re*  
17 *Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (approving  
18 reasonable costs in class action settlement to include travel expenses, postage, telephone,  
19 fax, notice, filing fees, photocopies, and computerized legal research).

20 Here, the expenses which Class Counsel seek are the type of expenses routinely  
21 charged to hourly paying clients and are well-within the range of reasonableness given  
22 the length and complexity of this litigation. For example, Class Counsel seeks  
23 reimbursement for filing fees, legal research, mediation, transcripts, and messenger fees.  
24 All of these charges are commonly accepted as reimbursable in a common fund case.

25 Plaintiff, therefore, respectfully requests that the Court order the reimbursement of  
26 Class Counsel's costs and expenses in the amount of \$10,173.55.

27 ///

28 ///

1 **IV. A \$7,500 INCENTIVE PAYMENT TO PLAINTIFF IS FAIR AND REASON-**  
2 **ABLE**

3 Plaintiff Maya Pitarro applies to the Court for an incentive payment of \$7,500.  
4 Settlements in class actions may include an incentive award to the named plaintiffs to  
5 compensate them for their time and effort and financial and reputational risks the  
6 litigation imposed upon them. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948,  
7 958-59 (9th Cir. 2009). “Because a named plaintiff is an essential ingredient of any class  
8 action, an incentive award is appropriate if it is necessary to induce an individual to  
9 participate in the suit.” *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). “Since  
10 without a named plaintiff there can be no class action, such compensation as may be  
11 necessary to induce him to participate in the suit could be thought the equivalent of the  
12 lawyers’ non-legal but essential case-specific expenses, such as long-distance phone  
13 calls, which are reimburs-able.” *In re Continental Illinois Sec. Litig.*, 962 F.2d 566, 571  
14 (7th Cir. 1992); *Staton*, 327 F.3d at 966.

15 In the context of this lawsuit, an award of a \$7,500 incentive payment to Plaintiff is  
16 fair and reasonable. Plaintiff contributed extensive time and effort to the litigation of this  
17 class action. Plaintiff had regular telephone conversations and communications with  
18 Class Counsel, provided Class Counsel with background information regarding her  
19 claims, assisted Class Counsel in understanding her claims and in responding to  
20 discovery, and searched for and produced documents supporting her claims and the  
21 claims of the Class. Ms. Pitarro estimates that she devoted approximately 26 hours  
22 assisting Class Counsel in this case. (Declaration of Maya Pitarro, filed concurrently  
23 herewith, at ¶ 10.)

24 The amount of incentive payment sought by Plaintiff is in line with incentive  
25 payments awarded in other class actions. *See Cicero v. DirecTV, Inc.*, No. EDCV 07-  
26 1182, 2010 WL 2991486, at \*7 (C.D. Cal. July 27, 2010) (approving incentive awards of  
27 \$5,000 and \$7,500 where the class representatives “actively participated in the action by  
28 assisting counsel and responding to discovery”); *Williams v. Costco Wholesale Corp.*,

1 No. 02cv2003 IEG (AJB), 2010 WL 2721452, at \*7 (S.D. Cal. July 7, 2010) (approving  
2 a \$5,000 incentive award); *Cervantez v. Celestica Corp.*, No. EDCV 07-729-VAP (OPx),  
3 2010 WL 2712267, at \*6 (C.D. Cal. July 6, 2010) (“An award of \$2,000 is reasonable,  
4 considering the time Plaintiff expended, the applicable risks, and the awards other Class  
5 Members will receive”).

6 Based on the foregoing, Plaintiff respectfully requests that the Court award  
7 Plaintiff Maya Pitarro a \$7,500 incentive payment, as provided under the Settlement  
8 Agreement.

9 **V. CONCLUSION**

10 For the foregoing reasons, Plaintiff respectfully requests that the Court issue an  
11 order: (a) awarding attorneys’ fees in the amount of \$366,666.67; (b) reimbursing the  
12 litigation costs and expenses reasonably incurred in this action of \$10,173.55; and (c)  
13 awarding an incentive payment of \$7,500 to Plaintiff Maya Pitarro.

14  
15 Dated: July 22, 2020

**MATERN LAW GROUP, PC**

*/s/ Mikael H. Stahle*

\_\_\_\_\_  
MATTHEW J. MATERN  
MIKAEL H. STAHLE

Attorneys for Plaintiff MAYA  
PITARRO and the Settlement Class