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9 **THE SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN FRANCISCO**

11 AARON SADINO and ANTHONY) **CLASS ACTION**
12 JOHNSON, individually and on behalf of all)
13 others similarly situated,) **CASE NO. CGC-17-560186**
14)
15) **PLAINTIFFS' NOTICE OF MOTION**
16 Plaintiffs,) **AND MEMORANDUM OF POINTS AND**
17) **AUTHORITIES IN SUPPORT OF**
18 vs.) **MOTION FOR ATTORNEYS' FEES,**
19) **REIMBURSEMENT OF LITIGATION**
20) **COSTS, CLASS REPRESENTATIVE**
21) **ENHANCEMENTS AND**
22) **ADMINISTRATION COSTS**
23)
24)

25 / Date: June 29, 2021

26 Time: 9:00 a.m.

27 **Hon. Andrew Y.S. Cheng**

28 **Dept 613**

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

2 NOTICE IS HEREBY GIVEN pursuant to the Court's Order Granting Preliminary
3 Approval of Class Settlement dated March 8, 2021, on June 29, 2021 at 9:00 a.m. in Department
4 613, located at 400 McAllister Street, San Francisco, CA 94102, before the Honorable Andrew
5 Y.S. Cheng of the Superior Court of the State of California, County of San Francisco, Plaintiffs
6 Aaron Sadino and Anthony Johnson ("Plaintiffs") will, and hereby do, move the Court for an
7 Order granting approval of (a) Class Counsel's attorneys' fees in the amount of \$525,000.00,
8 (b) reimbursement of litigation costs in the amount of \$72,991.07, (c) class representative
9 enhancements in the amount of \$20,000.00 each, and (d) costs of claims administration in
10 the amount of \$42,500.00 to be paid from the Total Settlement Amount ("TSA"). This
11 motion is made in conjunction with Plaintiffs' motion for final approval of the settlement
12 in this certified class action, which will be filed on or before June 4, 2021.

13 Good cause exists for the granting of this Motion. The Motion is based on this
14 Notice of Motion; the accompanying Memorandum of Points and Authorities; the
15 Declarations of Matthew Righetti, Plaintiff Aaron Sadino, and Plaintiff Anthony Johnson,
16 and the Declaration of Elizabeth Kruckenberg on behalf of Phoenix Settlement
17 Administrators; the papers and records on file in this action, and on such oral and
18 documentary evidence as may be presented at the hearing on this Motion.

19
20 Dated: May 7, 2021

RIGHETTI GLUGOSKI, P.C.

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23 Michael C. Righetti, Esq.
24 Counsel for Plaintiffs and the Class

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7 *Huguley v. General Motors Corp.*,
8 128 F.R.D. 81 (E.D.Mich. 1989) (in a case where incentive awards not objected to, the court
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11 *In re Activision Securities Lit.*
12 (N.D. Cal. 1989) 723 F. Supp. 1373 [6](#)

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to California Rules of Court, Rule 3.769(b) and California Code of Civil
4 Procedure section 382, Plaintiffs respectfully request approval of (1) an award of attorneys'
5 fees of \$525,000.00, (2) reimbursement of litigation expenses to Class Counsel of
6 \$72,991.07, (3) an enhancement award of \$20,000.00 each to the class representatives, and
7 (4) claims administration costs of \$42,500.00 to Phoenix Settlement Administrators.

8 Under both a percentage calculation and a lodestar calculation, the attorneys' fees
9 request equates to a reasonable value of services performed on behalf of Plaintiffs and the
10 Settlement Class Members. Moreover, Plaintiff requests reimbursement of litigation costs
11 totaling \$72,991.07, which is less than the \$75,000.00 Plaintiffs are entitled to request pursuant
12 to the Settlement Agreement. These litigation costs were reasonably incurred over the past four
13 years prosecuting the case, and Plaintiffs expect to incur several hundred dollars of additional
14 expenses before the case is concluded. The enhancement request for each of the class
15 representatives is reasonable in light of the extraordinary work they performed on behalf of the
16 class.

17 Plaintiffs' motion is supported by California law, and it is consistent with the terms of
18 the Second Revised Class Action Settlement Agreement ("Settlement" or "Settlement
19 Agreement"), which the Court preliminarily approved on March 8, 2021, and which is
20 attached as Exhibit 1 to the Declaration of Matthew Righetti in Support of Plaintiffs' Motion
21 for Attorneys' Fees, Reimbursement of Litigation Costs and Class Representative
22 Enhancements, and Administration Costs. Plaintiffs shall file a separate motion with
23 supporting documents when they bring their Motion for Final Approval of Class Action
24 Settlement. The deadline to file the final approval motion is June 4, 2021.

