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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

TANIKA TURLEY and CHRISTOPHER THOMPSON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CHIPOTLE SERVICES, LLC, a Colorado business entity, and DOES 1 through and including DOE 100,

Defendants.

Case No. CGC-15-544936
*Assigned to the Hon. Anne-Christine Massullo, Dept. 304*

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND ENHANCEMENT AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Date: February 19, 2021
Time: 9:15 a.m.
Judge: Hon. Anne-Christine Massullo
Dept.: 304
Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

Complaint Filed: March 25, 2015
Class Cert. Granted: Nov. 2, 2018
Prelim. App. Granted: Oct. 2, 2020

**TO EACH PARTY AND TO EACH PARTY'S ATTORNEY OF RECORD:**

**NOTICE IS HEREBY GIVEN** that, on **February 19, 2021**, at **9:15 a.m.**, or as soon thereafter as counsel may be heard, in **Department 304** of the San Francisco County Superior Court, located at Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102, Plaintiff TANIKA TURLEY ("Turley" or "Plaintiff") will move, and hereby does move this Court for entry of an order awarding attorneys' fees of **$583,275** and reimbursement of actual costs in the amount of **$25,000**, for a total of **$608,275**. The fee requested is roughly 33% of the actual lodestar of $1,611,061.50, representing 2,180 hours of attorney time to achieve an outstanding class settlement in this case. The settlement has been received enthusiastically by the 7,081 members of the Settlement Class. As of the filing hereof, there are no opt outs, no objections and no disputes from any class member, indicating a 100% participation rate.

The Motion will be based upon this Notice of Motion, the Declaration of Alan Harris (Class Counsel), the Declaration Plaintiff, and the Memorandum of Points and Authorities in Support of Motion for an Award of Attorneys' Fees and Reimbursement of Costs, the complete records and files of this action, and oral argument of counsel.

DATED: December 8, 2020

HARRIS & RUBLE

Alan Harris

Alan Harris
David Garrett
*Attorney for Plaintiffs*

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. Introduction.

In connection with the $1,750,000 settlement generated by counsel on behalf of the 7,081 absent Class Members, this Court should approve Plaintiff's Motion for Award of Attorneys' Fees and Costs by granting this application for an award of **$583,275 for attorneys' fees** and **$25,000 for reimbursement of costs,** for a total of **$608,275**. The requested fee represents approximately 33.33% of direct case recovery of $1,750,000, and roughly only 33% of the lodestar of $1,611,061.50. Plaintiff's counsel secured a settlement on behalf of a class of employees (the "Class Members") which will result in an average net recovery of nearly $146 for each of the 7,081 Class Members, an excellent result.[1] For their services in generating a settlement fund for the benefit of a Class comprised of the non-exempt employees,[2] Plaintiff's Counsel seeks a fee of $583,275 from the settlement and $25,000 for reimbursement of costs, for a total of **$608,275**. This amount will compensate fairly Plaintiff's Counsel for work already performed in the case and for all of the work remaining to be performed in the case, including preparation of the final-approval motion and efforts to ensure that the settlement is fairly administered and fully implemented. Further, Plaintiff respectfully requests that this Court award the requested $2,500 Enhancement Award ("Enhancement Award") to Plaintiff for her role in obtaining a positive result for the Class and in consideration of a broad release. As of the filing hereof, there is a 100% participation rate on behalf of the class members, indicating a positive reception.

Defendants called upon experienced counsel—DLA Piper LLP, Sheppard Mullin and Messner Reeves—three formidable defense firms. Nevertheless, Plaintiff achieved an outstanding result with a $1,750,000 settlement, which will pay damages to approximately 7,081 participating Class Members on account of alleged Labor Code violations. Decl. of Alan Harris in Support of Mot. for Award of

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[1] The Parties estimate the Net Distributable Amount will be approximately $1,039,175. The Entire Net Distributable Amount will be paid to the Participating Class Members. With approximately 7,081 Class Members, the average net payment to each Class Member will be $146 (=$1,039,175 [Net Distributable Amount]/7,081 [Class Members].

