

1 R. Rex Parris (SBN 96567)  
 rrparris@parrislawyers.com  
 2 Alexander R. Wheeler (SBN 239541)  
 awheeler@parrislawyers.com  
 3 Kitty K. Szeto (SBN 258136)  
 kszeto@parrislawyers.com  
 4 Ryan A. Crist (SBN 316653)  
 rcrist@parrislawyers.com  
 5 **PARRIS LAW FIRM**  
 43364 10th Street West  
 6 Lancaster, California 93534  
 Telephone: (661) 949-2595  
 7 Facsimile: (661) 949-7524

8 Attorneys for Plaintiff and the Putative Class

9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12

13 CHRISTINE CRUMP, individually, and on )  
 behalf of other members of the general public )  
 14 similarly situated and on behalf of other )  
 aggrieved employees pursuant to the )  
 15 California Private Attorneys General Act; )  
 16 Plaintiff,

17 v.

18 )  
 19 HYATT CORPORATION, an unknown )  
 business entity; and DOES 1 through 100, )  
 20 inclusive, )  
 21 Defendants. )  
 22 )  
 23 )  
 24 )

Case No. 4:20-cv-00295-HSG

**CLASS ACTION**

**PLAINTIFF CHRISTINE CRUMP'S UNOPPOSED**  
**MOTION FOR ATTORNEYS' FEES, COSTS, AND**  
**INCENTIVE AWARD**

Date: November 3, 2022  
 Time: 2:00 p.m.  
 Courtroom: 2

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PAGE**

NOTICE OF UNOPPOSED MOTION ..... 1

STATEMENT OF ISSUES TO BE DECIDED ..... 1

MEMORANDUM OF POINTS AND AUTHORITIES..... 1

1. PROCEDURAL HISTORY AND FACTUAL BACKGROUND..... 2

2. SUMMARY OF THE SETTLEMENT TERMS ..... 3

3. LEGAL STANDARD FOR ATTORNEYS’ FEES IN A CLASS ACTION SETTLEMENT..... 3

A. AN UPWARD ADJUSTMENT OF THE NINTH CIRCUIT’S  
BENCHMARK IS APPROPRIATE ..... 5

1. The Risks Assumed by Class Counsel Favor the Fee Award Sought..... 6

2. Class Counsel Obtained an Excellent Result for the Class..... 7

3. Class Counsel’s Award is Relatively Modest..... 8

4. Class Counsel Obtained Swift and Efficient Relief for the Class..... 8

5. The Skill and Reputation of Class Counsel Justifies the Fee Requested.... 9

4. ATTORNEYS’ FEES ARE ALSO APPROPRIATE UNDER THE LODESTAR METHOD..... 10

5. LITIGATION COSTS AND EXPENSES TO BE REIMBURSED TO CLASS COUNSEL ..... 12

6. THE CLASS REPRESENTATIVE INCENTIVE PAYMENT IS FAIR AND REASONABLE..... 12

CONCLUSION..... 14

**TABLE OF AUTHORITIES**

**PAGE(S)**

1

2

3 *Allapattah Services, Inc. v. Exxon Corp.*

4 454 F.Supp. 2d 1185, 1217 (S.D.Fla. 2006) ..... 5

5 *Armstrong v. Whirlpool Corp.*

6 2007 U.S. Dist. LEXIS 14635 (M.D. Tenn. 2007) ..... 6

7 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*

8 480 F.Supp. 1195 (S.D.N.Y. 1979), *aff’d* 622 F.2d 1106 (2nd Cir. 1980) ..... 10