25 **II. ARGUMENT IN SUPPORT OF PLAINTIFFS' APPLICATION FOR**
26 **AN AWARD OF ATTORNEYS' FEES**

27 **a. Class Counsel are Entitled to a Fee From the Common Fund**

1 In *Lafitte v. Robert Half International*, 1 Cal.5th 480 (2016), the California Supreme
2 Court addressed the correct methodology for awarding fees in a class action settlement. The
3 *Laffitte* Court approved awarding fees as a percentage of the settlement fund in cases like the
4 present one, where a settlement results in the creation of a common fund on behalf of a class:

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

9 *Id.* at p. 503. The Court set out several reasons why the percentage-of-the-fund method is
10 preferred over the alternative lodestar-multiplier approach in California courts:

11 The recognized advantages of the percentage method-including relative ease of
12 calculation, alignment of incentives between counsel and the class, a better
13 approximation of market conditions in a contingency case, and the
14 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation [citations]-convince us the percentage
method is a valuable tool that should not be denied our trial courts.

15 *Id.* at p. 503.

16 An award of 35% of the common fund is appropriate here under the "substantial benefit"
17 theory. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple*
18 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254. That theory permits a litigant who has sued
19 in a representative capacity to recover fees when the litigant's efforts have created a substantial,
20 actual, and concrete benefit for members of an ascertainable class and the court's jurisdiction
21 over the subject matter makes possible an award which spreads the cost proportionately
22 among the members of the benefitted class. See, *Ciani v. San Diego Trust & Sav. Bank* (1994)
23 25 Cal.App.4th 563, 578.

24 This doctrine rests on the understanding that, unless attorneys' fees are paid out of the
25 common fund, those who benefitted from the fund would be unjustly enriched. *Woodland Hills*
26 *Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 943; *Save El Toro Ass'n v. Days*
27 (1979) 98 Cal.App.3d 544, 548-49. To prevent this unfair result, courts exercise their inherent
28 equitable powers to assess attorney fees against the entire fund, thereby spreading the cost of

1 those fees among all those who benefitted. *Serrano III*, 20 Cal.3d at p. 35. "A court, in the
2 exercise of its equitable discretion, may decree that those receiving the benefit should contribute
3 to the costs of its production." *Save El Toro Assn., supra*, 98 Cal.App.3d at p. 548. As this
4 approach "better approximates the workings of the marketplace than the lodestar approach,"
5 there is "a greater judicial willingness to evaluate a fee award as a percentage of the recovery"
6 in common fund cases. *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal. App.4th 19 at pp. 31,
7 48.

8 *Lealao* stands for the proposition that court-awarded attorney's fees should approximate
9 what counsel could get on the free market for the same services. *Id.* at p. 50. Specifically,
10 *Lealao* holds that, even were the court to set fees under the lodestar, the multiplier should
11 consider what counsel would have earned on the free market. According to *Lealao*, the free
12 market is determined by the percentage of the common fund, not the lodestar amount. *Id.*
13 Accordingly, whatever method the court uses to set fees (i.e., percentage, or lodestar and
14 multiplier), the goal of the Court should be to determine what the market would bear in these
15 circumstances. Thus, if the Court awards fees under the lodestar method, under *Lealao*, the
16 lodestar fee should be adjusted by a multiplier to reflect the percentage of the fund. *Id.* at pp.
17 19, 50.

18 As detailed fully in the Settlement Agreement (Paragraph 4.1), the Total Settlement
19 Amount is \$1,500,000.00 plus any accrued interest over the payment period. The Parties agreed
20 that Plaintiffs may request an award of attorneys' fees not to exceed 35% of the Total
21 Settlement Amount. See Exhibit 1 to Righetti Decl., Para. 4.5. Class Members have been
22 notified of this fact in the Court-approved Notice that was disseminated to Class Members on
23 April 22, 2021. Plaintiffs shall advise the Court of any objections to the Settlement, including
24 any objections to the request for attorneys' fees, litigation costs or class representative
25 enhancements at the time Plaintiffs file their motion for final approval. No objections have
26 been received to date.

