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11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SONOMA**

14 DANIELLE HOWELL, individually and on  
behalf of all others similarly situated,

15  
16 Plaintiff,

17 v.

18 JONBEC CARE, INC., a California corporation;  
and DOES 1–10, inclusive,

19 Defendants.

Case No. SCV-267909

**PLAINTIFF DANIELLE HOWELL’S  
NOTICE OF UNOPPOSED MOTION FOR  
ATTORNEYS’ FEES, COSTS, AND CLASS  
REPRESENTATIVE SERVICE AWARD;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

**Filed concurrently with (1) Declaration of  
David Zelenski in Support of Plaintiff’s  
Unopposed Motion, (2) Declaration of Mark  
Greenstone in Support of Plaintiff’s Unopposed  
Motion, (3) Declaration of Danielle Howell in  
Support of Plaintiff’s Unopposed Motion, and  
(4) Declaration of Kevin Lee in Support of  
Plaintiff’s Unopposed Motion**

*Assigned to the Hon. Patrick Broderick*

Date: November 10, 2021

Time: 3:00 p.m.

Place: Sonoma County Superior Court, Hall of  
Justice, Courtroom 16, 600 Administration  
Drive, Santa Rosa, California 95403

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that, on November 10, 2021, at 3:00 p.m., in Courtroom 16 of the above-  
3 entitled Court located at 600 Administration Drive, Santa Rosa, California 95403—or on such other date,  
4 at such other time, or at such other place as the Court may designate—Plaintiff Danielle Howell will move  
5 for an order for an award of attorneys’ fees in the sum of \$333,333.33, attorneys’ costs in the sum of  
6 \$6,710.06, and a Service Award to Class Representative Danielle Howell in the sum of \$10,000.00.<sup>1</sup> This  
7 Motion is unopposed.

8 On July 9, 2021, this Court preliminarily approved the Parties’ Settlement Agreement in the above-  
9 captioned wage-and-hour class action. The proposed Settlement provides exceptional relief: an all-cash,  
10 non-reversionary, \$1.0 million common fund to be distributed automatically to Class Members. To date,  
11 there have been no objections to the Settlement, and only two Class Members have opted out. Assuming  
12 that *all* of the contemplated deductions are approved, the Net Settlement Amount for distribution to the  
13 718 Settlement Class Members equals approximately \$615,456.61. If no additional Class Members opt  
14 out, this leads to an average Individual Settlement Share of approximately \$857.18 to each Settlement  
15 Class Member.

16 This Settlement occurred after Class Counsel’s thorough investigation, tireless efforts, and  
17 extensive arm’s length negotiations over several months. The requested fees and costs are reasonable and  
18 appropriate because of the excellent results achieved, the amount of work involved, the contingent nature  
19 of this case, and the significant amount of risk assumed by Class Counsel. Because the attorneys’ fees  
20 and costs requested are well within the range of reasonableness, Plaintiff respectfully requests that the  
21 Court award them in full. The requested Class Representative Service Award is likewise well-deserved;  
22 Plaintiff’s involvement in this case was significant and instrumental to the success of this litigation.

23 //

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28 <sup>1</sup> Capitalized terms used herein have the meanings set forth in the Class-Action and PAGA Settlement Agreement, attached as Exhibit 1 to the concurrently filed Declaration of David Zelenski in Support of Plaintiff’s Unopposed Motions for Final Approval, Fees, Costs, and Service Award.

1           The Motion will be made, and based upon, this Notice; the concurrently filed Declarations of  
2 David Zelenski, Mark Greenstone, Danielle Howell, and Kevin Lee; the Memorandum of Points and  
3 Authorities appended hereto; the complete record in this action; and such further evidence and argument  
4 that may be submitted prior to, or during, the hearing on the Motion.

5  
6 Dated: October 1, 2021

ZELENSKI LAW, PC  
GREENSTONE LAW APC

*David Zelenski*

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Abigail A. Zelenski, David Zelenski  
Mark S. Greenstone  
*Attorneys for Plaintiff*

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1 **I. Introduction.**

2 On July 9, 2021, the Court preliminarily approved the Parties’ Settlement Agreement in this wage-  
3 and-hour class action. Court-appointed Class Counsel now respectfully requests that the Court grant Class  
4 Counsel’s Motion for (1) an award of attorneys’ fees in the amount of 33<sup>1</sup>/<sub>3</sub>% of the common fund, or  
5 \$333,333.33; (2) reimbursement of \$6,710.06 in reasonable and necessary litigation expenses; and (3) a  
6 Service Award of \$10,000.00 to Plaintiff Danielle Howell for her service as the Class Representative. The  
7 requested fees represent a fractional multiplier of under 0.91 applied to Class Counsel’s current lodestar  
8 of \$366,880.18.

9 As discussed more fully in Plaintiff’s Motion for Final Approval, the proposed Settlement provides  
10 exceptional relief: an **all-cash, non-reversionary, \$1.0 million** common fund from which **all** Settlement  
11 Class Members will **automatically** be paid their Individual Settlement Shares **without any need to submit**  
12 **claim forms**. Defendant will also pay **all** employer-side payroll taxes and contributions associated with  
13 the Settlement **separately**—i.e., **on top of** the Gross Settlement Amount. As of the date of this Motion,  
14 there have been **no** objections to the Settlement, and only two Class Members have opted out. Assuming  
15 that **all** of the contemplated deductions are approved in full, the Net Settlement Amount for distribution  
16 to the 718 Settlement Class Members equals approximately \$615,456.61. If no additional Class Members  
17 opt out, the Settlement will result in an average Individual Settlement Share to each Settlement Class  
18 Member of approximately \$857.18—a striking amount in light of the industry-specific defenses arguably  
19 applicable to Plaintiff’s claims.<sup>2</sup>

