Alan Harris (SBN 146079)
David Garrett (SBN 160274)
HARRIS & RUBLE
655 North Central Avenue, 17th Floor
Glendale, CA 91203
Telephone: (323) 962-3777
Facsimile: (323) 962-3004

David Harris (SBN 215224)
North Bay Law Group
116 E. Blithedale Ave.
Ste. 2
Mill Valley, CA 94941
Telephone: (415) 388-8788
Facsimile: (415) 388-8770

Attorneys for Plaintiffs and the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiff,

v.

CHIPOTLE SERVICES, LLC and DOES 1-100, inclusive,

Defendant.

Case No. CGC-15-544936
Assigned to Hon. Anne-Christine Massullo

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Filed concurrently with the Declaration of Phoenix Administration, Declaration of Alan Harris; [Proposed] Order Granting Motion for Final Approval and Judgment

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 THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE 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 a judgment, pursuant to California Rules of Court, Rules 3.766 and 3.769, and Code of Civil Procedure section 382, as follows:

1. Granting final approval of the Class Action Settlement Agreement and Release of Claims (the "Settlement") between Plaintiff, individually and on behalf of all others she seeks to represent, and Defendant Chipotle Services, LLC ("Chipotle" or "Defendant");
2. Finally approving the adequacy of the Class Notice and the procedures that provided notice to the Settlement Class and their opportunity to submit claims, opt out, and object;
3. Finally certifying the Settlement Class for settlement purposes only;
4. Finally appointing Plaintiff Tanika Turley as the Class Representative;
5. Finally appointing Plaintiff's counsel as Class Counsel;
6. Determining the reasonableness of the request for an enhancement fee for Plaintiff;
7. Determining the reasonableness of the request for attorneys' fees and reimbursement of costs incurred by Class Counsel.

Good cause exists for the granting of this motion as the proposed settlement is fair, adequate, and reasonable. The settlement has been received enthusiastically by the 7,081 class members. As of the filing hereof, with the opt-out and objection deadline having passed, there were no objections filed by any class members, no disputes, and only five opt outs (a 99.93% participation rate).

The motion is based on this Notice, the Memorandum of Points and Authorities, the Declaration of Claims Administration, the declarations of Alan Harris and Plaintiff, the complete files and records of this case, and any other evidence or argument which may be considered by the Court at the time of the hearing.

DATED: January 20, 2021

HARRIS & RUBLE

Alan Harris

Alan Harris
David Garrett
Attorney for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 2, 2020, this Court granted Preliminary Approval of the class action settlement in this case. The Parties now request final approval of the Settlement between Plaintiff, on behalf of the Settlement Class Members, on the one hand, and Defendant Chipotle Services, LLC ("Defendant" or "Chipotle"), on the other hand.[1] The $1,750,000 Settlement is fair, adequate, and reasonable. Plaintiff's counsel secured a settlement on behalf of the Settlement Class Members that will result in an average net recovery of nearly $146 for each of the 7,081 Class Members, an excellent result.[2] Good cause exists for the granting of this motion as the proposed settlement is fair, adequate, and reasonable. The settlement has been received enthusiastically by the 7,081 class members. As of the filing hereof, there are no objections from any class members[3], no disputes and only five opt outs (a 99.93% participation rate).

Defendant 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 provide payment to approximately 7,081 participating Class Members on account of alleged Labor Code violations. Decl. of Alan Harris in Support of Mot. for Final Approval ("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 depositions, engaged in voluminous written discovery, and prevailed in motions to compel discovery responses. In

[1] Unless otherwise noted, capitalized terms are as defined in the Settlement.

[2] 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].

[3] Josh Barber ("Barber"), who is not a class member, has attempted to file an objection (the "Barber Objection"). The Barber Objection should be disregarded as only class members have the right to object to a class settlement. Gould v. Alleco, Inc. (4th Cir. 1989) 883 F2d 281, 284; In re School Asbestos Litig. (3rd Cir. 1990) 921 F2d 1330, 1332-1333. "California Rules of Court, rule 3.769 requires class representatives to notify *class members* of a pending settlement on the merits and provide them with the opportunity to object at the final settlement fairness hearing." Hernandez v. Restoration Hardware, Inc., 4 Cal. 5th 260, 266, 409 P.3d 281, 285 (2018)(emphasis added). Barber is not a class member, and is not entitled to object or receive notice. Therefore, the Barber Objection should be disregarded.

addition, Plaintiff's counsel fended off a Motion to Intervene, organized a global mediation of this case and three other PAGA cases, which were all settled, and is currently fighting off a second Motion to Intervene. Importantly, the participation rate of **99.93%** indicates that the settlement has been well-received by the members of the class.[4] Further, there are no disputes or objections from any class members. Thus, it is evident that the Settlement has been received positively by virtually all members of the Class. Accordingly, Plaintiff respectfully requests that the Court grant final approval of the Settlement so that the settlement funds may be distributed to the class.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural Background

On March 25, 2015, Turley filed a 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 the Private Attorney General Act ("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, Plaintiff's 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.