[2] The proposed Settlement Class is defined as: *Any current or former employee of Chipotle who was hired before August 1, 2014 and who worked in California at any time between October 1, 2014 and August 1, 2020 ("Class Period"). Excluded from the Class are any California employees that are members of the collective action in the currently pending Turner v. Chipotle Mexican Grill, Inc., Case No. 1:14-cv-02612-JLK-CBS or who have filed individual arbitrations related to that action, as well as any other person who has a pending arbitration or lawsuit against Defendant as of August 1, 2020.*

Attorneys' Fees, Reimbursement of Costs and Enhancement Award ("Harris Decl.") ¶ 4. In litigating this case for five years, Plaintiff's counsel overcame a vigorous defense from three experienced law firms, a Motion to Decertify (which was denied) and a Motion for Summary Judgment (which was withdrawn). Plaintiff's counsel conducted eight deposition, voluminous written discovery and prevailed in motions to compel discovery responses. In addition, Plaintiff's counsel fended off a Motion to Intervene and organized a global mediation of this case and three other PAGA cases, which were all settled. Chipotle has advised of significant changes in their payroll practices. These employment practice changes appear to have been, in part, the result of the efforts of Plaintiffs' counsel in pursuing this case. The outstanding result warrants a reasonable fee. In re Heritage Bond Litig., 2005 WL 1594403 at *19 (C.D. Cal. 2005) (in a class action, "[t]he result achieved is a significant factor to be considered in making a fee award.") (citing Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)).

California public policy recognizes the extreme importance of deterring the type of misconduct Plaintiff has alleged in this action. California law provides for payment of mandatory attorneys' fees and costs in the event of the nonpayment of wages. See Cal. Lab. Code § 218.5. California Labor Code section 2699(g)(1) provides "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g)(1). California Labor Code section 226(e) provides that a prevailing employee "is entitled to an award of costs and reasonable attorney's fees." Cal. Lab. Code § 226(e). Section 218.5 of the Labor Code provides for the award of attorneys' fees in labor law cases "to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." "[S]tatutes governing conditions of employment are to be construed broadly in favor of protecting employees." Peabody v. Time Warner Cable, Inc., 59 Cal. 4th 662, 667 (2014); Lusardi Construction Co. v. Aubry, 1 Cal. 4th 976, 985 (1992); Bureerong v. Uvawas, 922 F. Supp. 1450, 1469 (C.D. Cal. 1996) ("the California law governing wages is remedial in nature and must be 'liberally construed'"). So, too, the statutes providing for payment of attorneys' fees to counsel who prevail in labor disputes should be construed in a liberal fashion so that high quality counsel will undertake the substantial risks in cases of this nature. Further, Chief Justice Tani G. Cantil-Sakauye stated that "[c]ourts are further urged to work with justice partners to encourage and facilitate expeditious settlement, where possible, of cases pending before the court, in compliance with applicable

health and safety laws, regulations, and orders, including through the use of remote technology, when appropriate." April 29, 2020, Statewide Emergency Order of the Judicial Council of California.

Therefore, Plaintiff's Counsel respectfully requests that the Court award them **$583,275** in attorneys' fees and **$25,000** for reimbursement of reasonable expenses. A detailed and precise statement of all of the services provided in connection with this application for a fee award is set forth in **Exhibit 1** to the Harris Declaration filed herewith. In this Memorandum, counsel will first address the legal standard governing this application, including the elements of the "lodestar" approach. Finally, Counsel will address the legal standard governing the granting of an Enhancement Award to Plaintiff, which Counsel respectfully requests in the amount of $2,500.

## II. Background, Strengths and Weaknesses of the Case, and Risks of Maintaining Class-Action Status Through Trial.

On March 25, 2015, Turley filed her Complaint on behalf of herself and other non-exempt employees who worked for Defendant in California, alleging: 1) failure to pay all earned wages upon termination (Labor Code §§201, 202 and 203); (2) unfair business practices (Bus. and Prof. Code ("BPC") §17200); and (3) violation of PAGA. Turley sought lost wages, interest, penalties, injunctive relief, attorneys' fees and expenses. On July 23, 2015, Turley filed a First Amended Complaint (the "FAC").

The Parties litigated the case extensively for five years, including formal written discovery, multiple depositions, the gathering of hundreds of declarations, and substantial motion practice. Thereafter, Plaintiff filed a Motion for Class Certification. On November 2, 2018, the Court issued an Order granting, in part, Plaintiffs' motion for class certification of a class with wage statement claims under Labor Code section 226 (the "Certified Class") and denying Plaintiff's motion with respect to the final pay, meal period, rest period, and derivative claims. The Court found that Turley was an adequate class representative for the Certified Class. The Certified Class contains approximately 7,081 class members who are all current and former non-exempt employees of Defendant, hired *before* August 1, 2014 and who worked in California at any time during the Class Period (from October 1, 2014 through approximately March 31, 2015). Class Cert. Order, pp. 20-23.

Class Counsel conducted extensive formal discovery that yielded information and documentation

concerning the claims set forth in the Litigation, such as Defendant' policies and procedures regarding the payment of wages, the provision of meal and rest breaks, time keeping policies, including recording hours, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the average number of hours worked, the wage rates in effect, and length of employment for the average putative class member.