20 This result was achieved after a rigorous review by Class Counsel of the evidence relevant to  
21 Plaintiff’s claims. Although this case was only recently filed in March 2021, the Parties began negotiating  
22 **nearly two years ago**, in 2019; during that time, the Parties engaged in substantial informal discovery and  
23

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24 <sup>2</sup> The Settlement contemplates a sixty-day period for Class Members to submit objections and requests  
25 for exclusion to the Settlement, running from the date that the Notice was first distributed to the Class.  
26 See Decl. of David Zelenski in Supp. of Pl.’s Unopposed Mot. for Final Approval, Fees, Costs, and  
27 Service Award (“Zelenski Decl.”) Ex. 1 at §§ 19, 37–38. As explained in the concurrently filed Motion  
28 for Final Approval, the Settlement Administrator first distributed the Notice on August 16, 2021. See  
Pl.’s Unopposed Mot. for Final Approval of Class-Action Settlement and for Conditional Class  
Certification (“Mot. for Final Approval”) § II.E. The deadline for submitting objections and requests for  
exclusion therefore closes on October 15, 2021, meaning that additional submissions may still come in.  
In advance of the November 10, 2021, hearing, Plaintiff will file a supplemental declaration with updated  
statistics.

1 an all-day mediation session so that they could evaluate their respective positions' strength and  
2 weaknesses. Before the mediation, Class Counsel reviewed Defendant's production of thousands of pages  
3 of documents, including Defendant's written scheduling, meal-break, and rest-break policies for the  
4 entirety of the relevant statutory period; computerized lists of all non-exempt employees who had worked  
5 for Defendant at any time since January 23, 2016, along with each such employee's job title, hiring date,  
6 and, if applicable, termination date; and a computerized random sampling of employees' timekeeping and  
7 payroll data. Ultimately, the \$1.0 million Gross Settlement Amount was the amount proposed by the  
8 mediator to settle this case, after the Parties' mediation session had failed to reach a resolution.

9 In continuing with this litigation, Plaintiff would have surely faced numerous challenges to  
10 establishing liability and damages, as well as to class certification. Thus, Plaintiff faced years of potential  
11 litigation in this Court, as well as possible appellate litigation, with no guarantee of any recovery  
12 whatsoever. Despite these risks, Class Counsel collectively worked nearly 450 hours over the course of  
13 almost two years, all on a contingency basis. Plaintiff herself likewise assisted with the prosecution of  
14 her claims through the ups and downs of litigation.

15 Class Counsel believe that an attorneys' fee award of 33<sup>1</sup>/<sub>3</sub>% of the common fund properly reflects  
16 the many significant risks taken by Class Counsel, the amount of work involved, and the excellent result  
17 achieved. When examined under either the percentage-of-the-fund or lodestar methods for calculating  
18 attorneys' fees, the requested fee is reasonable and well within the range of attorneys' fees awarded in  
19 similar complex, contingency cases. In addition, the costs requested by Class Counsel are reasonable in  
20 amount, and they were necessarily incurred in the successful prosecution of the action. The requested  
21 Class Representative Service Award is likewise well-deserved. Plaintiff's involvement in this case was  
22 significant and instrumental to the success of this litigation, and she is also agreeing to a broader release  
23 than those required by other Settlement Class Members. Accordingly, the requested attorneys' fee, costs,  
24 and Service Award should be approved.

25 ***II. Factual and Procedural History.***

26 Plaintiff refers the Court to her concurrently filed Motion for Final Approval for details regarding  
27 the procedural history of the litigation, the nature of the claims asserted, the negotiations leading to the  
28 Settlement, and the risks and uncertainties of continued litigation, all of which are respectfully



1 incorporated herein by reference. *See* Mot. for Final Approval §§ II.A–B, II.E, IV.C.

2 **III. Class Counsel’s Attorneys’ Fee Request Is Reasonable and Should Be Granted.**

3 **A. A Common-Fund Attorneys’ Fee Award Is Appropriate.**

4 The U.S. Supreme Court has long recognized that “a litigant or a lawyer who recovers a common  
5 fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee  
6 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). California courts have  
7 too “long recognized, as an exception to the general American rule that parties bear the costs of their own  
8 attorneys, the propriety of awarding an attorney fee to a party who has recovered or preserved a monetary  
9 fund for the benefit of himself or herself and others.” *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480,  
10 488–89 (2016).

11 The rationale for the common-fund doctrine is predicated on the principle of preventing unjust  
12 enrichment. The doctrine provides that, when a litigant’s efforts create or preserve a fund from which  
13 others derive benefits, the active litigant may require the passive beneficiaries to compensate him or her  
14 for his or her attorneys’ fees, since he or she was the one who created the fund. *See Walsh v. Woods*, 187  
15 Cal. App. 3d 1273, 1276–77 (Ct. App. 1986). Both state and federal courts in California have embraced  
16 this doctrine. *See, e.g., Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977); *Syed v. M-I LLC*, No. CV 1:14-742  
17 WBS BAM, 2016 WL 310135, at \*9 (E.D. Cal. Jan. 26, 2016).