27 This litigation resulted in "a substantial, actual and concrete ... benefit on the members
28 of an ascertainable class," (*Save El Toro Assn., supra*, 98 Cal.App.3d at p. 548), namely a non-

1 reversionary gross settlement fund of \$1,500,000.00 plus 10% simple interest accrued over the
2 course of the payment plan. Because no fees have been paid to Class Counsel for their four years
3 of efforts during the litigation, equity supports approval of a fair and reasonable fee based on
4 what the market would traditionally require, no less than if they had hired private counsel to
5 litigate their cases individually. Class Counsel therefore submits that they are therefore entitled
6 to a reasonable contingency fee of 35% from the Total Settlement Amount.

7 **b. The Attorneys' Fees Requested By Class Counsel is Well Within the**
8 **Range of Fees in Comparable Cases**

9 Courts historically award fees in the twenty-to-fifty-percent range, depending on the
10 circumstances of the case. Thus, Class Counsel's requested fee of 35% is well within the range
11 of reasonableness, as demonstrated below. *See, e.g., In re Activision Securities Lit.* (N.D. Cal.
12 1989) 723 F. Supp. 1373, 1378). As stated in Newberg:

13 No general rule can be articulated on what is a reasonable percentage of a
14 common fund. Usually 50% of the fund is the upper limit on a reasonable fee
15 award from a common fund in order to assure that the fees do not consume a
16 disproportionate part of the recovery obtained for the Class, although somewhat
17 larger percentages are not unprecedented.

18 (Newberg on Class Actions, 3rd Ed., 1992, § 14.03.) The requested fee falls in the middle of
19 the Ninth Circuit's historical range of acceptable fee awards of 20% to 50% and is fair
20 compensation for undertaking this particularly complex, risky, expensive, and time-consuming
21 litigation on a contingent basis.

22 **c. The Contingency Fee of 35% Requested by Class Counsel is**
23 **Reasonable Based on the Risks of Litigation and the Diligent Efforts of**
24 **Counsel that Led to a Fair and Reasonable Settlement for the Class**

25 Plaintiffs submit that the amount requested is reasonable because Class Counsel's
26 diligent litigation efforts and experience led to a fair and reasonable settlement in light of the
27 financial condition of the Defendant and the attendant risks of further litigation. Moreover, the
28 Class Members are low hourly wage earners, and the value of many of their individual meal
and rest period claims was likely too small and would never have been pursued. In this regard,
many of the Class Members will receive settlement proceeds that likely would not have been

1 economical to pursue on an individual basis. As such, this settlement is a respectable result for
2 thousands of current and former employees who incurred no risk whatsoever yet are recovering
3 hundreds and in some cases thousands of dollars from the efforts of Plaintiffs and Class
4 Counsel.

5 Additionally, it is recognized that one of the primary factors justifying an attorney fee
6 award in cases such as this is the attendant risks inherent in the litigation. As observed in *City*
7 *of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,470:

8 No one expects a lawyer whose compensation is contingent upon his success to
9 charge, when successful, as little as he would charge a client who had agreed to pay
10 for his services, regardless of success. Nor, particularly in complicated cases
11 producing large recoveries, is it just to make a fee depend solely on the reasonable
12 amount of time expended.

13 Class Counsel has extensively addressed the perceived risks in this case as well as the tenuous
14 financial condition of the Defendant in the three previous submissions in support of Plaintiffs'
15 Motion for Preliminary Approval and the Motion to Enforce the Settlement.¹

16 In addition to the complexity of this case, Class Counsel have borne the entire risk and
17 costs of this litigation during the four years that the case was pending, with their ultimate fee
18 based purely on the contingency of success. (Righetti Decl., para. 9.) Through the investment
19 of substantial effort and resources (nearly \$73,000.00 in expenditures), Class Counsel have
20 secured a result on behalf of the Class Members that provides a fair and reasonable monetary
21 benefit to thousands of individuals. Moreover, Plaintiffs incurred substantial attorneys' fees
22 filing a motion to enforce the settlement negotiated by the Parties after the Defendant refused
23 to draft a long form settlement agreement consistent with the terms set forth in the MOU. These
24 fees were totally unexpected but necessary when the Defendant sought to renegotiate the Total
25 Settlement Amount at a discount of \$500,000.00. Plaintiffs and Class Counsel rejected this
26 offer. Instead, Plaintiffs and Class Counsel incurred fees and costs filing a motion to enforce
27 the MOU, which the Court granted. Moreover, Defendant vigorously contested class
28 certification, the propriety of class certification, liability, and the amount of claimed damages.

1 Plaintiffs' counsel is not including the time spent on supplemental submissions filed in support of
Plaintiffs' motion for preliminary approval (which was extensive) in their lodestar provided to the Court.