Following Class Certification, the parties set up a mediation involving several Chipotle cases under the guidance of highly experienced wage and hour neutral, Jeff Krivis. To facilitate mediation, Defendant provided data on the number of paystubs issued, the number of class members, the number of workweeks at issue, and other relevant class data. This case was settled at that mediation, along with three statewide PAGA-only cases (Porras v. Chipotle, CV-19-000937 (Stanislaus County Superior); (2) Le Sure, et al. v. Chipotle, 19STCV05589 (Los Angeles County Superior); (3) Sanchez v. Chipotle, CIVDS1910956 (San Bernardino County Superior), which were combined for approval of a $4.9 million PAGA settlement in Stanislaus (the "Porras PAGA Settlement"). The Porras PAGA Settlement was approved on June 16, 2020, with the check in the amount of $2,369,129.47 accepted by the LWDA on July 10 and the balance of the $4.9 million settlement going to costs, attorney fees and 49,078 aggrieved employees.

Here, the Parties initially presented the Settlement for Preliminary Approval on February 24, 2020, but the Court denied the Motion without prejudice and expressed concerns regarding the appropriateness of Plaintiff to represent the broader class she initially sought to represent. The Parties, consistent with the terms of their initial settlement agreement, filed a Second Amended Complaint, adding Plaintiff Susan Carrithers to ensure that the class made of class members that had signed arbitration agreements was appropriately represented. Tragically, Plaintiff Carrithers, passed away in April. The Parties submitted a proposed Third Amended Complaint ("TAC") substituting Christopher Thompson as a plaintiff and proposed class representative for the class members that signed arbitration agreements. After the proposed Settlement was resubmitted, the Court denied preliminary approval on or about July 1, 2020, focusing its concerns on the broader class of employees not part of the certified class. That is, the Court primarily objected to the settlement because it included putative class members that had signed arbitration agreements and the Court was not persuaded that it could approve the

settlement on the terms presented.

Thereafter, based upon the Court's guidance, the Parties engaged in additional talks and with the input from the mediator and Judge Cheng at a Mandatory Settlement Conference, the Parties achieved a settlement limited to the Certified Class that addressesed the Court's concerns with the initial settlement.

Class Counsel represent that they have conducted a thorough investigation into the facts of this case, and have diligently pursued an investigation of the Class Members' claims, including: (1) interviewing Class Members and analyzing the results of Class Member interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and the potential defenses; and (4) reviewing relevant data including time records and pay data. The Parties have conducted significant investigation of the facts and law both before and after the Action was filed. Class Counsel facilitated the formal request for the records of Plaintiff pursuant to Cal. Labor Code sections 226 and 1198.5. Plaintiffs diligently pursued an investigation of the claims, any and all applicable defenses, and the applicable law. Harris Decl. ¶8. The investigation included formal written discovery, depositions, and exchange of data pursuant to mediation.

As mentioned above, prior to mediation, the Parties litigated the case extensively for five years, including exchanging multiple rounds of formal discovery (Chipotle provided 25,000 pages of payroll data in response to Plaintiff's Requests for Production), multiple depositions (Plaintiff deposed Chipotle PMK (Person Most Knowledgeable), a Team Director with responsibility for some 54 restaurants, as well a senior store manager), and engaging in substantial motion practice. Plaintiff's counsel, moreover, interviewed dozens of class members and reviewed 350 declarations provided by Chipotle. Chipotle, for its part, deposed five class members and Plaintiff's expert. Plaintiffs' counsel also reviewed the expert report of Berger Consulting Group, LLC ("BCG"), prepared in the Porras, Le Sure and Sanchez actions, which analyzed timekeeping data for 11,000 pay periods during the Class Period.

Chipotle has vigorously denied the allegations, having filed Motion for Summary Judgment. Plaintiff has considered the expense and length of continued proceedings through trial and possible appeals. Plaintiff has also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including the special issues involved in class actions. Defendant has concluded that, because of the substantial expense of defending against the

Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to their business operations, it is in its best interests to accept the terms of the Settlement.

On October 2, 2020, this Court granted Preliminary Approval of the class action settlement.

## III. Argument.

### A. A Common-Fund Attorneys' Fee Award Is Appropriate.

Here, Class Counsel has secured a common fund of $1,750,000 for Plaintiff and the Class. "Although American courts . . . have never awarded counsels' fees as a routine component of costs, at least one exception to this rule has become well established as the rule itself: that one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." Quinn v. State, 15 Cal. 3d 162, 167 (1975).