18 Trial courts have wide latitude in assessing the value of attorneys’ fees, and their decisions will  
19 not be disturbed on appeal absent a manifest abuse of discretion. *Lealao v. Beneficial Cal., Inc.*, 82 Cal.  
20 App. 4th 19, 53 (2000) California law provides that attorneys’ fees awards should be equivalent to fees  
21 freely negotiated in the legal marketplace and paid in comparable litigation, based on the result achieved  
22 and risk incurred. *See id.* at 24, 26, 47, 50. Fee awards that are too small will “chill the private enforcement  
23 essential to the vindication of many legal rights and obstruct . . . representative actions.” *Id.* at 53. In  
24 other words, attorneys’ fees serve as an economic incentive for counsel to bring class-action litigation  
25 necessary to protect the rights of individuals whose injuries or damages are too small to economically  
26 justify individual representation, i.e., awardable fees provide increased access to the judicial system.

27 In awarding fees in a class action, courts generally use either the percentage-of-the-fund or the  
28 lodestar-multiplier approach. *See Laffitte*, 1 Cal. 5th at 489. “The choice of a fee calculation method is

1 generally one within the discretion of the trial court, the goal under either the percentage or lodestar  
2 approach being the award of a reasonable fee to compensate counsel for their efforts.” *Id.* at 504. “[W]hen  
3 class action litigation establishes a monetary fund for the benefit of the class members, and the trial court  
4 in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of  
5 a reasonable fee by choosing an appropriate percentage of the fund created.” *Id.* at 503. There are,  
6 however, numerous “recognized advantages [to] the percentage method—including relative ease of  
7 calculation, alignment of incentives between counsel and the class, a better approximation of market  
8 conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement  
9 and avoid unnecessarily prolonging the litigation.” *Id.* See also *Lealao*, 82 Cal. App. 4th at 48 (stating  
10 that the percentage-of-the-benefit approach is preferred in such cases because “it better approximates the  
11 workings of the marketplace than the lodestar approach”) (quotation marks removed).

12 ***B. The Court Should Award a Reasonable Percentage of the Common Fund As Attorneys’***  
13 ***Fees.***

14 California and federal courts recognize that an appropriate method for determining the award of  
15 attorneys’ fees in a class action is based on a percentage of the total value made available to the class by  
16 the settlement. See generally, e.g., *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43 (2008); *Vincent v. Hughes*  
17 *Air W., Inc.*, 557 F.2d 759 (9th Cir. 1977). In determining the proper percentage, courts examine the risks  
18 and potential value of the litigation, the contingent nature of the representation, the novelty or difficulty  
19 of the issues presented, the skill shown by counsel, the hours worked, and the associated hourly rates in  
20 the legal marketplace. *Laffitte*, 1 Cal. 5th at 504. Although California courts have not established a  
21 “benchmark” percentage of the fund, they have noted that “[e]mpirical studies show that, regardless  
22 whether the percentage method or the lodestar method is used, fee awards in class actions average around  
23 one-third of the recovery.” *Chavez*, 162 Cal. App. 4th at 66 n.11 (2008) (quotation marks removed).

24 Here, the requested award of one-third of the non-reversionary Gross Settlement Amount fairly  
25 and reasonably compensates Class Counsel. Class Counsel invested significant resources in this case with  
26 the possibility of no recovery whatsoever. Decl. of Mark Greenstone in Supp. of Pl.’s Unopposed Mots.  
27 for Final Approval, Fees, Costs, and Service Award (“Greenstone Decl.”) ¶¶ 6, 15; Zelenski Decl. ¶ 30.  
28 Due, in no small part, to Class Counsel’s skill, experience, and past success litigating similar claims, Class

1 Counsel was able—after extensive negotiations—to resolve this case by way of a Settlement that provides  
2 significant relief to the Settlement Class. Greenstone Decl. ¶¶ 2–5, 15; Zelenski Decl. ¶¶ 3–4, 20–25. The  
3 Parties’ ability to reach the Settlement demonstrates Class Counsel’s efficient use of resources, and  
4 recognizes the risks and expenses of litigation and trial.

5 ***1. The Requested Attorneys’ Fees Are Reasonable Under Other Factors Considered***  
6 ***by California Courts.***

7 In determining the reasonableness of a fee request, California courts typically consider the  
8 following factors: (1) the result that class counsel obtained; (2) the time and labor required of the  
9 attorneys; (3) the contingent nature of the case, including the delay in payment to class counsel; (4) the  
10 extent to which the litigation precluded other employment by class counsel; (5) the experience, reputation,  
11 and ability of the attorneys who performed the services, as well as the skill they displayed in litigation and  
12 the novelty, complexity, and difficulty of the case; and (6) the informed consent of the class to the  
13 requested fee. *See, e.g., Serrano*, 20 Cal. 3d at 48; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810  
14 n.21 (1996).

15 ***a. The Result Obtained Supports the Requested Fee.***

16 The success of this litigation is readily apparent. The Settlement represents a fair resolution of this  
17 case given the risks inherent in litigating it through trial and possible appeals. Class Counsel’s efforts in  
18 this matter resulted in a non-reversionary common fund of \$1.0 million for the benefit of the Settlement  
19 Class. Zelenski Decl. Ex. 1 at §§ 10, 13, 29. Although Class Counsel believes that Plaintiff would prevail  
20 on her claims at trial, a number of risks reduced the case’s expected value. *See* Zelenski Decl. ¶¶ 20–25;  
21 Greenstone Decl. ¶ 15. As discussed extensively in Plaintiff’s Motion for Final Approval, Defendant  
22 raised issues with Plaintiff’s meal-break and rest-break claims regarding the need for individualized proof,  
23 and—perhaps more importantly—argued that its employees were within the relevant wage order’s meal-  
24 period and rest-period exemptions. *See* Mot. for Final Approval § IV.C. The California Labor and  
25 Workforce Development Agency (“LWDA”) also concluded that Defendant had sufficiently cured the  
26 alleged employer-address violation by retroactively providing corrected wage statements to all current and  
27 former employees. *Id.* Despite these challenges, Defendant agreed to pay a non-reversionary Gross  
28 Settlement Amount of \$1.0 million. In light of the risks that the Class would have faced had the litigation

1 continued, this is an excellent recovery that supports Class Counsel’s requested fees. *See Feminist*  
2 *Women’s Health Ctr. v. Blythe*, 32 Cal. App. 4th 1641, 1674 & n.8 (1995) (explaining that, “[w]here a  
3 plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee”) (brackets  
4 in original).