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,

[4] Only 5 individuals out of 7,081 requested exclusion from the settlement. Phoenix Decl. ¶ 14.

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 the other cases that were subject to the mediation.[5]

The Parties initially presented the Settlement in this matter 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. 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 who had signed arbitration agreements.

Thereafter, based upon the Court's guidance, the Parties engaged in additional talks and, with input from the mediator and Judge Cheng at a Mandatory Settlement Conference, achieved a settlement limited to the Certified Class that addressed the Court's concerns with the initial settlement. On October 2, 2020, this Court granted Preliminary Approval of the class action settlement.

B. Discovery & Investigation

Class Counsel conducted extensive formal discovery that yielded information and documentation concerning: the claims set forth in the Litigation, Defendant's policies and procedures regarding the payment of wages, the provision of meal and rest breaks, time keeping, including recording of hours worked, 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.

Class Counsel represent that they conducted a thorough investigation into the facts of this case, and diligently pursued an investigation of the claims, including: (1) interviewing Class Members and analyzing the results of the interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and the potential defenses; and (4) reviewing 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

[5] These other PAGA-only cases were consolidated in Stanislaus Superior Court in *Porras v. Chipotle Services, LLC*, Case No. CV-19-000937. The court in *Porras* approved that PAGA-only settlement and entered Judgment thereon on June 19, 2020.

and 1198.5. Plaintiff diligently pursued an investigation of the claims, any and all applicable defenses, and the applicable law. Harris Decl. ¶¶6-12. The investigation included formal written discovery, depositions, and exchange of data pursuant to mediation.

The Parties litigated the case extensively for over five years, including exchanging multiple rounds of formal discovery (Chipotle provided 25,000 pages of payroll data, multiple depositions, Plaintiff deposed Chipotle PMK, 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. Plaintiff's counsel also reviewed the expert report of Berger Consulting Group, LLC ("BCG"), which analyzed timekeeping data for 11,000 class pay periods.

Chipotle vigorously denied the allegations and filed a Motion for Summary Judgment. Plaintiff considered the expense and length of continued proceedings through trial and possible appeals. Plaintiff 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 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 its business operations, it is in its best interests to accept the terms of the Settlement. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues. Harris Decl. ¶¶ 6-12.

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

The settlement "Class"" shall consist of 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"). Each person in the class is a "Class Member," and all such persons are referred to

as the "Class."[6] 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 as of August 1, 2020.

B. Settlement Terms

In consideration for the release of claims, Defendant shall pay, or cause to be paid, the total sum of **$1,750,000.00** (the "Gross Settlement Amount"), in cash, for payment of all claims, payment of claims administration, attorney fees, attorney expenses, a payment to the LWDA, and a service award to Plaintiff. The following litigation costs and costs of administration will be deducted from the Gross Settlement Amount: (a) claims administration fees not to exceed $50,000; (b) a net payment to the LWDA of $50,000; (c) a service award to Plaintiff Turley not to exceed $2,500 for her services as Class Representative; (d) attorney fees in an amount not to exceed 33.33% ($583,275) and reimbursement of actual costs not to exceed $25,000. The "Net Settlement Amount," the amount available for payment of claims to Class Members after deducting the above-referenced fees and costs from the Gross Settlement Amount will be $1,039,225.

Claims Administration Costs and Expenses. The estimated costs and fees associated with administration of the Settlement is $50,000. Settlement, ¶ C(17). The proposed administrator, Phoenix Class Action Administration ("Phoenix") submitted a bid, capped at $49,500, slightly less than the allocated cost used for the calculations herein.