An award of contingent attorney's fees to counsel is justified under the "common fund" doctrine. Serrano v. Priest, 20 Cal. 3d 25, 34 (1977). See also Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). An attorney who recovers a common fund for the benefit of persons other than his or her clients is entitled to a fee from the common fund. Mills v. Electric Auto-Lite Co., 396 U.S. 375, 392–96 (1970); In re Pac. Enterprises Sec. Litig., 47 F. 3d 373, 379 (9th Cir. 1995); In re Activision Sec. Litig., 723 F. Supp. 1373, 1375 (N.D. Cal. 1989); Glendale City Employees' Ass'n v. City of Glendale, 15 Cal. 3d 328, 341 n.19 (1975). It is well-established that the "experienced trial judge is the best judge of the value of professional services rendered in [the] court." Serrano, 20 Cal. 3d at 49.

The common-fund doctrine is predicated on the principle of preventing unjust enrichment. It provides that, when a litigant's efforts create or preserve a fund from which others derive benefits, the litigant may require the passive beneficiaries to compensate those who created the fund. Both state and federal courts in California have embraced this doctrine. Serrano, 20 Cal. 3d at 35; See Vasquez v. Coast Valley Roofing, 266 F.R.D. 482 (E.D. Cal.2010) (determining that in a wage-and-hour action putative class-action settlement an award of attorneys' fees in the amount of **33.3 percent** of the common fund was appropriate); See also In re Activision Sec. Litig., 723 F. Supp. 1373, 1377–78 (N.D. Cal. 1989) (stating that "*nearly all* common fund awards range around **30%** ") (emphasis added);

Betancourt v. Advantage Human Resourcing, Inc., No. 14-CV-01788-JST, 2016 WL 344532, at *9 (N.D. Cal. Jan. 28, 2016) (stating that **34.3%** of the common fund was "fair and reasonable"); Deaver v. Compass Bank, No. 13-CV-00222-JSC, 2015 WL 8526982, at *11 (N.D. Cal. Dec. 11, 2015) (awarding attorney fee award of **33%** of the total settlement amount); Boyd v. Bank of Am. Corp., No. SACV 13-0561-DOC, 2014 WL 6473804, at *12 (C.D. Cal. Nov. 18, 2014) (**33.3 %** attorney fee award was appropriate given "the exceptional terms of the Settlement, in both the monetary and non-monetary relief; the overwhelming support of the class for the settlement; and the considerable risks in litigation."); Ching v. Siemens Indus., Inc., No. 11-CV-04838-MEJ, 2014 WL 2926210, at *7-8 (N.D. Cal. June 27, 2014) (awarding **30%** of attorney's fees); Elliott v. Rolling Frito-Lay Sales, LP, No. SACV 11-01730 DOC, 2014 WL 2761316, at *10 (C.D. Cal. June 12, 2014) ("Although the case was resolved very early in litigation, the Court finds that the requested **30%** is a reasonable fee award."); Fernandez v. Victoria Secret Stores, LLC, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) ("Considering the circumstances of this litigation, the court concludes that a **34%** award is fair and reasonable."); Stuart v. Radioshack Corp., No. C–07–4499 EMC, 2010 WL 3155645, at *6 (N.D. Cal. Aug. 9, 2010) (awarding **33.3%** the settlement amount in attorney's fees). "[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight." Ellis v. Naval Air Rework Facility, 87 F.R.D. 15, 18 (N.D. Cal.1980) affirmed, 661 F.2d 939 (9th Cir.1981).[3]

In the present case, the prerequisite supporting payment of fees by the beneficiaries of the common fund are satisfied. Under the doctrine, courts have historically and consistently recognized that class litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify individual representation. In Paul, Johnson, Alston & Hunt v. Graulty, 886 F. 2d 268, 271 (9th Cir. 1989), the Ninth Circuit embraced this principle when it stated that "it is well settled that the lawyer who creates a common fund is allowed an extra reward,

[3] See also Chavez v. Petrissans, Case No. 1:08–cv–00122 LJO GSA, Doc. No. 89 (E.D.Cal. Dec. 15, 2009) (awarding of attorneys' fees of 33.3 percent of the common fund); Romero v. Producers Dairy Foods, Inc., No. 1:05–cv–0484–DLB, 2007 WL 3492841, at * 4 (E.D. Cal. Nov.14, 2007) (ruling that in a class-action settlement attorneys' fees in the amount of 33 percent of common fund were warranted); Bond v. Ferguson Enterprises, Inc., No. 1:09–cv–01662–OWW–MJS, 2011 WL 2648879, at *11 (E.D. Cal. June 30, 2011) (approving attorneys' fees in the amount of 30 percent of the common fund).

beyond that which he has arranged with his client." Paul, Johnson, Alston & Hunt v. Graulty, 886 F. 2d at 271. Accordingly, in the determination of a reasonable common-fund fee award, the awarding of attorneys' fees is to serve as an economic incentive for counsel to bring class-action litigation in order to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. When this case was originally filed, the prospect of a long, drawn-out battle with Defendants was almost a certainty. Effective prosecution and ultimate settlement of this case took creativity, as well as tenacity on such mundane tasks as researching case law and analyzing documents. Accordingly, this case provided remedies to the Class Members that otherwise would have been at public expense, or the employees would never have received payment of the compensation to which they are entitled.