5 ***b. The Time and Labor Required Support the Requested Fee.***

6 The time and effort expended by Class Counsel in prosecuting the Action and achieving the  
7 Settlement are reasonable and support the requested fee. Under California law, every hour reasonably  
8 spent on a litigant’s case is compensable: “Absent special circumstances rendering the award unjust, an  
9 attorney fee award should ordinarily include compensation for **all** the hours **reasonably spent**, including  
10 those relating solely to the fee.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001) (emphasis in original).  
11 In determining what is reasonable, courts should look at “the entire course of the litigation, including  
12 pretrial matters, settlement negotiations, discovery, [and] litigation tactics.” *Vo v. Las Virgenes Mun. Util.*  
13 *Dist.*, 79 Cal. App. 4th 440, 447 (2000) (emphasis removed).

14 Moreover, summaries of Class Counsel’s time and billing records—set forth in the accompanying  
15 Declarations—provide the Court with evidence sufficient to determine the reasonableness of Plaintiff’s  
16 lodestar. Time-record summaries are *prima facie* evidence that counsel’s hours were necessarily incurred.  
17 *Hadley v. Krepel*, 167 Cal. App. 3d 677, 682 (1985). *See also Horsford v. Bd. of Trustees*, 132 Cal. App.  
18 4th 359, 396 (2005) (holding that “the verified time statements of the attorneys, as officers of the court,  
19 are entitled to credence in the absence of a clear indication the records are erroneous”).

20 None of Class Counsel’s time spent prosecuting this matter was unreasonable. Class Counsel  
21 invested nearly 450 hours of time litigating this case over the course of almost two years. Greenstone  
22 Decl. ¶¶ 10–13; Zelenski Decl. ¶¶ 38–43. As set forth in greater detail in the concurrently filed  
23 Declarations, Class Counsel’s work on this matter included, among other things, conducting interviews  
24 with Plaintiff and other witnesses; conducting an extensive investigation of the claims asserted;  
25 researching and preparing a detailed written notice to the LWDA and Defendant, as well as subsequent  
26 LWDA filings in opposition to Defendant’s submissions; preparing a detailed class-action Complaint;  
27 requesting and reviewing informal discovery produced by Defendant leading up to mediation; analyzing  
28 the information and documents provided by Defendant; researching the defenses raised by Defendant;

1 preparing a detailed and comprehensive mediation brief and damage analysis; engaging in a mediation  
2 process overseen by a highly experienced third-party mediator, which involved written submissions  
3 concerning liability and damages, and a full-day formal mediation session; negotiating and drafting the  
4 Memorandum of Understanding, Settlement Agreement, Notice, and related settlement documents;  
5 drafting the preliminary-approval moving papers; overseeing the implementation of the notice process;  
6 and drafting the final-approval moving papers and the within Motion. Greenstone Decl. ¶¶10–13;  
7 Zelenski Decl. ¶¶ 38–43.

8 Class Counsel also anticipates contributing additional time and effort to this case if the Settlement  
9 is finally approved. Greenstone Decl. ¶ 14; Zelenski Decl. ¶ 45. Additional tasks that Class Counsel  
10 expects to perform include continuing to oversee the administration of the Settlement, preparing for and  
11 attending the final-approval hearing, and continuing to respond to any Class Member inquiries.  
12 Greenstone Decl. ¶ 14; Zelenski Decl. ¶ 45. Thus, Class Counsel’s lodestar—discussed below—does not  
13 reflect the full extent of Class Counsel’s efforts.

14 *c. The Contingent Nature of the Case and the Delay in Payment to Class*  
15 *Counsel Further Support the Requested Fee.*

16 Whether the representation was provided on a contingency basis, as it was in this case, is an  
17 important factor:

18 *A contingent fee must be higher than a fee for the same legal services paid as they are*  
19 *performed.* The contingent fee compensates the lawyer not only for the legal services he  
20 renders but for the loan of those services. . . . A lawyer who both bears the risk of not being  
21 paid and provides legal services is not receiving the fair market value of his work if he is  
22 paid only for the second of these functions.

23 *Cates v. Chiang*, 213 Cal. App. 4th 791, 823 (2013) (emphasis supplied) (ellipsis in original) (quotation  
24 marks removed). In other words, there is a substantial difference between the risk assumed by attorneys  
25 who are paid on an hourly basis, on the one hand, and attorneys who work on a contingency-fee basis, on  
26 the other hand.

27 In this case, Class Counsel worked on a fully contingent basis and assumed the very serious risk  
28 of receiving nothing. Greenstone Decl. ¶¶ 6, 15; Zelenski Decl. ¶ 30. Because of this increased risk, a  
contingent fee must be higher than a fee for the same legal services paid as they are performed. *Ketchum*,  
24 Cal. 4th at 1132–33 (citing Richard A. Posner, *Economic Analysis of Law* 534, 567 (4th ed. 1992)).