LWDA Payment. In connection with the releases provided in the Settlement of penalty claims for alleged violations of Labor Code sections 201-203 of the California Labor Code pursuant to PAGA, California Labor Code section 2698 *et seq*., Chipotle, via the claims administrator, will pay the *net* amount of Fifty Thousand Dollars ($50,000.00) to the Labor Workforce Development Agency (the "LWDA"). Settlement, ¶ I(r). Because the net payment of $50,000 represents 75% of the civil penalties, the total civil penalties would be $66,667. *See* Brooks v. AmeriHome Mortgage Co., LLC (2020) 47 Cal.App.5th 624, 628-629 ("If the PAGA action results in penalties, LWDA recovers 75

[6] There are 7,081 class members (slightly higher than originally estimated), of which approximately 6,400 are former employees.

percent and the aggrieved employees recovers the remaining 25 percent of those penalties."

Class Representative Enhancement Fee. In recognition of her efforts and risk in prosecuting this matter, Plaintiff has applied for an enhancement fee of up to Two Thousand Five Hundred Dollars ($2,500) for the services rendered as a class representative. Settlement, ¶ I(r).

Attorneys' Fees and Costs. Plaintiff's counsel intends to apply to the Court for a fee award, plus expenses and costs incurred. Defendant will not object to a claim for attorneys' fees of up to 33.33% of the Gross Settlement Amount (or $583,275), and actual costs as documented in billing statements, estimated not to exceed $25,000. Settlement, ¶ II(r).

Net Settlement Amount. The "Net Settlement Amount" will be $1,039,225. This is the net amount available for payment of claims to Class Members after deducting the above-referenced fees and costs from the Gross Settlement Amount. This will result in an average payment of approximately $147 ($1,039,225 / 7,076) to each Class Member. Class Members do not have to submit claims forms or take any action to participate.

Class Members who do not affirmatively opt-out of the settlement will be mailed a check in an amount equal to a pro-rata share of the Net Settlement Amount based on the Class Members' pay periods worked during the Class Period. This average payment to each Class Member will be approximately $147. The allocation of payment of claims between the class members and tax treatment of such claims shall be 25% wages, 25% interest, and 50% penalties.[7]

If the amount of uncashed first checks exceeds $27,500, the Parties will facilitate a second distribution to the Class Members who cashed their checks during the first round (the "Second Distribution") in hopes of providing as much relief as practicable to the Class Members.[8] If any checks sent pursuant to the Second Distribution are not cashed within 180 days of payment, the funds shall be

[7] The tax treatment of 25% wages, 25% interest, and 50% penalties is based on the estimated allocation of the claims released. Because the class was certified for the wage statement portion, the parties gave a 50% weight to penalties to take into account the potential penalties being released under Labor Code §226. Because uncertified wage claims such as §203 (Continuing Wages), Meal Breaks (§226.7) and Rest Breaks (§226.7) were also being released, the parties assigned 25% of the payments as wages. The final 25% in interest was allocated for the UCL Claim being released. Harris Decl., ¶10.

[8] This takes into account the costs of administering the second mailing, which would be approximately $6,500, providing for checks of at least $3.00 each to the Class Members. The administration costs for the Second Distribution, if it occurs, will be in addition to the estimated cost for initial administration of the Settlement.

paid to the California pro bono law firm, Public Counsel, if approved by the Court as the *cy pres* recipient, in accordance with CCP section 384, subd. (b). No counsel or party has any interest or involvement in the governance of work of the proposed *cy pres* recipient. The Court has indicated that it will consider whether the proposed *cy pres* recipient is appropriate at final approval.

C. The Release

If approved by the Court, the settlement will be binding on all Class Members who have not excluded themselves from the settlement. The Released Claims include claims which could have been pled based on or reasonably related to the facts and claims alleged in the Complaint, FAC, SAC, TAC, or arising out of or reasonably related to the transactions and occurrences pled in the Complaint, FAC, SAC, or TAC. Settlement, ¶X(A)(61). As of the date the Final Approval Order is entered by the Court, each Class Member who has not opted out will be deemed to have released claims as follows:

> Once the settlement is finalized, all Class Members who have not submitted timely and valid Exclusion Letters will release and discharge Defendant, their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (the "Released Parties") from all claims, demands, rights, liabilities and causes of action that were or could have been asserted (whether in tort, contract or otherwise) for violation of the California Labor Code, the California Business and Professions Code, the applicable Industrial Welfare Commission Orders or any similar state or federal law, whether for economic damages, non-economic damages, liquidated damages, punitive damages, restitution, penalties, other monies, or other relief based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act pled or arising out of or reasonably related to the facts, transactions, and occurrences pled in the Complaint, the First Amended Complaint, Second Amended Complaint, or Third Amended Complaint which are or could be the basis of claims for: (1) unpaid wages; (2) unpaid minimum wages; (3) unpaid or underpaid overtime wages; (4) failure to provide meal periods and claims regarding meal period premium pay; (5) failure to provide rest periods and claims regarding rest period premium pay; (6) failure to reimburse expenses; (7) failure to provide accurate wage statements; (8) failure to timely pay wages upon termination and during employment; (9) claims for unfair competition arising from the facts alleged in the operative complaints; and (10) related claims for penalties pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA) for California Labor Code sections 201, 202, and 203 (collectively, the "Released Claims"). The release will exclude claims for vested benefits, wrongful termination (apart from that of Plaintiff Turley and any other named Plaintiff who will execute general releases of claims under Civil Code section 1542), unemployment insurance, disability, workers' compensation, and claims outside of the Class Period. The Gross Individual Settlement Payment to Participating Class Members will not result in any additional benefit payments beyond those provided by this Agreement to Plaintiff and Participating Class Members. Participating Class Members will be deemed to have waived all such claims for benefits premised upon the Gross Individual Settlement Payments to them, whether known or unknown by them, as part of their Released Claims under this Agreement.

Settlement, ¶ X(A)(62-63). The PAGA release is limited only to claims for continuing wages under

Labor Code sections 201, 202, and 203.[9]

IV. ARGUMENT

A. The Court Should Grant Final Approval Of The Proposed Settlement

1. The Proposed Settlement Is Entitled To A Presumption Of Fairness

A presumption of fairness for class action settlements exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. In re Microsoft I-V Cases, 135 Cal. App. 4th 706, 723 (2006); 7-Eleven Owners for Fair Franchising v. Southland Corp., 85 Cal. App. 4th 1135, 1146 (2000). The proposed Settlement satisfies each of these prerequisites.

a. The Proposed Settlement Was Reached Through Arm's Length Bargaining

The Settlement was reached following extensive negotiations. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. Harris Decl. ¶ 10. The Parties went into settlement discussions willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. Harris Decl. ¶ 9. Plaintiff considered the settlement negotiations conducted by the Parties and the recommendations of the Mediator, who is highly experienced in employment litigation, including class and complex litigation.

b. Plaintiff Conducted Sufficient Investigation And Discovery To Allow The Court And The Parties To Act Intelligently

Experienced Class Counsel conducted a thorough investigation, engaged in extensive legal research, and reviewed voluminous documents. Harris Decl. ¶¶8-10. Such discovery and investigation included, *inter alia*, interviews of potential witnesses and putative class members as well as the exchange of detailed information regarding the putative class members' employment. Plaintiff and her counsel diligently pursued an investigation of the Class Members' claims, any and all applicable defenses, and the applicable law. Id. The investigation included the exchange of information pursuant

[9] Importantly, PAGA claims for sections 201 to 203 for the period after September 21, 2017 are covered by the Porras PAGA settlement for all non-exempt current and former California employees of Chipotle. Thus, this release only covers these PAGA claims for the period until September 21, 2017.

to discovery and Plaintiff's records request, as well as extensive formal discovery and meetings between Class Counsel and Chipotle Counsel. Prior to Mediation, Class Counsel reviewed the time and wage records and prepared a detailed damages model. Based on this investigation, Class Counsel was able to act intelligently and effectively in negotiating the proposed Settlement. Id.

c. Class Counsel Has Extensive Experience In Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel are respected members of the bar with a strong record of vigorous and effective advocacy for their clients, and they are experienced in handling complex wage and hour class-action litigation. In a four-decade career specializing in the prosecution of class actions, Alan Harris has successfully tried class actions for plaintiffs and assisted in defending a class action trial for a defendant, Allstate Insurance Company. Although Plaintiff and her counsel were prepared to litigate the claims in the Action, they support the proposed Settlement as being in the best interests of the Class Members. Id.

d. A Tiny Percentage of Opt Outs and No Class Objections were Received

The Settlement has been received positively by the members of the Class. As of the filing hereof, following the expiration of the Notice period, there are no disputes, no class member objections, and only five (5) opt outs from the class of 7,081 (0.07%), indicating a participation rate of **99.93%**. The exceedingly low rate of objections, 0%, is a strong indication of fairness. Microsoft, 135 Cal. App. 4th at 723. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms are favorable to the class members." Nat'l Rural Telecomms. Coop., 221 F.R.D. at 529; *see also* Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013) ("Where a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable.").[10] That not a single class

[10] As stated above, Barber is not a class member, and therefore lacks standing to object. Edwards v. Heartland Payment Sys., Inc., 29 Cal. App. 5th 725, 734 (2018). Essentially, Barber is attempting to derail this Settlement while not being subject to the Settlement. Barber has no personal interest in this outcome, because he is excluded from the class. Hernandez, 4 Cal. 5th at 266.