**B. The "Lodestar" Approach Is Mandated by California Law.**

Since 1977, California has followed the policy of awarding attorney's fees in cases involving matters of public interest. Serrano v. Priest, 20 Cal. 3d 25 (1977) ("Serrano III"). In doing so, it has, from the beginning, adopted the "lodestar" approach. Serrano III at 48 n. 23. The efforts of counsel, resulting in payments to Plaintiff and those Class members who participated, vindicated a fundamental public policy of the Labor Code of the State of California. For that reason, Plaintiff's counsel is entitled to an award of reasonable fees. Keeping in mind the fact that the struggle to secure a recovery for Plaintiff has been difficult, the issue, then, is how such fees are to be calculated.

The primacy of the "lodestar" approach in calculating fees in cases such as this was established in Serrano III. It has continued to be the primary and favored approach ever since. In 2000, the Supreme Court, in the context of fees awarded under section 1717 of the California Civil Code, reaffirmed its commitment to the lodestar approach. PLCM Group, Inc v. Drexler, 22 Cal. 4th 1084, 1091 (2000). In 2001, it again reaffirmed that commitment in the context of fees to be awarded under section 425.16 of the California Code of Civil Procedure in so-called SLAPP cases. Ketchum v. Moses, 24 Cal. 4th 1122, 1132–33 (2001).

The clear teaching of the Supreme Court cases is that that there are two factors that are not to be considered in establishing the lodestar figure. One of these prohibited factors is the amount of the recovery achieved on behalf of the client. The two seminal cases are Serrano III and Press v. Lucky

Stores, 34 Cal. 3d 311, 322 (1983). In the first, no monetary recovery at all was sought or awarded. In the second, the trial court denied attorney's fees on the explicit basis that only injunctive relief had been sought and, hence, no fund had been created. The Supreme Court unhesitatingly rejected this approach and ordered fees awarded on a lodestar basis. Likewise, in Ketchum, there was no monetary recovery because counsel's efforts consisted of succeeding in dismissing the plaintiff's abusive lawsuit.

The second of the prohibited factors is the actual cost to the client of the attorney's services. In the "Serrano series" of opinions, the State Treasurer, challenging the amount of the award, sought discovery of the actual cost of the attorneys' services. Denial of such discovery was upheld on the grounds that it was irrelevant; the only relevant factor is the market rate for the services rendered. Serrano v. Unruh, 32 Cal. 3d 621, 641–42 (1982) ("Serrano IV"). In PLCM, the Supreme Court soundly rejected a contention that, because the prevailing party was represented by in-house counsel, actual cost rather than market rate should apply. PLCM, 22 Cal. 4th at 1091. In Ketchum, counsel was proceeding on a contingent-fee basis because, as the evidence showed, the defendant he was representing could not afford to compensate him on an hourly basis.

The opinion in Ketchum is instructive and binding on a number of other points. First, it reaffirms the rule that the lodestar figure is calculated by using the prevailing hourly rates for comparable legal services in the community. Ketchum, 24 Cal. 4th at 1132. Next, it explicitly recognizes that, in addition to the expertise presumptively enjoyed by the trial-court judge, it is proper to offer expert opinion by way of declaration or otherwise as to the prevailing rate for the sort of service rendered. Id. at 1128. It also reaffirms the rule that the lodestar includes hours reasonably spent in applying for fees and in defending the fee award. Id. at 1133. The lodestar figure is arrived at by a compiling the professional time reasonably spent and the applicable hourly rate for each attorney. Serrano III, 20 Cal. 3d at 48; Ramos v. Countrywide Loans, 82 Cal. App. 4th 615, 622–23 (2000). Here, review of the detailed time records of Class Counsel, in which work is recorded to the tenth of an hour, without block billing, compels a conclusion that the requested lodestar is appropriate.