1 The contingent fee compensates the lawyer not only for the legal services that he or she renders, but, again,  
2 also for ““the loan of those services.”” *Ketchum*, 24 Cal. 4th at 1132 (quoting Posner, *Economic Analysis*  
3 *of the Law* 534, 567). ““The implicit interest rate on such a loan is higher because the risk of default (the  
4 loss of the case . . . ) is much higher than that of conventional loans.”” *Ketchum*, 24 Cal. 4th at 1132–33  
5 (quoting Posner, *Economic Analysis of the Law*, 534, 567).

6 In this case, Class Counsel took this case on a contingency-fee basis, investing time and resources  
7 in this matter without any compensation to date. Contingency-fee practices, by their very nature, do not  
8 accommodate the investment of unnecessary time in a case. At all times, this case carried a very real  
9 possibility of an unsuccessful outcome and of Class Counsel’s receiving no fees of any kind.

10 Counsel retained on a contingency-fee basis, whether in an individual action or in class-action  
11 litigation, has the right to receive a premium beyond their standard, hourly, non-contingent fee schedule,  
12 in order to compensate for the assumed risks and the delay in payment. The simple fact is that, despite  
13 the most vigorous and competent efforts, success is never guaranteed. A lawyer who bears the risk of not  
14 being paid but who provides legal services anyway is not receiving the fair market value of his or her work  
15 if he or she is paid only for the second of these functions. If he or she were paid no more, then competent  
16 counsel would be reluctant to accept fee-award cases. *Ketchum*, 24 Cal. 4th at 1133 (citing John  
17 Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 Yale L.J. 473, 480 (1981)). *See also* Cal.  
18 R. Prof’l Conduct 1.5(b)(11) (recognizing that the contingent nature of representation is an appropriate  
19 component in considering whether a fee is reasonable).<sup>3</sup>

20 Further, continued litigation of this matter carried a number of very specific risks that could have  
21 resulted in no recovery for the Class and no compensation for Class Counsel. In order to succeed, Plaintiff  
22 would have to prevail at several stages, including a likely motion for summary judgment, a motion for  
23 class certification, and trial. Even if Plaintiff prevailed on all of those, an appeal would likely follow. All  
24 of these legal hurdles presented significant barriers to recovery, and all would have been well-litigated by  
25 Defendant. Defendant is represented by skilled counsel from Fisher Phillips LLP, which has extensive  
26

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27 <sup>3</sup> Relatedly, as discussed below, Plaintiff herself similarly undertook the risk of liability for  
28 Defendant’s costs had this case been unsuccessful, as well as other potential negative ramifications from  
coming forward to sue on behalf of the Class. Decl. of Danielle Howell in Supp. of Pl.’s Unopposed Mots.  
for Final Approval, Fees, Costs, and Service Award (“Howell Decl.”) ¶ 9.

1 experience defending wage-and-hour class actions. Defendant no doubt would have mounted a vigorous  
2 defense throughout continued litigation; that Class Counsel was nevertheless able to secure a \$1.0 million  
3 recovery for the benefit of the Class is indicative of Class Counsel’s skill, experience, and expertise in  
4 wage-and-hour class-action litigation.

5 ***d. The Litigation Precluded Class Counsel’s Other Employment, Which***  
6 ***Also Supports the Requested Fee.***

7 As set out in further detail in the accompanying Declarations, Class Counsel invested nearly 450  
8 hours of time litigating this case. Greenstone Decl. ¶¶ 10–13; Zelenski Decl. ¶¶ 38–43. Not only was  
9 litigating this action time-intensive, but it was also complex, given the unique, industry-specific defenses  
10 applicable. In light of the amount of time and resources dedicated to litigating this action, Class Counsel  
11 was otherwise precluded from pursuing other cases or undertaking other representation. Zelenski Decl.  
12 ¶ 30. Class Counsel’s commitment to the litigation cannot be assessed in a vacuum, and this further  
13 supports the requested fee.

14 ***e. The Experience and Skill of Class Counsel and the Complexity of the***  
15 ***Case Support the Requested Fee.***

16 The complexity of the issues presented in this case and the skill displayed by Class Counsel warrant  
17 the requested fee award. These factors are not redundant of those discussed above. Attorneys of  
18 comparable expertise and experience must employ greater skill when working on a contingent-fee basis  
19 as compared to working on an hourly basis, since the contingent-fee attorney must, out of financial  
20 necessity, operate in a more efficient manner than an hourly attorney who is paid regularly without the  
21 burden of working on an all-or-nothing basis.

22 Here, Defendant put up a vigorous defense throughout this litigation. Defendant denied liability,  
23 felt very strongly about its ability to prevail, and confronted Class Counsel with complex factual and legal  
24 defenses that presented meaningful hurdles to achieving a favorable settlement. Despite this, Class  
25 Counsel was able to use its substantial experience in complex wage-and-hour litigation to convince  
26 Defendant to attend mediation and discuss a potential settlement, rather than proceed with further  
27 litigation. When Defendant agreed to mediation, Class Counsel spent significant time combing through  
28 thousands of pages of documents, including timekeeping and payroll records to prepare for mediation.

1 The Settlement was possible largely because Class Counsel marshaled enough evidence to substantiate  
2 Plaintiff’s novel theories and to make convincing arguments during the mediation itself. *See* Greenstone  
3 Decl. ¶¶ 5, 10; Zelenski Decl. ¶¶ 9–19.

4 Due to the novelty and complexity of the legal issues involved, Class Counsel utilized skills  
5 normally reserved to those who handle complex employment-law litigation cases. The novelty of  
6 Plaintiff’s claims and the difficulty of this case, as well as the quality and tenacity of Defendant’s Counsel,  
7 all evidence the skill presented by Class Counsel in the successful prosecution of this action. Practice in  
8 the narrow area of wage-and-hour litigation undeniably requires skill, knowledge, and experience.