9 *Boring v. Bed Bath & Beyond of California Ltd. Liab. Co.*

10 No. 12-CV-05259-JST, 2014 WL 2967474, at \*3 (N.D. Cal. June 30, 2014) ..... 13

11 *Brotherton v. Cleveland*

12 141 F.Supp.2d 907, 913–14 (S.D.Ohio 2001) ..... 14

13 *Dolgow v. Anderson*

14 43 F.R.D. 472, 481-84 (E.D.N.Y. 1968)..... 4

15 *Eddings v. Health Net, Inc.*

16 No. CV 10-1744-JST RZX, 2013 WL 3013867, at \*7 (C.D. Cal. June 13, 2013) ..... 14

17 *Fischel v. Equitable Life Assur. Society of U.S.*

18 307 F.3d 997, 1006-1008 (9th Cir. 2002) ..... 10, 11

19 *Garner v. State Farm Mut. Auto. Ins. Co.*

20 No. CV 08 1365 CW (EMC), 2010 WL 1687832, \*17 (Apr. 22, 2010) ..... 13

21 *Glass v. UBS Financial Services, Inc.*

22 2007 WL 221862, \*16 (N.D. Cal. Jan. 26, 2007) ..... 5

23 *Holman v. Experian Info. Solutions, Inc.*

24 No. 11-CV-0180 CW (DMR), 2014 WL 7186207, at \*6 (N.D. Cal. Dec. 12, 2014)..... 14

25 *In re Ampicillin Antitrust Litigation*

26 526 F. Supp. 494 (D.D.C. 1981) ..... 10

27 *In re Buspirone Patent & Antitrust Litig.*

28 MDL No. 1413, 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003) ..... 10

1 *In re Cardizem CD Antitrust Litig.*  
2 No. 99-73259 (E.D. Mich. Nov. 25, 2002) ..... 10  
3 *In re Interpublic Sec. Litig.*  
4 No. Civ. 6527 (DLC), 2004 U.S. Dist. LEXIS 21429, at \*30-31 (S.D.N.Y. Oct. 27, 2004)..... 4  
5 *In re KeySpan Corp. Sec. Litig.*, No. CV 2001-5852 (ARR) (MDG)  
6 2005 U.S. Dist. LEXIS 29068, at \*35 (E.D.N.Y. Aug. 25, 2005)..... 8  
7 *In re Linerboard Antitrust Litigation*  
8 MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at \* 49 (E.D. Pa. June 2, 2004) ..... 10  
9 *In re Pacific Enterprises Security Litigation*  
10 47 F.3d 373, 379 (9th Cir. 1995) ..... 3, 10  
11 *In re Relafen Antitrust Litig.*  
12 1:01cv12239-WGY, (Order and Final Judgment dated Apr 9, 2004, D. Mass.)..... 10  
13 *In Re Southern Ohio Correctional Facility*  
14 175 F.R.D. 270, 272 (S.D. Ohio 1997)..... 13  
15 *In re Washington Public Power Supply Sys. Sec. Litig.*  
16 19 F.3d 1291, 1300 (9th Cir. 1994) ..... 6, 8  
17 *Ingram v. The Coca-Cola Co.*  
18 200 F.R.D. 685, 694 (N.D. Ga. 2001)..... 13  
19 *Masters v. Wilhelmina Model Agency, Inc.*  
20 473 F.3d 423, 437 (2d Cir. 2006)..... 5  
21 *Mills v. Electric Auto-Lite Co.*  
22 396 U.S. 375 (1970)..... 4  
23 *Nichols v. Smithkline Beecham Corp.*, No. Civ. A. 00-6222  
24 2005 WL 950616, at \*24 (E.D. Pa. Apr. 22, 2005) ..... 10  
25 *North Shore Hematology-Oncology Assoc., P.C. v. Bristol-Myers Squibb Co.*  
26 No. 04 Civ. 248 (D.D.C. Nov. 30, 2004)..... 10  
27 *Paul, Johnson, Alston & Hunt v. Gaulty*  
28 886 F.2d 268, 272 (9th Cir. 1989) ..... 3, 4

1 *Razilov v. Nationwide Mut. Ins. Co.*  
 2 No. 01-CV-1466-BR, 2006 WL 3312024, at \*4 (D. Or. Nov. 13, 2006) ..... 13  
 3 *Singer v. Becton Dickinson and Co.*, 08-cv-821-IEG (BLM)  
 4 2010 WL 2196104, at \*9 (S.D. Cal. June 1, 2010)..... 14  
 5 *Six Mexican Workers v. Arizona Citrus Growers*  
 6 904 F.2d 1301, 1311 (9th Cir. 1990) ..... 3, 4, 5  
 7 *Smith v. CRST Van Expedited, Inc.*  
 8 No. 10-CV-1116- IEG WMC, 2013 WL 163293, at \*6 (S.D. Cal. Jan. 14, 2013)..... 14  
 9 *Van Vranken v. Atlantic Richfield Co.*  
 10 901 F.Supp. 294, 297-298 (N.D.Cal. 1995)..... 10, 13, 14  
 11 *Vizcaino v. Microsoft Corp.*  
 12 290 F.3d 1043, 1047 (9th Cir. 2002) ..... passim  
 13 *Vranken v. Atlantic Richfield Co.*  
 14 901 F.Supp. 294, 299 (N.D. Cal. 1995) ..... 10, 12  
 15 *Waters v. International Precious Metals Corp.*  
 16 190 F.3d 1291, 1295-96 (11th Cir. 1999) ..... 5  
 17 *Williams v. MGM-Pathe Communications*  
 18 129 F.3d 1026, 1026-27 (9th Cir. 1997) ..... 5  
 19 *Young v. Polo Retail, LLC*  
 20 2007 WL 951821, \*8 (N.D. Cal. 2007) ..... 5

21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1 **NOTICE OF UNOPPOSED MOTION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that on November 3, 2022, at 2:00 p.m., or as soon thereafter  
4 as this matter may be heard before the Honorable Haywood S. Gilliam, Jr. in Courtroom 2 of the  
5 above-entitled court located at 1301 Clay Street, Oakland, California 94612, Plaintiff Christine  
6 Crump (“Plaintiff”) will seek an order granting final approval of:

- 7
- Attorneys’ fees in the amount of **\$346,500** to Class Counsel;
  - Litigation costs and expenses in the amount of **\$97,158.56** to Class Counsel; and
  - A Class Representative Incentive Payment in the amount of **\$10,000** to Plaintiff.
- 8  
9

10 This motion is based on the following memorandum of points and authorities; the  
11 Declarations of Kitty K. Szeto and Christine Crump in support thereof; the [Proposed] Order  
12 lodged together with this motion, as well as upon the pleadings and other records on file with the  
13 Court in this matter, and upon such documentary evidence and oral argument as may be  
14 presented at or before the hearing on this motion.