**C. Lodestar Rates Are Market Rates.**

The hourly rates to be utilized in establishing the lodestar figure are market rates. This has a number of important ramifications, and the market-rate principle applies both to attorney's fees and to

services such as paralegal fees. That the hourly rate to be used in calculating the lodestar is not the actual cost of the services but is instead the market rate was re-affirmed by the California Supreme Court in PLCM, in which the Court rejected a contention that, because the services were rendered by in-house counsel, the rate should be based upon the cost to the client. PLCM Grp. v. Drexler, 22 Cal. 4th 1084, 1096 (2000), as modified, (June 2, 2000). This rule harkens back at least to Serrano IV, 32 Cal.3d 621 (1982). In appealing an award of attorney's fees to a public-interest law firm, the State Treasurer complained, inter alia, of being denied discovery into the actual salaries paid to the individual attorneys. The Supreme Court held that discovery had been properly denied. The salaries were irrelevant because the proper hourly rate for computation of the lodestar was the reasonable market value of the services rendered. Serrano IV, 32 Cal. 3d at 641–42. Indeed, the lodestar is established by ascertaining the market rate even where the legal services were rendered pro bono. Hayes v. Ward, 3 Cal. App. 4th 618, 628 (1992). Likewise, paralegal fees are to be set at market rate. Sundance v. Mun. Court for the Los Angeles Judicial Dist., 192 Cal. App. 3d 268, 274–75 (1987). In Sundance, the trial court was reversed for declining to award compensation for 850 hours of paralegal time on the ground that it had been volunteered, in other words, that it cost nothing.

Although a trial judge is deemed to possess unique insight into the value of services rendered in his or her courtroom, this may properly be supplemented by reference to expert testimony, especially as to the value of services rendered before other judges and in other courtrooms. Mandel v. Lackner, 92 Cal. App. 3d 747, 762 (1979). The relevant community is that in which the court sits, in this case Los Angeles. The rates used by Class Counsel are within the range of rates recently approved for class actions. See, e.g., Pierce v. County of Los Angeles, 2012 U.S. Dist. LEXIS 150492, at *42–52 & n.16 (C.D. Cal. Mar. 2, 2012) (approving rates of up to **$850**); In re HP Laser Printer Litig., 2011 U.S. Dist. LEXIS 98759, at *14–19 (C.D. Cal. Aug. 31, 2011) (approving rates of up to **$800**); Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles, 2009 U.S. Dist. LEXIS 132269, at *15–16 (C.D. Cal. June 24, 2009) (approving rates of up to **$800**). Moreover, Class Counsel's rates have been approved in connection with other class-wide settlements. (Harris Decl. ¶ 9.) This establishes their reasonableness. See Rutti, 2012 U.S. Dist. LEXIS 107677, at *30–31 (explaining that "'[a]ffidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate

determination in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate'").

**D. The Total Hours Expended Were Reasonably Required**

Class Counsel spent a reasonable number of hours for the work required in this matter, and all of them should be considered in computing the lodestar award. Plaintiff is seeking minimal fees for pre-filing services. In litigating this case for five years, Plaintiff's counsel overcame a vigorous defense from three experiencing law firms, a Motion to Decertify (which was denied) and a Motion for Summary Judgment (which was withdrawn). Plaintiff's counsel also fended off a Motion to Intervene. Chipotle has advised of significant changes in their payroll practices, which appear to have been, in part, the result of the efforts of Plaintiffs' counsel in pursuing this case. Professional time reasonably and necessarily expended in securing an award of attorney's fees is subject to reimbursement. Serrano IV, 32 Cal. 3d 621, 624 (1982); Guinn v. Dotson, 23 Cal. App. 4th 262, 270 (1994).

**E. The Total Lodestar Dollar Amount Is Reasonable.**

As stated above, Defendants called upon experienced defense counsel— DLA Piper LLP, Sheppard Mullin and Messner Reeves—three formidable defense firms. In litigating this case for five years, Plaintiff's counsel overcame a vigorous defense, conducted eight deposition, voluminous written discovery and prevailed in motions to compel with Chipotle's prior counsel. In addition, Plaintiff's counsel fended off a Motion to Intervene from an outside firm. Nevertheless, Plaintiff achieved an outstanding result with a $1,750,000 settlement, which will pay damages to participating Class Members on account of alleged Labor Code violations. The total hours and expenses incurred is reasonable for a case of this nature. The total lodestar in this case is $1,611,061.50 for approximately 2,180 hours of work through completion of this case. Harris Decl. ¶¶ 8-10, Exhibit 1. Here, Class Counsel requests only **$583,275**, or an amount roughly equal to only 33% of the lodestar. Harris Decl. ¶¶ 8-10. This amount is reasonable considering the extraordinary result obtained for the Class Members, both in terms of cash payments and the Defendant's recent adoption and implementation of modified wage statement, final payment, and meal and rest period policies and practices.

**F. The Award Should Include All Reasonably Incurred Costs & Expenses.**

The cases cited in the preceding sections of this Memorandum universally approve awards that

include reimbursement of all costs and expenses reasonably incurred by counsel in the litigation. These are not limited to the costs recoverable under sections 1032 and 1033.5 of the Code of Civil Procedure. In other words, those costs and expenses that would properly be included in a memorandum of costs and disbursements. Bussey v. Affleck, 225 Cal. App. 3d 1162, 1166 (1990); Cal. Hous. Fin. Agency v. E.R. Fairway Assocs. I, 37 Cal. App. 4th 1508, 1514–15 (1995); Arntz Contracting Co. v. St. Paul Fire and Marine Ins. Co., 47 Cal. App. 4th 464, 492 (1996).