1 It is this kind of situation, involving lengthy litigation that includes multiple complex issues,
2 where the courts approve attorney fees that are commensurate with the work performed, the
3 contingency nature of the undertaking and the results obtained.

4 **III. CLASS COUNSELS' FEE REQUEST IS REASONABLE UNDER THE**
5 **LODESTAR CROSSCHECK**

6 Courts may "cross-check" the results of the common fund method against the
7 lodestar method. *See, e.g., In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.
8 The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly
9 rate. *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. Those rates reflect "the general local hourly
10 rate for a fee-bearing case" and do "not include any compensation for contingent risk,
11 extraordinary skill, or any other factors." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.)
12 The court may then enhance the lodestar with a multiplier. *Wershba, supra*, 91 Cal.App.4th at
13 p. 254; *Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347; *Serrano 111, supra*,
14 20 Cal.3d at p. 49. The court may consider several factors when determining a reasonable
15 hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the
16 relevant area of expertise and the attorney's customary billing rates. *Flannery v. California*
17 *Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

18 The purpose of the lodestar/multiplier method is to mirror the legal marketplace.
19 Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an
20 enhancement is recognized, where appropriate, so that the fee received is commensurate with
21 what attorneys could expect to be compensated for services in similar circumstances. *See San*
22 *Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d
23 738, 755 [an award must be large enough "to entice competent counsel to undertake difficult
24 public interest cases"]. No specific findings reflecting the court's calculations are required.
25 *Wershba, supra*, 91 Cal.App.4th at p. 254; *Rebney, supra*, 232 Cal.App.3d at p. 1349. "The
26 record need only show that the attorney fees were awarded according to the 'lodestar' or
27 'touchstone' approach." *Ibid.*

1 *Lealao* states several factors justifying an enhancement based on the percentage-of-the-
2 benefit, namely, no objections by class members, (82 Cal. App. 4th at 51), commendable
3 conduct by counsel (*id.*), and significant recoveries by class members. *Id.* at 53. These factors
4 are all evident in this case as well. As in *Lealao*, the class has been notified of the fee request,
5 and to date there have been no objections, disputes or requests for exclusion; nevertheless, the
6 time period to dispute, object or request exclusion has not yet expired. Plaintiffs' counsel has
7 spent considerable time and effort making sure that Class Members are aware of the opt-out
8 and objection filing deadlines. In addition, Class Counsel provided information to class
9 members with various questions on how and whether to participate in the settlement,
10 communicating estimated payments and updating addresses. Righetti Decl., para. 18. This is
11 commendable conduct, which took time and effort.

12 Here, a lodestar cross-check confirms that the percentage of the Total Settlement
13 Amount requested is reasonable. Class Counsel's aggregate lodestar amounts to \$550,888.50
14 (without future hours spent in connection with the motion for final approval and settlement
15 administration and without including time spent working on supplemental submissions in
16 response to the Court's tentative rulings on Plaintiffs' preliminary approval motion, which were
17 substantial). The lodestar represents 841.2 hours of attorney work and 270.9 paralegal hours
18 from the case's inception in 2017 through the filing of this Motion for Attorneys' Fees,
19 Reimbursement of Litigation Costs, Class Representative Enhancements and Administration
20 Costs. Righetti Decl., para. 17. As such, Class Counsel is requesting a *negative* multiplier of
21 .95, which reduces the lodestar down from \$550,888.50 down to \$525,000.00 equal to 35% of
22 the Total Settlement Amount.

23 Typically, the lodestar is merely the starting point for the calculation of a reasonable fee,
24 and courts will multiply the lodestar by a factor to account for the risk of non-payment, delay
25 in payment, the quality of work, and the novelty and difficulty of the issues involved. *See*
26 *Radar v. Thrasher* (1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo Bank* (1991) 235
27 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning v. Bd. of Supervisors* (1977) 76
28 Cal.App.3d 241, 251.