9 Class Counsel submits that the quality of its representation is best evidenced by the quality of the  
10 result achieved. Here, the Settlement provides a very favorable result for the Settlement Class in light of  
11 the serious risks of continued litigation. Class Counsel respectfully submits that the quality of its efforts  
12 in the litigation to date, together with its substantial experience in class actions and its commitment to this  
13 litigation, provided Class Counsel with the leverage necessary to negotiate the Settlement.

14 Courts have recognized that the quality of the opposition faced by plaintiffs’ counsel should be  
15 taken into consideration in assessing the quality of counsel’s performance. *See, e.g., Peak-Las Positas*  
16 *Partners v. Bollag*, 172 Cal. App. 4th 101, 114 (2009) (explaining that fees are reasonable in light of the  
17 complexity of issues, the results obtained, and the opposing party’s aggressive litigation posture). Again,  
18 Defendant was represented by Fisher Phillips LLP—an accomplished law firm that vigorously represented  
19 the interests of its client throughout this Action. Notwithstanding this opposition, Class Counsel’s  
20 thorough investigation, ability to present a strong case, and demonstrated willingness to vigorously  
21 prosecute the action enabled Class Counsel to achieve the favorable Settlement. This factor therefore  
22 militates in favor of the requested fee.

23 *f. The Settlement Class Consents to the Fee Award.*

24 The Notice that was delivered to the Class following preliminary approval set forth an overview  
25 of the matters at issue in the Settlement, including the anticipated size of Class Counsel’s requested fee.  
26 *See* Decl. of Kevin Lee in Supp. of Pl.’s Unopposed Mots. for Final Approval, Fees, Costs, and Service  
27 Award (“Lee Decl.”) Ex. A at. Thus far, there have been no objections to the Settlement as a whole or to  
28 Class Counsel’s requested fee in particular. Lee Decl. ¶ 11. This factor weighs in favor of approval.



1                   2.       *The Lodestar Cross-Check Also Strongly Supports the Reasonableness of Class*  
2                                    *Counsel’s Fee Request.*

3                   While the percentage-of-the-benefit approach is endorsed as the better approximation of the  
4 workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-  
5 check” the results of the other. *See, e.g., Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557 (2009)  
6 (explaining that, “assuming the class benefit can be monetized with a reasonable degree of certainty”—i.e.,  
7 assuming that a common fund exists—“[i]t may be appropriate . . . to ‘cross-check’ . . . the lodestar in  
8 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable”). This said,  
9 courts have cautioned that the primary basis of the fee award in common-fund cases remains the  
10 percentage-of-the-fund method, and have cautioned that class counsel should not necessarily receive a  
11 lesser fee achieving, as here, a speedy and timely result for class members in need of immediate relief. *See*  
12 *Laffitte*, 1 Cal. 5th at 489–90 (explaining that the lodestar method can be “criticized for discouraging early  
13 settlement,” while a percentage method “encourages early settlement, which avoids protracted litigation”);  
14 *Vizcaino v. Microsoft Corp.*, 290 F.3d. 1043, 1050 & n.5 (9th Cir. 2002) (explaining same). Indeed, courts  
15 have noted that “it is widely recognized that the lodestar method creates incentives for counsel to expend  
16 more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar  
17 method does not reward early settlement.” *Vizcaino*, 290 F.3d at 1050 n.5. Only when the lodestar  
18 multiplier is “*far outside* the normal range” would a trial court “have reason to reexamine its choice of a  
19 percentage.” *Laffitte*, 1 Cal. 5th at 504. Furthermore, “trial courts conducting lodestar cross-checks have  
20 generally not been required to closely scrutinize each claimed attorney-hour, but have instead used  
21 information on attorney time spent to focus on the general question of whether the fee award appropriately  
22 reflects the degree of time and effort expended by the attorneys.” *Id.* (quotation marks removed).

23                   A lodestar cross-check here confirms that the requested award is reasonable. Class Counsel has  
24 executed Declarations summarizing the time spent to date by each attorney in this case.<sup>4</sup> Greenstone Decl.  
25 ¶¶ 12–13; Zelenski Decl. ¶¶ 38–43. As the Declarations indicate, Class Counsel has already logged a  
26 combined total of 448.30 hours in billable time, all of which represents time spent on tasks that were  
27

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28                   <sup>4</sup> Class Counsel will continue to spend time on this matter up to and even after the final-approval  
hearing, including responding to Class Member inquiries. Greenstone Decl. ¶ 14; Zelenski Decl. ¶ 45.

1 essential to the litigation and settlement; based on a blended hourly rate of \$818.38, Class Counsel’s  
2 lodestar is therefore \$366,880.18, which *exceeds* the fees requested. Greenstone Decl. ¶¶ 10–13; Zelenski  
3 Decl. ¶ 38–43.

4 The proposed hourly rate for Class Counsel are reasonable. In the case of a lodestar analysis, the  
5 reasonable hourly rate is that prevailing in the community for similar work. *Ketchum*, 24 Cal. 4th at 1132.  
6 As detailed in the concurrently filed Declarations, Class Counsel’s rate was computed using the Laffey  
7 Matrix—a widely recognized compilation of attorney-rate data frequently used to compute fee awards—  
8 as adjusted for California. *See, e.g., Bond v. Ferguson Enters., Inc.*, No. 1:09-CV01662 OWW MJS, 2011  
9 WL 2648879, at \*12 (E.D. Cal. June 30, 2011). The lodestar, in turn, may be adjusted up or down based  
10 on the number of years the attorneys have been practicing and the subject-matter area in which they focus,  
11 among other factors. *Laffitte*, 1 Cal. 5th at 504. As explained in the accompanying Declarations, the rates  
12 of pay are reasonable in the California legal markets for attorneys who handle complex employment-  
13 related class actions. Greenstone Decl. ¶ 12; Zelenski Decl. ¶¶ 33–37.