15 **STATEMENT OF ISSUES TO BE DECIDED**

16 Whether to grant final approval of Plaintiff’s attorneys’ fees, costs, and incentive award.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 Plaintiff Christine Crump (“Plaintiff”) seeks final approval of attorneys’ fees (\$346,500)  
19 and costs (\$97,158.56) to Class Counsel and a Class Representative Incentive Payment (\$10,000)  
20 to Plaintiff to be paid out of the \$990,000.00 class action settlement. This hotly-contested class  
21 action has been actively litigated for over a year and involved ongoing investigations, the  
22 exchange of written discovery and the analysis of close to 1,000 pages of documents and  
23 voluminous time and payroll data, taking and defending 10 non-expert and expert depositions, a  
24 partially briefed motion for class certification, attending an arms-length mediation, and post-  
25 mediation settlement negotiations. The \$990,000 class action settlement was obtained through  
26 these efforts by Plaintiff and Class Counsel as detailed below. Accordingly, the Court should  
27 grant final approval of Plaintiff’s request for attorneys’ fees, costs, and incentive award.

28 ////

1 **1. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

2 On December 6, 2019, Plaintiff filed her original Complaint against Defendant on behalf  
3 of the Class. The Complaint was removed to federal court based on jurisdiction under the Class  
4 Action Fairness Act. On August 5, 2020, Plaintiff filed a First Amended Complaint on behalf of  
5 the Class. Plaintiff asserted nine causes of action in her First Amended Complaint against  
6 Defendant: (1) “Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period  
7 Premiums)”;

8 (2) “Violation of California Labor Code §§ 226.7 (Unpaid Rest Period Premiums)”;

9 (3) “Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages)”;

10 (4) “Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid)”;

11 (5) “Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment)”;

12 (6) “Violation of California Labor Code § 226(a) (Non-Complaint Wage Statements)”;

13 (7) “Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records)”;

14 (8) “Violation of California Business & Professions Code § 17200, et seq.”; and (9) “Violation of  
15 California Labor Code § 2698, et seq.(California Labor Code Private Attorney General Act of  
16 2004).” Like the original Complaint, the First Amended Complaint sought unpaid wages, actual  
17 damages, statutory damages, monetary damages, interest, statutory penalties, civil penalties,  
18 liquidated damages, restitution, declaratory and injunctive relief, equitable relief, pre-judgment  
19 interest, and attorneys’ fees and costs.

20 During the litigation of this Action, the Parties have engaged in extensive written  
21 discovery. Defendant served a Notice of Oral Deposition and completed Plaintiff’s deposition.  
22 Defendant also served a Demand for Production of Documents, and received documents from  
23 Plaintiff. Plaintiff also propounded multiple sets of Interrogatories and Demands for Production  
24 against Defendant, and received responses from Defendant. Plaintiff served a notice of  
25 deposition of Defendant under Rule 30(b)(6), and completed that deposition. The parties also  
26 took the depositions of various expert witnesses and class declarants.

27 Class Counsel investigated the claims against Defendant in the Action and also analyzed  
28 all applicable defenses raised by Defendant. The investigation included review of documents  
produced during discovery, deposition of Plaintiff, deposition of Defendant’s corporate witness,

1 depositions of putative class member declarants, depositions of Plaintiff's retained experts,  
2 several conferences between Class Counsel and Defendant's Counsel, conferences between the  
3 Parties and the Court, and Class Counsel's further interviews of the Class Representative and  
4 other Class Members. Class Counsel believed it had obtained enough information to file a  
5 Motion for Class Certification and subsequently filed a Motion for Class Certification on May 6,  
6 2021. Similarly, Defendant's Counsel similarly believes it had obtained enough information to  
7 file an Opposition to Plaintiff's Motion for Class Certification, which it filed on July 15, 2021.

8 On July 20, 2021, the parties participated in a full day of mediation with Paul Grossman,  
9 Esq., a well-respected class and representative action mediator. While the case did not settle at  
10 the mediation, the parties continued settlement negotiations with the assistance of the mediator  
11 and ultimately reached the Settlement.

## 12 **2. SUMMARY OF THE SETTLEMENT TERMS**

13 Under the terms of the Settlement, Defendant shall pay a Gross Settlement Amount of  
14 **\$990,000.00**. All funds remaining after deduction of the Class Representative Incentive Payment  
15 (\$10,000), Attorneys' Fees (\$346,500), Costs (\$97,158.56), the LWDA Payment (\$37,500), and  
16 Settlement Administration Costs (\$85,000) will result in a net settlement amount of \$413,841.44  
17 ("Net Settlement Amount") that will be automatically paid out to all Settlement Class Members  
18 on a pro-rata basis based on the number of Weeks Worked.

## 19 **3. LEGAL STANDARD FOR ATTORNEYS' FEES IN A CLASS ACTION SETTLEMENT**

20 Class Counsel seeks approval of an attorneys' fee award equal to 35% of the total value  
21 of the settlement fund established by the settlement agreement. An award of attorneys' fees as a  
22 percentage of a fund established by a settlement is well-established in Ninth Circuit  
23 jurisprudence; the Ninth Circuit's benchmark for such common fund awards is 25% of the  
24 common fund. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Six*  
25 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul,*  
26 *Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *In re Pacific Enterprises*  
27 *Security Litigation*, 47 F.3d 373, 379 (9th Cir. 1995); *In re Activision Securities Litigation*, 723  
28 F. Supp. 1373, 1375 (N.D. Cal. 1989).