1 The *Laffitte* Court explained the lodestar analysis as follows:

2
3 With regard to expenditure of judicial resources, we note that trial courts
4 conducting lodestar cross-checks have generally not been required to closely
5 scrutinize each claimed attorney-hour, but have instead used information on
6 attorney time spent to “focus on the general question of whether the fee award
7 appropriately reflects the degree of time and effort expended by the
8 attorneys.” (5 Newberg on Class Actions, *supra*, § 15:86, p. 331; see, e.g.,
9 *Goldberger v. Integrated Resources, Inc.*, *supra*, 209 F.3d at p. 50 [2d Cir.;
10 “where used as a mere cross-check, the hours documented by counsel need not
11 be exhaustively scrutinized by the district court”]; *In re Prudential Ins. Co.*
12 *America Sales Practice Litigation Agent Actions* (3d Cir.1998) 148 F.3d 283,
13 342 [agreeing with district court that “detailed time summaries were
14 unnecessary where, as here, it was merely using the lodestar calculation to
15 double check its fee award.”]; *Barbosa v. Cargill Meat Solutions Corp.*
16 (E.D.Cal.2013) 297 F.R.D. 431, 451 [“Where the lodestar method is used as a
17 cross-check to the percentage method, it can be performed with a less exhaustive
18 cataloguing and review of counsel’s hours.”].) The trial court in the present case
19 exercised its discretion in this manner, performing the cross-check using counsel
20 declarations summarizing overall time spent, rather than demanding and
21 scrutinizing daily time sheets in which the work performed was broken down by
22 individual task.

23 *Laffitte, supra*. Here, the lodestar in fact exceeds the requested fee and must therefore be cross-
24 checked with a negative multiplier, further validating that the cross-check method in the present
25 case can be performed with a less exhaustive cataloguing and review of counsel’s hours.

26
27 **a. The Number of Hours Claimed is Reasonable**

28 Class Counsel are entitled to be compensated for “all time reasonably expended in
pursuit of the ultimate result achieved in the same manner that an attorney traditionally is
compensated by a fee-paying client for all time reasonably expended on a matter.” *Hensley v.*
Eckerhart (1983) 461 U.S. 424, 431 [internal quotations omitted]; *accord Serrano v. Unruh*
(1982) 32 Cal.3d 621,633 [“Serrano IV”] [parties should recover for all hours reasonably spent];
Meister v. Regents of Univ. of Cal. (1998) 67 Cal.App.4th 437, 447-48 [same]. The amount of
time spent on this case (841.2 attorney hours) is reasonable given the complexity and novelty
of the issues involved, the vigorous defense, the length and intensity of the litigation, and the
results obtained. Righetti Decl., para. 18. Class Counsel litigated this action with skill and
efficiency reflecting the amount of work required to achieve the Settlement. Class Counsel

1 has submitted a declaration evidencing the reasonable hourly rate for their services and
2 establishing the number of hours spent working on the case. Righetti Decl., paras. 16-18.

3 The hours are neither unreasonable nor duplicative. Righetti Decl., para. 16. California
4 courts have recognized that the work of more than one attorney is permissible when the
5 demands of the case warrant more than one attorney. In such cases, some duplication of work
6 is both expected and compensable. *Margolin v. Regional Planning Comm'n* (1982) 134 Cal.
7 App. 3d 999, 1006-1007. Plaintiffs' counsel has broken down the hours spent on this case by
8 each attorney (Michael Righetti and Matthew Righetti) and separate from paralegal hours
9 because the attorneys and the paralegals have different hourly rates. Moreover, reductions were
10 made for time worked where 1) counsel determined there was duplication or 2) counsel
11 determined that accomplishing the objective could have been completed in fewer hours. *Id.* A
12 prime example of this took place at the preliminary approval stage, which required several
13 submissions from Plaintiff before receiving the Court's approval. For that example, Plaintiffs'
14 counsel excluded time spent on the supplemental submissions required to obtain preliminary
15 approval, which were conservatively estimated 30-50 hours of attorney time. *Id.*

16 Reasonable hours include, in addition to time spent during litigation, the time spent
17 before the action is filed, including time spent interviewing the clients, investigating the facts
18 and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey* (1980)
19 447 U.S. 54, 62, 100 S. Ct. 2024, 2030. Further, the fee award should include fees incurred to
20 establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal. 3d 621, 639
21 ("*Serrano IV*"). Because this motion is being filed before Plaintiffs' motion for final approval
22 has been prepared, Plaintiffs' lodestar does not include time that will have to be spent to
23 completely resolve the case.

24 Plaintiffs submit that the present case was significantly complex and presented unique
25 challenges, which warranted the work of more than one attorney. The breakdown of the
26 attorneys' time and work performed on the matter is attached as Exhibit 4 to the Righetti Decl.
27 The time spent is summarized and grouped into eight different categories. No time is allocated
28 to the summary judgment category because no time was spent on dispositive motions.