Further, a *class member* has standing to object to an attorney fees award only if he or she is "aggrieved" (injured) by the fee award itself. [Glasser v. Volkswagen of America, Inc. (9th Cir. 2011) 645 F3d 1084, 1088-1089—objector's contention that plaintiffs' claims were meritless and that settlement would harm objector's interests as shareholder of defendant or consumer of defendant's products insufficient. Here, Barber is not even a class member, so the objection is unwarranted.

member objected to the settlement, despite a 60-day period of time within which to do so, raises a strong presumption that the settlement was fair, adequate, and reasonable.

2. The Proposed Settlement Is Fair, Adequate, And Reasonable

The Settlement is not only presumptively fair and reasonable, it is in fact fair and reasonable. The trial court has broad discretion to determine "whether a settlement [is] fair and reasonable." In re Cellphone Fee Termination Cases, 186 Cal. App. 4th 1380, 1389 (2010). In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; and the reaction of the class members to the proposed settlement. Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 128 (2008). In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. Id. at 133. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." Kullar, 168 Cal. App. 4th at 130; Clark v. American Residential Servs. LLC, 175 Cal. App. 4th 785, 799 2009. An informed evaluation of a settlement requires "an understanding of the amount in controversy and the realistic range of outcomes of the litigation." Clark, 175 Cal. App. 4th at 801.

While Plaintiff and Class Counsel remain confident in the merits of Plaintiff's case, a legitimate controversy exists as to each cause of action. Harris Decl. ¶ 9. Plaintiff also recognizes that proving the amount of wages due to each Settlement Class Member would be an expensive, time-consuming, and an extremely uncertain proposition. Harris Decl. ¶ 9. Furthermore, the risk that Defendant may appeal

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The Barber/Delgado case in Orange County is currently stayed, and set for arbitration in August, 2021. In that case, counsel for Barber has not certified a class, nor have they filed a motion for class certification or even sent out a Belaire West Notice in five years of litigation. Neither has counsel for Barber taken more than one deposition or conducted any substantial discovery in five years. Counsel for Barber has failed to secure any money for any aggrieved Chipotle employees in five years, while class counsel herein has negotiated the instant settlement and a $4.9 million settlement in the Porras PAGA case. In short, the Barber Objection is based merely on a case of "sour grapes," having chosen not to attend the global mediation for the statewide Chipotle cases that was held in October, 2019.

As will be addressed in a separate response, the Barber Objection is completely meritless on its face. This Settlement is an excellent result for the Class Members as indicated by the high participation rate and lack of any class member objections.

class certification is obviated by the Settlement. Id. Moreover, continued litigation would very likely reduce and substantially delay recovery by Settlement Class Members. Id. In contrast, because of the proposed Settlement, Settlement Class Members will receive timely relief and avoid the risk of an unfavorable judgment. Id. In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal in the event of a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear the settlement is well within the "ballpark" of reasonableness and final settlement approval is appropriate.

The Parties analyzed these and other Kullar factors at greater length in the preliminary approval briefing, and agreed that the Settlement is fair, adequate, and reasonable for the Settlement Class Members. The Court preliminarily concluded the same when preliminarily approving the Settlement. There is no reason to change that conclusion at this stage, after overwhelming acceptance of the settlement by the Class.

3. Class Counsel's Requested Fees And Costs Are Reasonable

The Settlement provides for attorney's fees to Class Counsel to a maximum fee award of **$583,275**, plus reasonable and actual litigation estimated expenses of **$25,000** (less than the $38,427.47 actually incurred). Harris Decl. ¶12. The request for attorney's fees is supported by the "common fund theory," where "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." Serrano v. Priest, 20 Cal. 3d 25, 35 (1977). This approach "spread[s] litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent v. Hughes Air West, Inc., 557 F.2d 759, 769 (9th Cir. 1977); City and County of San Francisco v. Sweet, 12 Cal. 4th 105, 110 (1995) (recognizing that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share"). The requested fees are reasonable, as they are well-within the range of fees generally sought and approved in common fund class action cases.

"Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." In re Consumer Privacy

Cases, 175 Cal. App. 4th 545, 558 n.13 (2009) ; Newberg on Class Actions, 4th Ed. 2002, § 14: 6 (historically courts have awarded percentage fees in the range of 20% to 50%).

The Court should also consider that the efforts of Class Counsel have resulted in substantial benefits to the Settlement Class in the form of a significant settlement fund established to compensate for the alleged wage and hour violations. Without the efforts of Class Counsel, the claims alleged in the Complaint would likely have gone without remedy. After this case was filed, Chipotle, for the first time, instituted procedures under which local store managers had authority to pay workers on the day on which he or she was fired, abandoning its past practice of preparing such checks from an out-of-state center, resulting in routine late payments of final wages. Additionally, Class Counsel has invested significant time and resources in this case, with any payment at all, or reimbursement of costs, deferred to the end of the litigation and entirely contingent on a positive outcome. Harris Decl. ¶ 12. Class Counsel may be awarded reimbursement of out of pocket costs pursuant to Labor Code section 1194. Plaintiff's request for costs is reasonable, as they were incurred in prosecuting this action. Harris Decl. ¶ 15. The Class Counsel hourly rates have been approved by other courts in Los Angeles and San Francisco, as reflected in recent decisions in state and federal court. Harris Decl. ¶ 20.

4. The Requested Class Representative Enhancement Fees Are Reasonable

As explained in detail in Plaintiff's Fee Motion, the Settlement provides for a total $2,500 class representative enhancement fee to Plaintiff, subject to Court approval. Harris Decl. ¶ 7. Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." Munoz v. BCI Coca-Cola Bottling Company of Los Angeles, 186 Cal. App. 4th 399, 412(2010). The factors to consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. In re Cellphone Fee Termination Cases, 186 Cal. App. 4th at 1394-95, citing Van Vranken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). An incentive award to a class representative must not be disproportionate to the amount of time and energy expended in pursuit of

the lawsuit. Id. 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).

The requested $2,500 class enhancement fee payment to Plaintiff is reasonable given: (1) the substantial time and effort Plaintiff has expended on behalf of the Settlement Class; (2) the risks Plaintiff faces as a result of bringing this Action; (3) the fact that Plaintiff put the interests of the class ahead of her own; (4) the substantial benefit conferred upon the Settlement Class as result of Plaintiff's Action; and (5) the broad release of Plaintiff's claims. Harris Decl. ¶ 10. Indeed, enhancements are especially appropriate where, as here, plaintiff is a former employee whose recommendation may be at risk by reason of having prosecuted the suit, and therefore is lending her name and efforts to the prosecution of litigation at some personal peril. See, e.g., Roberts v. Texaco, 979 F. Supp. 185, 201 (S.D.N.Y. 1997).

B. The Class Notice Was Appropriate And Satisfied Due Process

The class notice "'must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.'" Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 251 (2001) (citations omitted). Additionally, the notice should have a reasonable chance of reaching class members. Cartt v. Superior Court, 50 Cal. App. 3d 960, 974 (1975). Direct mail notice to class members' last known address is the best possible notice. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 173, 176 (1974); Phillips Petroleum v. Shutts, 472 U.S. 797, 811-812 (1985).

Here, Phoenix satisfied these due process prerequisites by ensuring compliance with the Court-approved notice and procedures. It mailed a straightforward class notice, as approved by the Court, to all Class Members, using the last available contact information in Defendant's files, updated as necessary through a records search. Phoenix Decl. ¶¶5-10. Further, a shortened notice was also emailed to Class Members directing them to the settlement website, where all relevant documents could be viewed and downloaded.

C. The Court Should Finally Certify The Class For Settlement Purposes Only

A class may be certified where there is: (1) an ascertainable class; (2) a well-defined community

of interest in the questions of law or fact affecting the parties to be represented; and (3) certification that will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. Fireside Bank v. Superior Court, 40 Cal. 4th 1069, 1089 (2007).

Plaintiff contends that the Settlement Class is plainly ascertainable. It is objectively defined as California-based former and current employees of the Defendant which, during any part of the Class Period, has been classified by Defendant as non-exempt, and contains 7,081 Class Members, who have been identified through Defendant's personnel records.