1 This “common fund” doctrine, under which attorneys who create a common fund or  
 2 benefit for a group of persons may be awarded their fees and costs out of the fund, has long been  
 3 a staple of class action settlements in federal courts generally: “a lawyer who recovers a common  
 4 fund for the benefit of persons other than...his client is entitled to a reasonable attorney’s fee  
 5 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v.*  
 6 *Electric Auto-Lite Co.*, 396 U.S. 375 (1970).<sup>1</sup> Federal courts, and particularly the Ninth Circuit,  
 7 have endorsed the percentage method as a fair way to calculate a reasonable fee when  
 8 contingency fee litigation has produced a common fund. *See, e.g., Blum v. Stenson*, 465 U.S.  
 9 886, 900 n.16 (1984) (under common fund doctrine, “reasonable fee is based on a percentage of  
 10 the fund bestowed on the class”); *Six Mexican Workers*, 904 F.2d at 1311 (common fund fee is  
 11 generally “calculated as a percentage of the recovery”); *Paul, Johnson, Alston & Hunt v.*  
 12 *Grauly*, 886 F.2d 268, 272 (9th Cir. 1989).

13 Courts have recognized that, in addition to providing just compensation, awards of fair  
 14 attorneys’ fees from a common fund should also serve to encourage skilled counsel to represent  
 15 those who seek redress for damages inflicted on entire classes of persons, and to discourage  
 16 future alleged misconduct of a similar nature. *See, e.g., Dolgow v. Anderson*, 43 F.R.D. 472,  
 17 481-84 (E.D.N.Y. 1968). Courts in this Circuit have consistently adhered to these teachings.  
 18 *See In re Interpublic Sec. Litig.*, No. Civ. 6527 (DLC), 2004 U.S. Dist. LEXIS 21429, at \*30-31  
 19 (S.D.N.Y. Oct. 27, 2004) (“It is well established that where an attorney creates a common fund  
 20 from which members of a class are compensated for a common injury, the attorneys who created  
 21 the fund are entitled to ‘a reasonable fee – set by the court – to be taken from the fund.’”)  
 22 (citation omitted). The “[d]etermination of ‘reasonableness’ is within the discretion of the  
 23 district court.” *Id* at \*31.

24 The Ninth Circuit has made clear that when a fund is established which makes a pool of  
 25 money available to a class of persons, the attorneys’ fees for the plaintiffs’ counsel are properly  
 26

27 <sup>1</sup> The common fund doctrine rests on the understanding that attorneys should normally be paid by their  
 28 clients, and that unless attorneys’ fees are paid out of the common fund where the attorneys’ unnamed class member  
 “clients” have no express 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.

1 calculated as a percentage of the entire fund. *See Williams v. MGM-Pathe Communications*, 129  
 2 F.3d 1026, 1026-27 (9th Cir. 1997). In *Boeing*, the Court concluded that the attorneys for a  
 3 successful class may recover a fee based on the entire common fund created for the class, even if  
 4 some class members make no claims against the fund so that money remains in it that otherwise  
 5 would be returned to the defendants. *Boeing*, 444 U.S. at 480-81; *see also Six Mexican Workers*,  
 6 904 F.2d at 1311; *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2006);  
 7 *Waters v. International Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999); *Glass*  
 8 *v. UBS Financial Services, Inc.*, 2007 WL 221862, \*16 (N.D. Cal. Jan. 26, 2007); *Young v. Polo*  
 9 *Retail, LLC*, 2007 WL 951821, \*8 (N.D. Cal. 2007).

10 Substantial fee awards in successful cases, such as the present action, encourage and  
 11 support meritorious class actions, and thereby promote private enforcement of, and compliance  
 12 with federal laws. The continued viability of wage-and-hour laws, like the viability of other  
 13 remedial statutes, depends on the ability of private litigants to seek redress through litigation.  
 14 The success of these lawsuits depends in part on the availability and willingness of attorneys to  
 15 bring them. Substantial fee awards also encourage reputable law firms with skilled, capable  
 16 attorneys to take the risk of serving as “private attorneys general.” Indeed, “[a]bsent an award of  
 17 fees that adequately compensates Class Counsel, the entire purpose and function of class  
 18 litigation under Rule 23 of the Federal Rules of Civil Procedure will be undermined and  
 19 subverted to the interest of those lawyers who would prefer to take minor sums to serve their  
 20 self-interest rather than obtaining real justice on behalf of their injured clients.” *Allapattah*  
 21 *Services, Inc. v. Exxon Corp.*, 454 F.Supp. 2d 1185, 1217 (S.D.Fla. 2006).

22 **A. AN UPWARD ADJUSTMENT OF THE NINTH CIRCUIT’S BENCHMARK IS**  
 23 **APPROPRIATE**

24 Although the Ninth Circuit established 25% as a “benchmark” for attorneys’ fee awards  
 25 that are established out of a common fund, where, as here, circumstances merit it, “[t]hat  
 26 percentage amount can then be adjusted upward or downward to account for any unusual  
 27 circumstances involved in [the] case.” *Paul*, 886 F.2d at 272. Given the results achieved and the  
 28 difficulties attendant in litigating this case, an upward adjustment is warranted.

1 In *Vizcaino*, the Ninth Circuit laid out the factors to be considered in adjusting a fee  
2 award from the “benchmark.” See *Vizcaino*, 290 F.3d at 1047-1050. These are: (i) the size of  
3 the fund (and thus the resulting size of the percentage fee award); the quality of the results  
4 obtained by Plaintiff’s counsel; (ii) the risk taken on by Plaintiff’s counsel in accepting and  
5 pursuing the case with no guarantee of victory or being paid for their time and effort; (iii)  
6 incidental or non-monetary benefits conferred by the settlement; (iv) the effort expended by  
7 Plaintiff’s counsel; (v) Plaintiff’s counsel’s reasonable expectations based on the circumstances  
8 of the case and fee awards in other cases; and, to a certain extent, the percentage fee award  
9 originally contracted for between Plaintiff and Plaintiff’s counsel. *Id.* A consideration of the  
10 *Vizcaino* factors shows that Plaintiff’s Counsel’s request for 35% the total value of the settlement  
11 is exceedingly reasonable.