14 With respect to the time spent itself, “California courts do not require detailed time records, and  
15 courts have discretion to award fees based on declarations of counsel describing the work they have done  
16 and [on] the court’s own view of the number of hours reasonably spent.” *Syers Props. III, Inc. v. Rankin*,  
17 226 Cal. App. 4th 691, 698 & n.3 (2014). Again, Class Counsel’s concurrently filed Declarations  
18 sufficiently summarize the time spent on this litigation. Greenstone Decl. ¶¶ 10–13; Zelenski Decl. ¶¶ 38–  
19 43. In any event, Class Counsel is ready and able to provide detailed time records for *in camera* review,  
20 if the Court so desires. Greenstone Decl. ¶ 11; Zelenski Decl. ¶ 33.

21 Even if Class Counsel’s lodestar were less than the requested fees—which it is not—the Court  
22 may apply an upward-adjusting multiplier to increase the fee. Courts, in fact, often approve multipliers  
23 between two and four. *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 255 (2001), *disapproved*  
24 *on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 269–70 (2018). *See also*  
25 *Laffitte*, 1 Cal. 5th 480, 488, 506 (affirming an order “approving a multiplier . . . of 2.03 to 2.13”); *City of*  
26 *Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78, 82–83, 86 (1998) (affirming an order approving a 2.34  
27 multiplier); *In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (stating that  
28 “[w]e see nothing wrong with” a multiplier of 2.52). Some cases have awarded even higher multipliers.

1 See *Wershba*, 91 Cal. App. 4th at 255 (stating that “[m]ultipliers can range from 2 to 4 or even higher”).

2 As discussed above, Class Counsel seeks a fee award that is one-third of the Gross Settlement  
3 Amount—and Class Counsel’s lodestar exceeds that amount. In the event that the Court believes the rates  
4 charged are too high, Plaintiff respectfully requests that the Court exercise its discretion to enhance the  
5 lodestar to reach the amount requested. And, in case the Court determines the lodestar-multiplier method  
6 is the best method to calculate reasonable attorneys’ fees, the Court may apply an enhancement to the  
7 lodestar if needed. Put differently, based on the Laffey Matrix, the fractional lodestar multiplier of under  
8 0.91 is clearly within a reasonable range, meaning that no multiplier is actually required because Class  
9 Counsel’s lodestar exceeds the requested fee.<sup>5</sup> The lodestar crosscheck thus supports the requested fee.

10 ***IV. The Court Should Approve the Requested Litigation Costs.***

11 Class Counsel also seeks reimbursement of actual out-of-pocket expenses incurred in litigating  
12 and settling this matter. Attorneys who create a common fund for the benefit of a class are entitled to  
13 payment from the fund of reasonable litigation expenses and costs, since those who benefit from their  
14 effort should share in the cost. *Rider v. Cty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992).

15 As set forth in Class Counsel’s Declarations, Class Counsel requests litigation expenses in the  
16 amount of \$6,710.06. These expenses include, *inter alia*, legal-filing fees, mediation fees, postage costs,  
17 and copying costs. Greenstone Decl. ¶¶ 17–18. All of Class Counsel’s expenses are reasonable in amount  
18 and were necessary for the successful prosecution of the litigation; they therefore should be reimbursed in  
19 full. *Id.*

20 ***V. The Class Representative Service Award Is Reasonable.***

21 Named plaintiffs in class-action lawsuits are eligible for reasonable enhancements as  
22 compensation “for the expense or risk they have incurred in conferring a benefit on other members of the  
23 class.” *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412 (2010). A  
24 named plaintiff is an essential ingredient of any class action, and a service award is appropriate to induce  
25 individuals to step forward and assume the burdens and obligations of representing a class. In deciding  
26 the amount of a service award for the class representative, relevant factors include the actions that he or  
27

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28 <sup>5</sup> In other words, even if the Court were to **reduce** Class Counsel’s hourly rates by approximately 10%,  
no multiplier would be required to reach the requested fees.

1 she took to protect the interests of the class, the degree to which the class has benefited from those actions,  
2 and the amount of time and effort the plaintiff expended in pursuing the litigation. *Munoz*, 186 Cal. App.  
3 4th at 405. Particularly in employment class actions, named plaintiffs should receive service awards as  
4 an incentive to take the risks associated with pursuing employment claims on behalf of other employees,  
5 such as the difficulty in obtaining future employment from prospective employers.

6 The requested \$10,000.00 Service Award to Plaintiff Danielle Howell for her service as a Class  
7 Representative is fair and appropriate based on the substantial amount of effort that she invested in  
8 bringing this suit and assisting Class Counsel. As the Class Representative, Plaintiff devoted substantial  
9 time to successfully prosecuting the case, and she performed her duties to the Class admirably and without  
10 hesitation. She provided detailed information that enabled Class Counsel to request informal discovery.  
11 Howell Decl. ¶ 4. She searched for, provided, and explained relevant documents that she had received  
12 from her employer, which was instrumental in Class Counsel's understanding of the case. *Id.* As the case  
13 went forward to mediation, she assisted in preparing the factual portion of the mediation brief, speaking  
14 with Class Counsel and providing the facts and evidence necessary to substantiate the allegations. *Id.*  
15 ¶¶ 4–6. She also assisted in reviewing and approving the Settlement, and reviewing the preliminary-  
16 approval moving papers. *Id.* The information and documentation provided by Plaintiff were instrumental  
17 in substantiating the wage-and-hour violations alleged in this action, and the recovery provided by the  
18 Settlement would have been impossible to obtain without her participation. These services unquestionably  
19 merit the requested Service Award.