1 **b. The Hourly Rates Requested Are Reasonable**

2 Class Counsel are entitled to be compensated at hourly rates that reflect the reasonable
3 market value of their legal services, based on their experience and expertise. *See Serrano*
4 *IV, supra*, 32 Cal.3d at pp. 640-43, n.31. "The reasonable hourly rate is that prevailing in the
5 community for similar work." *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.
6 Payment at full market rates is essential to entice well-qualified counsel to undertake difficult
7 cases, such as this one. *San Bernardino Valley Audubon Soc'y v. County of San Bernardino*
8 (1984) 155 Cal.App.3d 738, 755. Additionally, calculation of a lodestar based on current
9 hourly rates is appropriate as a means of compensating for delay in payment. *Missouri v.*
10 *Jenkins by Agyei* (1989) 491 U.S. 274, 283-84.

11 One difficulty in determining the hourly rate of attorneys of similar skill and experience
12 in the relevant community is the scarcity of hourly fee-paying clients in class action litigation.
13 As a practical matter, few, if any, consumers pay attorneys' fees on an hourly basis for such
14 extensive litigation, and thus retainer agreements in such cases are invariably based on a
15 contingency fee relationship. Therefore, since there is no "customary billing rate," the nature of
16 class action work should be strongly considered by the Court.

17 The requested hourly rates in this case range from \$800.00 per hour to \$500 for
18 attorneys and \$165 per hour for paralegal time. Righetti Decl. Paras 13-14. Class Counsels'
19 hourly rates are fully supported by their experience and reputation in handling complex
20 employment litigation, including wage and hour class actions. Righetti Glugoski, P.C. is a law
21 firm with decades of experience litigating complex class actions in state and federal courts.
22 Righetti Decl. paras. 1-5. The firm has litigated many important wage and hour class action
23 cases at the appellate level over the past twenty years including *Sav-On Drug Stores, Inc. v.*
24 *Superior Court*, (2004) 34 Cal.4th 319, *Gentry v. Circuit City Stores, Inc.*, (2007) 42 Cal.4th
25 443, *Crab Addison v. Superior Court*, (2008) 169 Cal.App.4th 958, and *Kilby v. CVS* (2016) 63
26 Cal.4th 1. The firm's attorneys speak at various seminars on class actions and
27 labor/employment law and have contributed to legal publications on employment topics.

28

1 Righetti Decl., para. 4. Biographical information for the attorneys involved in handling this
2 litigation is included in the Righetti Declaration.

3 Class Counsel's rates are commensurate with the prevailing market rates in the San
4 Francisco Bay Area for attorneys of comparable experience and skill handling complex
5 litigation. Righetti Decl., paras. 6-15. Class Counsel have had higher rates approved by State
6 and Federal Courts – most recently at \$850.00/hr for Matthew Righetti and \$550.00/hr for
7 Michael Righetti; however, here Class Counsel are requesting slightly less per hour. Similar
8 rates have been approved by state and federal trial courts in California, including cases where
9 fees/rates were contested. Righetti decl., paras 14-15.

10 The nature of the work, the risk inherent in this kind of litigation and counsels'
11 experience justify the requested rates as well. The nature of the work in this case involved a
12 class action under California's wage and hour laws. Navigating the wage and hour laws is
13 difficult and not within the ambit of many lawyers. This area of law presents a patchwork of
14 both state and federal regulations where both the regulations and the agency/court
15 interpretations of the regulations are constantly evolving. Class action work in this area requires
16 specialized learning and the willingness to take large risks. Righetti Decl., para. 9. Again, not
17 many lawyers are adept at handling these cases with success due to these complicating factors.

18 Class Counsel have had unique success in wage and hour class actions dating back over
19 thirty years in this niche area of the law. They are held in high regard by the legal community.
20 This case was not a "fender-bender" that any lawyer could litigate, but a specialized area of
21 employment law that required skilled and experienced attorneys to achieve a favorable result.
22 There are a relatively small number of attorneys in California with Class Counsel's level of
23 expertise and experience. Therefore, the requested rates are reasonable.

24 **IV. PLAINTIFFS' CLASS REPRESENTATIVE ENHANCEMENT REQUESTS**
25 **ARE COMMENSURATE WITH THE RISKS THEY TOOK AND THE WORK**
26 **THEY PERFORMED ON BEHALF OF THE CLASS**

27 The request for a service award of \$20,000 for each of the class representatives' efforts
28 to help the class in connection with this case is fair and reasonable -- and there has been no
objection to the enhancement requests. To be sure, the enhancement request is substantial,

1 but it is well deserved for the bravery, fortitude, hard work and due diligence of the class
2 representatives – both of whom put in countless hours and were extremely organized in
3 advocating for the rights of all who are now benefitting as a result.