12 **1. The Risks Assumed by Class Counsel Favor the Fee Award Sought**

13 Class Counsel assumed a very real risk in taking on this case. Plaintiff took on a national  
14 corporation defended by a national law firm with far more resources than Class Counsel. Class  
15 Counsel took the case on a contingency basis, and invested time, effort, and money with no  
16 guarantee of any recovery. In cases where the “recovery is far from certain,” as here, an award  
17 of more than 25% of the common fund as attorneys’ fees is appropriate. *In re Washington*  
18 *Public Power*, 19 F.3d at 1302; see also *Vizcaino*, 290 F.3d at 1048.

19 Class Counsel proceeded knowing there was a chance that Defendant would prevail and  
20 that even if Plaintiff prevailed, there was a chance that the case would take years to bring to trial  
21 and would not be resolved without an appeal. The risk of no recovery in complex class actions  
22 of this type is very real. There are numerous cases where Plaintiff’s counsel in contingent-fee  
23 cases such as this one, after devoting hundreds of hours and advancing significant sums in out-  
24 of-pocket expenditures, received no compensation whatsoever. See, e.g., *Armstrong v.*  
25 *Whirlpool Corp.*, 2007 U.S. Dist. LEXIS 14635 (M.D. Tenn. 2007) (denying class certification  
26 of racial harassment claims); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)  
27 (“The risk of maintaining class action status throughout the trial” was an important favor in  
28

1 approving the class action settlement.). From the outset Defendant has adamantly denied any  
2 liability and continues to do so today.

3 This was a complicated and uncertain case in which Defendant vehemently contested  
4 liability. This action has been pending since 2019. There have been voluminous discovery and  
5 related disputes that have required substantial efforts by Plaintiff's counsel. Plaintiff's counsel  
6 have made a significant effort on behalf of the Class, including taking and defending class  
7 member and expert depositions up and down the State of California, without assurance of any  
8 compensation. The risks of the case and litigation obstacles were great, but Plaintiff's counsel,  
9 nevertheless, achieved an extremely successful result, and thus, this *Vizcaino* factor militates in  
10 favor of the fee award sought by Plaintiff's counsel.

## 11 **2. Class Counsel Obtained an Excellent Result for the Class**

12 The result obtained by Class Counsel here is remarkable in light of the current status of  
13 the case. The parties were in the midst of class certification briefing when the settlement was  
14 obtained.

15 Class Counsel diligently and effectively investigated Plaintiff's claims, drafted the  
16 Complaint, interviewed witnesses, prepared and responded to discovery, reviewed and analyzed  
17 documents produced, prepared for and defended the deposition of the Class Representative, and  
18 filed a Motion for Class Certification. Class Counsel concluded that the Settlement reflected in  
19 this Agreement is in the best interests of the Class, after reviewing Plaintiff's deposition  
20 transcript, completing interviews with potential Class Members, reviewing Defendant's policies,  
21 conferring with Defendant's Counsel regarding Defendant's arguments in support of an  
22 Opposition to the Motion for Class Certification, and evaluating the risk that further litigation  
23 might result in Plaintiff not recovering anything at all was a very significant factor in  
24 determining that this Agreement is fair, reasonable, and adequate. As a result of the settlement,  
25 all of the Settlement Class Members will be provided with an automatic recovery. Thus, this  
26 *Vizcaino* factor greatly favors Plaintiff's Counsel's fee request.

27 The fairness of this fee request is further supported by the high quality of Plaintiff's  
28 Counsel's legal representation as described above and in the declaration. Plaintiff's Counsel's

1 highly-informed, diligent, and efficient prosecution of this matter positioned Plaintiff to  
 2 successfully settle this case, affording redress to the entire proposed settlement class, and  
 3 avoided the inevitable expense and risk attendant with protracted litigation.

4 The quality of opposing counsel is also important in evaluating the quality of Plaintiff's  
 5 Counsel's work.<sup>2</sup> Here, as set forth above, Defendant is represented by experienced and skilled  
 6 lawyers from a law firm with a deserved reputation for vigorous advocacy in the defense of  
 7 complex employment class action cases. The ability of Class Counsel to obtain this Settlement  
 8 in the face of such formidable legal opposition confirms the quality of Class Counsel's  
 9 representation. Accordingly, this factor strongly supports the requested fee.

### 10 **3. Class Counsel's Award is Relatively Modest**

11 Here, Class Counsel seeks 35% of the value of the settlement fund of \$990,000. Most  
 12 Ninth Circuit cases consider the size of the settlement fund for purposes of evaluating fee  
 13 requests, in relation to how large it renders the resulting fee award. *See, e.g., In re Washington*  
 14 *Public Power*, 19 F.3d at 1297 ("the percentage of an award generally decreases as the amount of  
 15 the fund increases"). The fee request is less than the Net Settlement Amount that will be paid to  
 16 the Class. Accordingly, the fee request here is in line with Ninth Circuit precedent.