Plaintiff also contends that the Settlement Class satisfies the community of interest requirement, which embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1806 (1996). Plaintiff believes that all of these requirements are satisfied. The predominance requirement is met, since Plaintiff alleges that Defendant's policies and practices were uniform as to all Settlement Class Members. Second, typicality refers to the nature of the claim or defense, and not the specific facts from which it arose. Seastrom v. Neways, Inc., 149 Cal. App. 4th 1496, 1502 (2007). As Settlement Class Members' claims are based on the same legal theories, Plaintiff claims that typicality is also satisfied. Third, adequacy exists where the plaintiff's attorney is qualified, and the plaintiff's interests are not antagonistic to the class. McGhee v. Bank of America, 60 Cal. App. 3d 442, 450 (1976). Here, Class Counsel includes qualified and accomplished trial lawyers, and Plaintiff has no antagonistic interests.

Finally, Plaintiff contends that a class action is the superior means of resolving this dispute, as the Settlement Class Members and Court will derive substantial benefits. See Linder v. Thrifty Oil Co., 23 Cal. 4th 429, 434 (2000) (relevant considerations include whether class approach would deter and redress alleged wrongdoing). Individual actions arising out of the same operative facts would unduly burden the courts and could produce inconsistent results. In preliminarily approving the Settlement, the Court preliminarily accepted these conclusions, and there is no reason to change them now.

D. The Court Should Approve the Request for Fees and Costs

1. A Contingent Fee Award is Justified by the Common Fund Doctrine

In connection with the $1,750,000 settlement generated by counsel on behalf of the absent

Settlement Class Members whom she seeks to represent, this Court should approve Plaintiff's Request for Award of Attorneys' Fees, Reimbursement of Costs and Enhancement Award 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 the total settlement value.

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 efforts to ensure that the settlement is fairly administered and fully implemented. The requested fee represents roughly a third of the lodestar (the number of hours reasonably expended multiplied by the reasonable hourly rate) of $1,611,061.50 in this Action.

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. In litigating this case for five years, Plaintiff's counsel overcame a vigorous defense from the three experienced law firms, a Motion to Decertify (which was denied), a Motion for Summary Judgment (which was withdrawn), and is currently litigating a second Motion to Intervene. 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) ("[t]he result achieved is a significant factor to be considered in making a fee award.").

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). Labor Code section 226(e) provides that an 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); 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'"). 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). 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). 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.

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) (in wage-and-hour action class-action an award of **33.3 percent** appropriate); See also In re Activision Sec. Litig., 723 F. Supp. 1373, 1377–78 (N.D. Cal. 1989) ("*nearly all* common fund awards range around **30%** "); Betancourt v. Advantage Human Resourcing, Inc., No. 14-CV-01788-JST, 2016 WL 344532, at *9 (N.D. Cal. Jan. 28, 2016) (**34.3%** of common fund "fair and reasonable"); Deaver v. Compass Bank, No. 13-CV-00222-JSC, 2015 WL 8526982, at *11 (N.D. Cal. Dec. 11, 2015) (**33%**); Boyd v. Bank of Am. Corp., No. SACV 13-0561-DOC, 2014 WL 6473804, at *12 (C.D. Cal. Nov. 18, 2014) (**33.3 %**); Fernandez v. Victoria Secret Stores, LLC, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (**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) (**33.3%**).[11]

In the present case, the facts 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

[11] 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) (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).

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 stated that "it is well settled that the lawyer who creates a common fund is allowed an extra reward, 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 serves as an economic incentive for counsel to bring class-action litigation 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 Defendant was almost a certainty, and that proved to be a reality. 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 Settlement 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.

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 a "lodestar" cross check 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. The lodestar figure is arrived at by 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). The hourly rates to be utilized in establishing the lodestar figure are market rates. 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).

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 San Francisco County. 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)[12]. Moreover, Class Counsel's rates have been approved in connection with other class-wide settlements. (Harris Decl. ¶ 12.) This establishes their reasonableness. See Rutti, 2012 U.S. Dist. LEXIS 107677, at *30–31 (explaining that "'[a]ffidavits of the Plaintiff's attorney and other attorneys regarding prevailing fees in the community, and rate determination in other cases, particularly those setting a rate for the Plaintiff's attorney, are satisfactory evidence of the prevailing market rate'").

2. The Total Hours Expended Were Reasonably Required.

Class Counsel spent a reasonable number of hours for the work required in this matter, and all hours should be considered in computing the lodestar award. Plaintiff is seeking minimal fees for pre-filing services. (Harris Decl. ¶ 13.) 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).