20 At the same time, Plaintiff assumed the risk that she might be held liable for costs incurred in  
21 connection with this case had she lost. *Id.* ¶ 9. She thus subjected herself to the very real possibility of  
22 an adverse judgment and a corresponding payment of costs to Defendant. In addition, she faced actual  
23 risks with her future employment, since putting herself on public record in an employment lawsuit could  
24 very well affect her likelihood for future employment. Despite this, Plaintiff still chose to bring this  
25 litigation on behalf of others and to put those interests ahead of her own. *Id.* ¶ 7.

26 As a result of Plaintiff's service, 720 Class Members have had the opportunity to participate in the  
27 Settlement and to receive amounts for alleged wage-and-hour violations that they may have never known  
28 about, or been willing to pursue, on their own. If these Class Members would have each tried to pursue

1 their respective legal remedies on their own, they each would have had to expend a significant amount of  
2 their own monetary resources and time, all of which was obviated by Plaintiff's putting herself on the line  
3 on behalf of others.

4 In the final analysis, without Plaintiff's participation and hard work on behalf of the absent  
5 Settlement Class Members, there would be no case, and Settlement Class Members would have recovered  
6 nothing for their claims. The modest service award of \$10,000.00—just 1% of the Gross Settlement  
7 Amount—is an extremely small amount of money to recognize Plaintiff's active participation in this  
8 lawsuit, and it is in line with those regularly approved in class-action settlements. *See e.g., In re Cellphone*  
9 *Fee Termination Cases*, 186 Cal. App.4th 1380, 1393–95 (2010) (granting enhancement awards in the  
10 amount of \$10,000.00 to each of the four named class representatives); *Vandervort v. Balboa Cap. Corp.*,  
11 8 F. Supp. 3d 1200, 1208 (C.D. Cal. 2014) (approving \$10,000.00 incentive award); *Gaudin v. Saxon*  
12 *Mortg. Servs., Inc.*, No. 11-cv-01663-JST, 2015 WL 7454183, at \*10 (N.D. Cal. Nov. 23, 2015) (finding  
13 a service award of \$15,000.00 to be “fair and reasonable”); *In re Online DVD Rental*, 779 F.3d 934, 947–  
14 48 (9th Cir. 2014) (approving an incentive award 417 times larger than individual payments).

15 In any event, there are no objections to the Service Award by any Settlement Class Members. Lee  
16 Decl. ¶ 11. The Service Award to Plaintiff should therefore be approved as fair, adequate, and reasonable  
17 compensation for her services on behalf of the Settlement Class, and for the risks and personal sacrifice  
18 that she assumed. Class Counsel very respectfully requests that the Court approve the requested Service  
19 Award to Class Representative Danielle Howell.

20 **VI. Conclusion.**

21 For the foregoing reasons, Plaintiff respectfully requests that this Court grant her Motion for  
22 Attorneys' Fees, Costs, and Class Representative Service Award.

23  
24 Dated: October 1, 2021

ZELENSKI LAW, PC  
GREENSTONE LAW APC

*David Zelenski*

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Abigail A. Zelenski, David Zelenski  
Mark S. Greenstone  
*Attorneys for Plaintiff*

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to  
3 the within action; and my business address is 201 North Brand Boulevard, Suite 200, Glendale, California  
4 91103.

5 On **October 1, 2021**, I served the document(s) described as **PLAINTIFF DANIELLE HOWELL’S**  
6 **NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS-ACTION**  
7 **SETTLEMENT AND FOR CONDITIONAL CLASS CERTIFICATION; MEMORANDUM OF**  
8 **POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the party(ies) in this action by delivering  
9 a true copy(ies) addressed as follows:

10 Colin P. Calvert  
11 ccalvert@fisherphillips.com  
12 Sarah G. Bennett  
13 sbennett@fisherphillips.com  
14 FISHER & PHILLIPS LLP  
15 2050 Main Street, Suite 1000  
16 Irvine, California 92614

17  **BY U.S. MAIL:** I am readily familiar with the firm’s practice of collection and processing  
18 correspondence for mailing. Under that practice, an envelope(s) containing the document(s) would  
19 be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at  
20 Glendale, California in the ordinary course of business. I am aware that, on motion of the party  
21 served, service is presumed invalid if the postal-cancellation date or postage-meter date is more  
22 than one day after the date of deposit for mailing.

23  **BY OVERNIGHT DELIVERY OR EXPRESS MAIL:** I enclosed the document(s) in an  
24 envelope(s) or package(s) allowed by an overnight-delivery carrier and/or by the U.S. Post Office  
25 for express mail, and addressed to the person(s) at the address(es) above. I placed the envelope(s)  
26 or package(s) for collection and overnight delivery or express mail at an office or a regularly  
27 utilized drop-box of the overnight-delivery carrier, or I dropped it off at the U.S. Post Office.

28  **BY HAND DELIVERY:** I caused the document(s) to be delivered by hand to at least one of the  
individuals listed above.

XXX **BY ELECTRONIC SERVICE:** I caused the document(s) to be delivered by e-mail to the  
individuals listed above, and, to my knowledge, the transmission was reported as complete and  
without error.

I declare under penalty of perjury under the laws of the State of California and the United States that the  
foregoing is true and correct. Executed on **October 1, 2021**, at Los Angeles, California.

23 *David Zelenski*  
24 \_\_\_\_\_  
25 David Zelenski