### 17 **4. Class Counsel Obtained Swift and Efficient Relief for the Class**

18 While the *Vizcaino* court considered the protracted litigation in that case, it stressed:  
 19 "We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a  
 20 case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely  
 21 result for class members in need of immediate relief." *Vizcaino*, 290 F.3d at 1050, n. 5. In fact,  
 22 the Court acknowledged that using time expended as a proxy for the effort expended on or  
 23 success of a case "creates incentives for counsel to expend more hours than may be necessary on  
 24 litigating a case so as to recover a reasonable fee," and that such an evaluation "does not reward  
 25 early settlement." *Id.* Here, Class Counsel achieved a substantial benefit for class members in a  
 26 very timely fashion, providing class members with substantial and certain relief much sooner

---

27  
 28 <sup>2</sup> *See In re KeySpan Corp. Sec. Litig.*, No. CV 2001-5852 (ARR) (MDG), 2005 U.S. Dist. LEXIS 29068, at  
 \*35 (E.D.N.Y. Aug. 25, 2005) ("The quality of opposing counsel is also important in evaluating the quality of Class  
 Counsel's work.").

1 than if this matter had been extensively litigated. There is no doubt that either side would have  
2 appealed the trial verdict.

3 Moreover, Class Counsel did not sacrifice due diligence in achieving an efficient  
4 resolution of this case. As discussed above, Class Counsel litigated this case heavily, took and  
5 defended depositions up and down the state, and reviewed hundreds of pages of relevant  
6 documents produced by Defendant. Dkt. 70-1 at ¶ 1. In addition, Class Counsel spoke with  
7 numerous Class Members concerning their claims. Hence, Class Counsel's request for fees is  
8 reasonable here.

### 9 **5. The Skill and Reputation of Class Counsel Justifies the Fee Requested**

10 As shown in the accompanying declaration, Class Counsel are recognized leaders in  
11 employment class actions, and put the full use of their skill and experience to work in the service  
12 of Plaintiff and the Class in this case. *Id.* at ¶ 8. As a result, these factors favor the fee award  
13 sought by Class Counsel. The Parris Law Firm has dedicated itself to this case. Class Counsel  
14 are nationally-recognized trial and class-action attorneys and employed their knowledge, skill,  
15 and experience in bringing to conclusion a very favorable result in a unique, hard-fought  
16 litigation. *Ibid.* The goal achieved is the extraordinary result of obtaining \$990,000.00 for the  
17 Class. Class counsel respectfully requests an award of attorneys' fees equal to 35% of that  
18 amount.

### 19 **6. Reasonable Expectations of Counsel and Customary Fees in Similar** 20 **Cases**

21 Class Counsel knew this case would be an uphill battle, yet still took Defendant on a  
22 contingency basis. And they were right. Defendant fought this case strenuously and spared no  
23 expense on discovery and fighting Plaintiff's experts and Plaintiff's class member declarants.  
24 Accordingly, there was a reasonable expectation based on the circumstances of the case and  
25 given the amount of work and hours Class Counsel devoted to this case that warrants an upward  
26 adjustment of the 25% benchmark to 35% of the Gross Settlement Amount.

27 This adjusted fee request is commensurate with federal court -- and, in particular, Ninth  
28 Circuit -- precedent: case surveys reflect that awards of this amount, or more, are common.

1 Newberg, Newberg on Class Actions, 4th Ed., 2002 §14.6; *Van Vranken v. Atlantic Richfield*  
 2 *Co.*, 901 F.Supp. 294, 297-298 (N.D.Cal. 1995) (citing cases awarding an award of 33%).  
 3 Indeed, many courts have approved common fund fee awards equivalent to or greater than the  
 4 percentage requested here, and even when the award results in a substantial multiplier. *See, e.g.*,  
 5 *In re Pacific Enterprises*, 47 F.3d at 379 (affirming an award equal to 33% of the common fund);  
 6 *In re Ampicillin Antitrust Litigation*, 526 F. Supp. 494 (D.D.C. 1981) (45% of settlement fund);  
 7 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*, 480 F.Supp. 1195 (S.D.N.Y. 1979),  
 8 *aff'd* 622 F.2d 1106 (2nd Cir. 1980) (53% of settlement fund); *Van Gemert v. Boeing Co.*, 516 F.  
 9 Supp. 412, 420 (S.D.N.Y. 1981) (36% of settlement fund); *In re Buspirone Patent & Antitrust*  
 10 *Litig.*, MDL No. 1413, 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003) (multiplier was  
 11 more than eight times counsel's lodestar) ("BuSpar"); *North Shore Hematology-Oncology*  
 12 *Assoc., P.C. v. Bristol-Myers Squibb Co.*, No. 04 Civ. 248 (D.D.C. Nov. 30, 2004), (multiplier  
 13 was well over eight times counsel's lodestar); *In re Relafen Antitrust Litig.*, 1:01cv12239-WGY,  
 14 (Order and Final Judgment dated Apr 9, 2004, D. Mass.) (multiplier of 4.88 awarded); *In re*  
 15 *Cardizem CD Antitrust Litig.*, No. 99-73259 (E.D. Mich. Nov. 25, 2002) (approving multiplier of  
 16 approximately 3.7); *Nichols v. Smithkline Beecham Corp.*, No. Civ. A. 00-6222, 2005 WL  
 17 950616, at \*24 (E.D. Pa. Apr. 22, 2005) (approving multiplier of 3.15); *In re Linerboard*  
 18 *Antitrust Litigation*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at \* 49 (E.D. Pa. June 2,  
 19 2004) (approving 2.66 multiplier). Accordingly, Class Counsel's 35% fee request is in line with  
 20 the customary fees awarded in similar cases given the amount of work Class Counsel devoted on  
 21 behalf of the Class.