The Harris Declaration filed and served herewith sets out such expenses in detail. Harris Decl., Ex. 2. The costs and expenses that are set forth in the Harris Declaration should be included in the award. The request for reimbursement of $25,000 in costs is reasonable considering the results obtained by the class, and the fact that the requested amount is less than the actual expenditure of $38,427.47. This firm advanced all of these costs during the five years of litigation without guarantee of repayment.

**G. Plaintiff's Counsel Are Entitled to Reasonable Fees**

Plaintiff contend that Defendant failed to pay employees all of their wages. The public policy of California recognizes the extreme importance of deterring employer misconduct. See, e.g., Smith v. Superior Court, 39 Cal. 4th 77, 82 (2006) ("The public policy in favor of full and prompt payment of an employee's earned wages is fundamental and well established."); Gould v. Maryland Sound Indus., Inc., 31 Cal. App. 4th 1137, 1147 (1995) ("[T]he prompt payment of wages due an employee is a fundamental public policy of this state."). Accordingly, unlike the prevailing "American Rule" in litigation, in which each party bears its own attorneys' fees, in employment cases such as this—as well as in civil-rights cases, antitrust cases, and other unique situations—the law requires that the wrongdoer pay the legal fees of the prevailing party.

Significantly, section 218.5 of the California Labor Code provides that, "[i]n any action brought for the nonpayment of wages . . . the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." Cal. Lab. Code § 218.5. Section 226(e) provides "[a]n employee . . . is entitled to an award of costs and reasonable attorney's fees. Cal. Lab. Code § 226(e). Finally, PAGA provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g). Plaintiff and the Class are entitled to recover the reasonable

attorneys' fees and costs pursuant to the foregoing provisions of state law.

"[S]tatutes governing conditions of employment are to be construed broadly in favor of protecting employees." Peabody v. Time Warner Cable, Inc., 59 Cal. 4th 662, 667 (2014); Lusardi Construction Co. v. Aubry, 1 Cal. 4th 976, 985 (1992); Bureerong v. Uvawas, 922 F. Supp. 1450, 1469 (C.D. Cal. 1996) ("the California law governing wages is remedial in nature and must be 'liberally construed'"). So, too, the statutes providing for payment of attorneys' fees to counsel who prevail in labor disputes should be construed in a liberal fashion so that high quality counsel will undertake the substantial risks in cases of this nature.

**H. The Court Should Award Plaintiff a $2,500 Enhancement**

The Settlement provides for an additional payment in the amount of up to $2,500 to Plaintiff on account of the service that she has rendered to the Settlement Class in bringing this litigation, the time that she has and will devote, as well as the broad release she made in connection with the Settlement. Incentive awards "are not uncommon and can serve an important function in promoting class action settlements." Sheppard v. Consol. Edison Co. of N.Y., Inc., 2002 U.S. Dist. LEXIS 16314 at *16 (E.D.N.Y. filed Aug. 1, 2002). "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." In re S. Ohio Corr. Facility, 175 F.R.D. 270, 272 (S.D. Ohio 1997), rev'd on other grounds, 191 F.3d 453 (6th Cir. 1999). It is appropriate to provide a payment to class representatives for his or her services to the class. Van Vraken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995); Wang v. Chinese Daily News, Inc., 231 F.R.D. 602, 614 (C.D. Cal. 2005) ("Proceeding by means of a class action avoids subjecting each employee to the risks associated with challenging an employer"); Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 32 (E.D. Pa. 1985); St. Marie v. Eastern R.R. Ass'n., 72 F.R.D. 443, 449 (S.D.N.Y. 1976) ("The risks entailed in suing one's employer are such that the few hardy souls who come forward should be permitted to speak for others when the vocal ones are otherwise fully qualified"), rev'd on other grounds, 650 F.2d 395 (2d Cir. 1981).

Under the terms of the Settlement Agreement, Class Counsel have applied for an Enhancement Award for Plaintiff of $2,500 for her extensive efforts in bringing and prosecuting this case. According to the Ninth Circuit, "[i]ncentive awards are fairly typical in class action cases" and "are intended to

compensate class representatives for work done on behalf of [a] class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958–59 (9th Cir. 2009) (emphasis removed), vacated on other grounds, 688 F.3d 645, 660 (9th Cir. 2012). Courts should consider "the risk to the class representative in commencing suit, both financial and otherwise," as well as "the amount of time and effort spent by the class representative" and "the personal benefit (or lack thereof) enjoyed by the class as a result of the litigation." Smith v. CRST Van Expedited, Inc., 2013 U.S. Dist. LEXIS 6049, at *16 (S.D. Cal. filed Jan. 14, 2013).