4 Service awards are recognized as serving an important function in promoting class
5 action settlements, particularly where the named plaintiffs participated in the litigation. In
6 *League of Martin v. City of Milwaukee*, 588 F.Supp. 1004 (E.D. Wis 1984), the court held that
7 the proposed settlement properly granted the named plaintiff an enhancement. It is “not
8 uncommon for class members... to receive special treatment in settlement,” especially when
9 they have been instrumental in prosecuting the lawsuit. *Id.* at 1024. Courts routinely approve
10 awards to class representatives who expend special efforts that benefit absent class members.
11 *White v. National Football League*, 822 F.Supp 1389, 1406 (D. Minn 1993); *See, e.g., Thorton*
12 *v. East Texas Motor Freight*, 497 F.2d 416,420 (6th Cir. 1974)(approving greater awards for
13 those who took a more active role in seeking class relief); *Huguley v. General Motors Corp.*,
14 128 F.R.D. 81,85 (E.D.Mich. 1989)(in a case where incentive awards not objected to, the court
15 noted that “named plaintiffs and witnesses are entitled to more consideration than class
16 members generally because of the onerous burden of litigation they have borne.”). *In Lo Re v.*
17 *Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210 at *16-17 (S.D.N.Y. May 23, 1979),
18 the court approved payment of \$229,000 out of a \$1,579,000 settlement fund for the named
19 plaintiffs, which represented the full value of their individual claims. One of the factors
20 considered by the court in determining that such payments were fair was the fact that none of
21 the absent class members had objected to these payments; another was the fact that plaintiffs’
22 efforts conferred a benefit on a substantial number of people. *Id.* at *17.

23 In this instance, the class representatives’ efforts in pursuing this litigation have
24 conferred a substantial economic benefit on current and former employees. Without these
25 efforts, absent class members would have received no economic benefit whatsoever. The
26 Notice provided to the class members advised them that Plaintiffs Sadino and Johnson would
27 seek additional compensation of up to \$20,000.00 each. To date, none of the class members
28 have objected to the proposed service awards in this action.

1 Here, both Plaintiffs were current employees when they started to pursue claims against
2 their employer. It is widely recognized that both current and former employees are extremely
3 hesitant to assert claims against major employers. Whether well-founded or not in every case,
4 workers have tremendous concerns that they will be retaliated against by their current employer
5 or “blackballed” within the industry. This phenomenon has been widely recognized by the
6 courts:

7 [A] current employee who individually sues his or her employer is at greater risk
8 of retaliation. We have recognized that retaining one's employment while
9 bringing formal legal action against one's employer is not "a viable option for
10 many employees." (*Richards v. CH2M Hill, Inc.* (2001) [26 Cal.4th 798, 821](#);
11 see also *Mullins v. Rockwell Internat. Corp.* (1997) [15 Cal.4th 731, 741](#).)

12 Indeed, federal courts have widely recognized that fear of retaliation for
13 individual suits against an employer is a justification for class certification in the
14 arena of employment litigation. (See, e.g., *Mullen v. Treasure Chest Casino, LLC* (5th Cir. 1999) [186 F.3d 620, 625](#) [it is "reasonably presumed" that
15 potential class members still employed by employer "might be unwilling to sue
16 individually or join a suit for fear of retaliation at their jobs"]; see also *Horn v.*
17 *Associated Wholesale Grocers, Inc.* (10th Cir. 1977) [555 F.2d 270,](#)
18 [275](#); *Arkansas Ed. Ass'n v. Board of Ed., Portland, Ark. Sch. Dist.* (8th Cir.
19 1971) [446 F.2d 763, 765](#); *Scott v. Aetna Services, Inc.* (D.Conn. 2002) [210](#)
20 [F.R.D. 261, 267](#); *Adames v. Mitsubishi Bank, Ltd.* (E.D.N.Y. 1989) [133 F.R.D.](#)
21 [82, 89](#) ["[s]ince here a number of putative members [of the class] are current
22 employees, the concern for possible employer reprisal action exists"]; *Simmons*
23 *v. City of Kansas City, Kan.* (D.Kan. 1989) [129 F.R.D. 178, 180](#); *Slanina v.*
24 *William Penn Parking Corp., Inc.* (W.D.Pa. 1985) [106 F.R.D. 419, 423-](#)
25 [424](#) ["[I]t needs no argument to show that fear of economic retaliation might
26 often operate to induce aggrieved employees quietly to accept substandard
27 conditions." (*Mitchell v. DeMario Jewelry* (1960) [361 U.S. 288, 292](#).)