22 **4. ATTORNEYS' FEES ARE ALSO APPROPRIATE UNDER THE LODESTAR METHOD**

23 Ninth Circuit law regards both the percentage and lodestar methods as acceptable ways to  
 24 calculate fees for class counsel in class action settlements. *Vizcaino*, 290 F.3d at 1047; *Fischel v.*  
 25 *Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1006-1008 (9th Cir. 2002). Thus, while  
 26 some courts use the lodestar to "check" the reasonableness of a fee request, an examination of  
 27 Class Counsel's lodestar is unnecessary here. *Vizcaino*, 290 F.3d at 1047. But even if this Court  
 28

1 were to apply a lodestar cross-check on the percentage fee award sought, 35% of the Settlement  
2 Fund is an appropriate fee award in this case.<sup>3</sup>

3 Class Counsel provided a chart detailing the time worked on the case with a description of  
4 the work they performed and the amount of time spent on each task. Dkt. 70-1 at ¶ 5. This chart  
5 shows that the fee award requested is reasonable under the lodestar check as well as the  
6 percentage method.

7 “Under the lodestar method, the court multiplies a reasonable number of hours by a  
8 reasonable hourly rate.” *Fischel*, 307 F.3d at 1006. As with the percentage method, “a court can  
9 adjust the lodestar upward or downward based on certain factors.” *Id.* at 1007. Increasing the  
10 lodestar is done by the inclusion of a “multiplier.” *Vizcaino*, 290 F.3d at 1051. The *Vizcaino*  
11 Court found that 83 percent of courts in the common fund cases it surveyed assessed a multiplier  
12 to class counsel’s lodestar of between 1.0 and 4.0. *Id.* at 1051, n. 6.

13 Here, Class Counsel spent 908 hours on this case which equates to a lodestar of \$499,400  
14 that well exceeds the \$346,500 fee request. Dkt. 70-1 at ¶ 5. These hours were spent preparing  
15 for class certification, taking and defending 10 non-expert and expert depositions and traveling to  
16 and from each of them, and reviewing close to 1,000 pages of documents and time and payroll  
17 data. *Id.* Each task and hour spent by Class Counsel was necessary to achieve the settlement  
18 result for the class. Class Counsel obtained this settlement efficiently, affording redress to the  
19 Class Members swiftly, without forcing them to wait through protracted, and risky, litigation.  
20 Class Counsel was able to settle this case for a substantial amount under the circumstances,  
21 especially considering the difficulty of the case and Defendant’s defenses. Class Counsel  
22 includes experienced class action attorneys. *Id.* at ¶ 8. They used their full abilities to achieve  
23 the successful result here. As shown above, the award requested here is fully in line with awards  
24 in much larger cases, where the fees requested are many times the fees requested here.

25 \_\_\_\_\_  
26 <sup>3</sup> While federal courts generally do not include multipliers in fee awards, “[t]he bar against risk multipliers in  
27 statutory fee cases does not apply to common fund cases.” *Vizcaino*, 290 F.3d at 1051. In any event, Plaintiff’s  
28 counsel does not seek fees through the use of a multiplier in this case; this section is merely to show that the award  
is imminently reasonable when checked by the lodestar/multiplier method. Moreover, Plaintiff’s complaint includes  
claims under California law, which does not bar the use of multipliers to assess attorneys’ fee awards. *See Lealao v.*  
*Beneficial California, Inc.*, 82 Cal.App.4th 19, 26 (2000).



1 **5. LITIGATION COSTS AND EXPENSES TO BE REIMBURSED TO CLASS COUNSEL**

2 Plaintiff seeks final approval of an award of litigation costs and expenses as detailed in  
3 the declaration of Class Counsel, totaling \$97,158.56. Dkt. 70-1 at ¶ 10. This includes the costs  
4 for filing the complaint, the cost to take and defend 10 non-expert and expert depositions up and  
5 down the state and to obtain certified copies of the deposition transcripts, mediation costs with a  
6 reputable wage-and-hour class action mediator, expert costs incurred in connection with  
7 Plaintiff's motion for class certification, as well as costs relating to Class Counsel traveling to  
8 court appearances and depositions. These expenses are reasonable and necessary in the  
9 prosecution of this class action for the last two years. Importantly, this is \$2,841.44 *less than* the  
10 \$100,000 allocated in the Settlement Agreement, meaning \$2,841.44 will be added back to the  
11 Net Settlement Amount to be distributed to the Settlement Class. Accordingly, the Court should  
12 grant final approval of \$97,158.56 to Class Counsel for litigation costs and expenses.