3. The Total Lodestar Dollar Amount Is Reasonable.

Again, despite Defendant calling on three different, highly experienced defense firms, Plaintiff achieved an outstanding result, which will result in payments to participating Settlement 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. ¶¶ 15-17. Here, the amount requested is only approximately one-third of the total lodestar. Harris Decl. ¶¶ 12. This amount is reasonable considering the extraordinary result obtained for the Class Members.

[12] See also Astorga v Snap-On, No. BC506474, 2018 WL 2198826, at *1 (Cal.Super. Jan. 24, 2018)(noting partner received $1,200 per hour in class action); Orian v. Fed'n Int'l des Droits de L'Homme, 2012 WL 994643, at *2-3 (C.D. Cal. Mar. 22, 2012) (approving $900 per hour) .

Risk multipliers are available under California law. Compare City of Burlington v. Dague, 505 U.S. 557 (1992) with Ketchum v. Moses, 24 Cal. 4th 1122 (2001). Contingent risk multipliers can also be awarded under California law. See Ketchum v. Moses, 24 Cal. 4th 1122, 1136-37 (2001); Greene v. Dillingham Construction N.A., Inc., 101 Cal. App. 4th 418, 426-29 (2002); Weeks v. Baker & McKenzie, 63 Cal. App. 4th 1128, 1169-77 (1998); Flannery v. California Highway Patrol, 61 Cal. App. 4th 629 (1998); see also Mangold v. Cal. Pub. Util. Comm'n, 67 F.3d 1470, 1478 (9th Cir. 1995). "The contingency adjustment may be made at the lodestar phase of the court's calculation or by applying a multiplier to the non-contingency lodestar calculation (but not both)." Horsford v. Board of Trustees of California State University, 132 Cal. App. 4th 359, 395 (2005). The size of the monetary recovery by itself does not limit the amount of fees. City of Riverside v. Rivera, 477 U.S. 561 (1986) ($33,350 damages award; $245,456 fees award). Enhancement is available for exceptional quality of representation and results. Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546 (1986); Wing v. Asarco, Inc., 114 F.3d 986, 989 (9th Cir. 1997) (upholding 2.0 multiplier awarded for quality of representation and exceptional results). Notwithstanding the fact that multipliers are regularly awarded in class action cases, Class Counsel is not requesting any multiplier in this case, and in fact, requests approximately one-third of its total lodestar.

4. 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). The Harris Declaration filed and served herewith sets out such expenses in detail. Harris Decl., Ex. 1. 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.

5. The Court Should Award Plaintiff A $2,500 Enhancement Award

The Settlement provides for a payment in the amount of up to $2,500 to Plaintiff on account of the service she has rendered to the Settlement Class in bringing this litigation, the time that she has

devoted, as well as the broad release made. "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); 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"). 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." Clark v. Am. Residential Servs. LLC, 175 Cal.App.4th 785, 804 (2009).

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 declaration, 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. 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). Plaintiff sought out and obtained the services of counsel, participated in discovery, had her deposition taken and assisted throughout the negotiation of the settlement and bringing the case to closure. In doing so, she has successfully maintained claims that may have never been brought had she not step forward to file this Action.

V. CONCLUSION

The Parties respectfully request that this Court enter judgment:

1. Granting final approval of the Settlement;
2. Finally approving the adequacy of the Class Notice and the procedures that provided notice to the Settlement Class and their opportunity to opt out;
3. Finally certifying the Settlement Class for settlement purposes only;
4. Finally appointing Plaintiff as the Class Representative;
5. Finally appointing Plaintiff's counsel as Class Counsel;

6. Determining the reasonableness of the enhancement fee ($2,500) for Plaintiff;

7. Determining the reasonableness of the request for attorneys' fees ($583,275) and reimbursement of costs ($25,000) incurred by Class Counsel.

Dated: January 10, 2021

HARRIS & RUBLE

By: */s/ Alan Harris*
Alan Harris
David Garrett
Attorneys 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 January 22, 2021, I served the within document(s):

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL

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:

Angela C. Agrusa
Levi W. Heath
Steve L. Hernández
DLA PIPER LLP (US)
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704

MESSNER REEVES LLP
Charles C. Cavanagh
1430 Wynkoop Street, Suite 300
Denver, Colorado 80202

I declare under penalty of perjury that the above is true and correct. Executed on January 22, 2021, at Los Angeles, California.

David Garrett