28 *Gentry v. Superior Court*, 42 Cal.4th 443, 459-60 (Cal. 2007)

In this particular case, Plaintiffs performed their class representative duties in exemplary
fashion, and in doing so, they were extremely helpful to Class Counsel throughout all stages of
this case, including pre-filing investigation, discovery, class member outreach and the
settlement process. Righetti Decl. para. 20; see also Declarations of Aaron Sadino and Anthony
Johnson attached as Exhibits 8 and 9 respectively to the Righetti Decl. Additionally, Plaintiffs
provided Class Counsel with numerous documents supporting their own individual claims and

1 describing Defendant’s policies and procedures with respect to meal periods and rest breaks.
2 The Class Representatives assisted class counsel in understanding how Defendant operated its
3 business and the expectations it placed on the class members. Before engaging Class Counsel,
4 both Class Representatives had spent substantial time and resources advocating on their own
5 behalf in state court and before the Labor Commissioner. They provided contacts with other
6 employees and served as an invaluable “sounding board” with respect to information gathered
7 by Class Counsel. See Righetti, Johnson and Sadino Declarations.

8 The success of this case is due in large part to the commitment of the class
9 representatives. The enhancement award requested by Class Counsel, in the amount of
10 \$20,000.00 to each Plaintiff is on par with awards to class representatives in other class action
11 settlements with which Class Counsel have been involved. In *Doornbos v. Pilot Travel*, Case
12 No. 04CV00044 BEN (BLM), United States District Court for the Southern District of
13 California, Robert Benitez, approved service payments of \$20,000 each to the two named class
14 representatives in a wage and hour overtime class action which settled for \$3,900,000. In
15 *Lindley v. Discount Tire Centers, Inc.*, Case No. BC239094, the Honorable Judge Peter
16 Lichtman approved service payments totaling \$110,000 for the five class representatives in an
17 overtime class action, which settled for \$3,250,000.

18 Finally, in addition to the amount of time and effort spent by Plaintiffs, they risked a
19 judgment against themselves if they were not successful at trial. As the Court is aware, the
20 prevailing party is entitled to an award of statutory costs. If Plaintiffs had not been successful,
21 then they could have been personally liable for Defendant’s statutory costs. In this case, those
22 costs would have been substantial. Plaintiffs were aware and assumed this risk and agreed to
23 proceed forward knowing the risk involved. Altogether these facts support and justify the
24 requested enhancement awards of \$20,000.00. Based on the above, Class Counsel respectfully
25 request that this Court award additional compensation to Class Representatives Aaron Sadino
26 and Anthony Johnson in the amount of \$20,000.00 each.

27 **V. THE COURT SHOULD APPROVE THE PAYMENT FOR LITIGATION**
28 **COSTS AND COSTS OF ADMINISTRATION**

1 The request for reimbursement of costs is fair and reasonable. Righetti Glugoski, P.C.
2 incurred nearly \$73,000.00 in litigation costs, most of which was spent on depositions, data
3 analytics experts/consultants and mediation fees. Moreover, Class Counsel expect to incur
4 additional costs to see the settlement through to completion. See Righetti Decl. Exhibit 5. All
5 costs were reasonably and necessarily spent in furtherance of the prosecution of these claims,
6 and there have been no objections to the costs request from any Class Members.

7 Finally, Plaintiff requests that the Court approve settlement administration costs, which
8 have been capped at \$42,500.00. See Decl. of Elizabeth Kruckenberg on behalf of Phoenix
9 Settlement Administrators, which is attached as Exhibit 6 to the Righetti Decl.

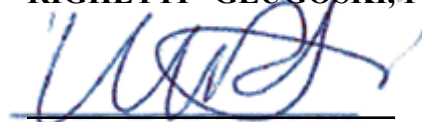
10 **VI. CONCLUSION**

11 Based on the foregoing, Plaintiffs respectfully requests that the Court approve the
12 requested fee award of \$525,000.00, reimbursement of litigation costs totaling \$72,991.07,
13 class representative enhancements of \$20,000.00 each to Plaintiff Aaron Sadino and Plaintiff
14 Anthony Johnson, and costs of administration totaling \$42,500.00.

15 Dated: May 7, 2021

Respectfully submitted,

RIGHETTI · GLUGOSKI, P.C.

17 

18
19 Michael C. Righetti
20 Attorneys for Plaintiff