13 **6. THE CLASS REPRESENTATIVE INCENTIVE PAYMENT IS FAIR AND REASONABLE**

14 Plaintiff requests that the Court approve a Class Representative Incentive Payment in the  
15 total amount of \$10,000 to Class Representative Christine Crump for her efforts in filing and  
16 assisting in this class action lawsuit. It is within the Court's discretion to award to the Class  
17 Representative for her efforts and work. *Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299  
18 (N.D. Cal. 1995) (approving \$50,000 participation award to a single class representative). The  
19 criteria courts may consider in determining whether to make an incentive award include: 1) the  
20 risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety  
21 and personal difficulties encountered by the class representative; 3) the amount of time and effort  
22 spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or  
23 lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

24 Incentive payments to named plaintiffs are frequently awarded to recognize their time and  
25 efforts, and the risks they undertake on behalf of a class. Courts routinely award service  
26 payments, which are intended to advance public policy by encouraging individuals to come  
27 forward and perform their civic duty in protecting the rights of the class, as well as to  
28 compensate class representatives for their time, effort and inconvenience. *Ingram v. The Coca-*

1 *Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), quoting *In Re Southern Ohio Correctional*  
2 *Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (“Courts routinely approve incentive awards to  
3 compensate named plaintiffs for the services they provided and the risks they incurred during the  
4 course of the class action litigation.”). In the *Ingram* case, the Court approved incentive awards  
5 of \$300,000 to each named plaintiff in recognition of the services they provided to the class by  
6 responding to discovery, participating in the mediation process and taking the risk of stepping  
7 forward on behalf of the class. *Id* at 694; see also *Van Vranken*, 901 F. Supp. at 300 (N.D. Cal.  
8 1995) (approving \$50,000 participation award for the representative Plaintiff).

9 Incentive awards are particularly appropriate where the “class representative[ ] remain[s]  
10 fully involved and expended considerable time and energy during the course of the litigation.”  
11 *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-CV-1466-BR, 2006 WL 3312024, at \*4 (D. Or.  
12 Nov. 13, 2006). Plaintiff spearheaded this lawsuit. Dkt. 70-2 at ¶ 4. She committed time to the  
13 litigation by reviewing pleadings, communicating with Class Counsel during the prosecution of  
14 this case, and sitting for deposition, warranting an incentive award.<sup>4</sup> See *Garner v. State Farm*  
15 *Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, \*17 (Apr. 22, 2010)  
16 (approving a \$20,000 award where plaintiff “made herself available for deposition on two  
17 separate occasions; met with Class Counsel on six separate occasions; attended the full-day  
18 Court-ordered appraisal hearing; spoke with Class Counsel and their staff on many occasions;  
19 reviewed all major pleadings; and repeatedly responded to interrogatories and document  
20 requests.”)

21 The Class Representative Incentive Payment is further justified because Plaintiff has  
22 agreed to the full general release of her claims against Defendant, which is much broader than  
23 the release that applies to the class. Dkt. 70-2 at ¶ 16. Broad releases of the named plaintiff’s  
24 claims that go beyond what is required of the class members are taken into account when  
25 considering the reasonableness of the incentive award. See *Boring v. Bed Bath & Beyond of*  
26 *California Ltd. Liab. Co.*, No. 12-CV-05259-JST, 2014 WL 2967474, at \*3 (N.D. Cal. June 30,  
27 2014); *Holman v. Experian Info. Solutions, Inc.*, No. 11-CV-0180 CW (DMR), 2014 WL

---

28 <sup>4</sup> Dkt. 70-2 at ¶¶ 4-15.

1 7186207, at \*6 (N.D. Cal. Dec. 12, 2014) (finding that the class representative is entitled to an  
 2 incentive award “for his service to the class and for his broad release of all claims, known or  
 3 unknown, against [the defendant]”); *Eddings v. Health Net, Inc.*, No. CV 10-1744-JST RZX,  
 4 2013 WL 3013867, at \*7 (C.D. Cal. June 13, 2013) (approving the incentive award in part  
 5 because the plaintiff executed “a general release that will resolve her individual claims, as well  
 6 the class claims”).

7 Notably, the award is also well within the acceptable range awarded in similar cases.  
 8 *See, e.g., Van Vranken v. Atlantic Richfield*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (holding  
 9 that incentive awards of \$50,000 to each named plaintiff was fair and reasonable); *Singer v.*  
 10 *Becton Dickinson and Co.*, 08-cv-821-IEG (BLM), 2010 WL 2196104, at \*9 (S.D. Cal. June 1,  
 11 2010) (finding class representative award of \$25,000 reasonable); *Smith v. CRST Van Expedited,*  
 12 *Inc.*, No. 10-CV-1116- IEG WMC, 2013 WL 163293, at \*6 (S.D. Cal. Jan. 14, 2013) (holding  
 13 that incentive awards of \$15,000 for each of the three named representatives was “well within  
 14 the range awarded in similar cases”); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913–14  
 15 (S.D. Ohio 2001) (approving an award of \$50,000 where the class representative “has been  
 16 instrumental in bringing [the] lawsuit forward” and “has performed numerous tasks in  
 17 association with [the] litigation”). Without the effort of Plaintiff, this case would not have been  
 18 filed and a classwide settlement would not have been achieved. The proposed \$10,000 Class  
 19 Representative Incentive Payment to Plaintiff is therefore appropriate and justified.

### 20 CONCLUSION

21 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final  
 22 approval of attorneys’ fees in the amount of **\$346,500** to Class Counsel, litigation costs and  
 23 expenses in the amount of **\$97,158.56** to Class Counsel; and a Class Representative Incentive  
 24 Payment in the amount of **\$10,000** to Plaintiff.

25 DATED: July 22, 2022

26 **PARRIS LAW FIRM**

27 By: /s/ Kitty K. Szeto

28 Kitty K. Szeto  
 Attorneys for Plaintiff and the  
 Putative Class