Here, all of the factors support approving the award. First, as a direct result of Plaintiff having brought this suit, participating settlement Class Members will receive substantial payments. Second, and as set forth in the contemporaneously filed declarations, Plaintiff has expended considerable time conferring with Class Counsel, providing factual background and support, analyzing and provided data, and consulting with Counsel during settlement discussions. See Declaration of Tanika Turley, ¶¶ 7-10. Third, Plaintiff "undertook the financial risk that, in the event of a judgment in favor of [MTI] in this action, [the named Plaintiff] could have been personally responsible for any costs awarded in favor of [MTI]." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 491 (E.D. Cal. 2010).

Indeed, enhancement awards are particularly appropriate in employment class actions, where they help to alleviate the "stigma upon future employment opportunities for having initiated an action against a former employer." Campbell v. First Investors Corp., 2012 WL 5373423, at *8 (S.D. Cal. filed Oct. 29, 2012). Because the requested enhancement award is in line with the current trend for such awards and *below* the range sometimes awarded in similar cases. See Smith, 2013 U.S. Dist. LEXIS, at *17–18 (noting that incentive awards range from $18,500 to $50,000).

In light of Plaintiff's willingness to come forward on behalf of the Class, and in light of their efforts in advancing the litigation, the proposed payments are reasonable. Plaintiff sought out and obtained the services of counsel, participated in informal discovery, and assisted throughout the negotiation of the settlement and bringing the case to closure. In doing so, they have successfully brought and maintained claims that may have never been brought. See Crab Addision, Inc. v. Superior Court, 169 Cal. App. 4th 958, 971 (2008) ("Current employees suing their employers run a greater risk

of retaliation. For them, individual litigation may not be a viable option, and employees may be unaware of the violation of their rights and their right to sue.").

**IV. Conclusion.**

Here, there is a 100% participation rate (as of the filing here), indicating that the settlement has been well-received by the class. Given the long-standing proposition, which has been consistently articulated by the California Supreme Court in Murphy v. Kenneth Cole Productions, Inc., 40 Cal. 4th 1094, 1103 (2008), and numerous state and federal courts that "statutes governing conditions of employment are to be construed broadly in favor of protecting employees," counsel is entitled to a reasonable fee. California Courts have consistently recognized that most fee awards based on either a lodestar or percentage calculation are 33%. See Stuart v. RadioShack Corp., No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (noting that fee award of 1/3 settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits."); Singer v. Becton Dickinson and Co., No. 08-cv-821-IEG (BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); Boyd v. Bank of Am. Corp., No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding a 33.34% fee on a $5,800,000 settlement). Moreover, in light of the five years of difficult litigation with three competent defense firms, the accomplishment in resolving this case is particularly significant. It is respectfully requested that this Court award attorney fees in the amount of **$583,275** and reimbursement of costs in the sum of **$25,000**, a total of **$608,275**. Further, it is respectfully requested that the Court award an Enhancement Award to the named Plaintiff in the amount of **$2,500**.

DATED: December 7, 2020

HARRIS & RUBLE

Alan Harris
David Harris
David Garrett
Attorney for Plaintiff

## PROOF OF SERVICE

I am an attorney for Plaintiff(s) herein, over the age of eighteen years, and not a party to the within action. My business address is 655 N. Central Ave., 17th Floor, Glendale, CA 91203. On December 8, 2020, I served the within document(s):

**DECLARATION OF ALAN HARRIS IN SUPPORT OF MOTION FOR ATTORNEY FEES REIMBURSEMENT OF COSTS AND ENHANCEMENT AWARD**

**[PROPOSED] ORDER GRANTING MOTION FOR ATTORNEY FEES, REIMBURSEMENT OF COSTS AND ENHANCEMENT AWARD**

**NOTICE OF MOTION AND MOTION FOR ATTORNEY FEES, REIMBURSEMENT OF COSTS AND ENHANCEMENT AWARD**

Facsimile: I caused such envelope to be uploaded electronically via e-mail (File & Serve) to:

angela.agrusa@us.dlapiper.com
levi.heath@us.dlapiper.com
Steve.hernandez@dlapiper.com

Electronic Service: Based on a court order, I cause the above-entitled document(s) to be served through Case Anywhere addressed to all parties appearing on the electronic service list for the above-entitled case and on the interested parties in this case:

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I declare under penalty of perjury that the above is true and correct. Executed on December 8, 2020, at Los Angeles, California.

David Garrett