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13 **UNITED STATES DISTRICT COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**

16
17 RICKY MANIER, JR., individually and on
behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20
21 SIMS METAL MANAGEMENT -
22 NORTHWEST, an unknown corporate entity;
and DOES 1 through 50, inclusive,

23 Defendants.
24
25
26

Case No. 4:19-cv-00718-JST

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
ATTORNEYS’ FEES, COSTS, AND
CLASS REPRESENTATIVE SERVICE
PAYMENT; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: January 27, 2022
Time: 2:00 p.m.
Courtroom: 6
Judge: Hon. John S. Tigar

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

2 **PLEASE TAKE NOTICE** that on January 27, 2022 p.m., at 2:00 p.m., or as soon
3 thereafter as the matter may be heard in Courtroom 6 of the United States District Court for the
4 Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450
5 Golden Gate Avenue, San Francisco, CA 94102, before the Honorable Jon S. Tigar, Plaintiff
6 RICKY MANIER, JR. (“Plaintiff”) will and hereby does move this Court for an Order granting
7 Class Counsels’ application for attorneys’ fees in the amount of \$300,000.00 (equal to 33 1/3%
8 of the gross settlement amount of \$1,000,000.00), reimbursement of costs in the amount of
9 \$15,408.13, and class representative service payment in the amount of \$10,000 to Plaintiff in
10 connection with the class-action and PAGA settlement reached in this case.

11 This Motion is based upon this Notice of Motion and Motion for Approval of Attorneys’
12 Fees, Costs, and Class Representative Service Payment, the attached Memorandum of Points and
13 Authorities in Support, the accompanying Declarations of Edward W. Choi, Larry W. Lee,
14 William L. Marder, Dennis S. Hyun, Ricky Manier, any oral argument of counsel, the complete
15 files and records in the above-captioned matter, and such additional matters as the Court may
16 consider.

17
18 DATED: November 10, 2021

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

19
20 By: /S/Edward W. Choi
Edward W. Choi
21 Attorney for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Plaintiff RICKY MANIER, JR. (“Plaintiff”) submits this memorandum of points and
3 authorities in support of his Motion for Attorneys’ Fees, Costs, and Service Payments (“Fee
4 Motion”). Plaintiff’s Fees Motion is not opposed by Defendant SIMS GROUP USA
5 CORPORATION (erroneously sued as “SIMS METAL MANAGEMENT – NORTHWEST”)
6 (“Defendant”) (Plaintiff and Defendant are collectively referred to as “Parties”).

7 **I. INTRODUCTION**

8 Plaintiff and his counsel respectfully request that the Court award: (1) Plaintiff’s counsel
9 30% of the \$1,000,000.00 common fund, or \$300,000.00; (2) reimbursement of litigation costs in
10 the amount of \$15,408.13¹ and (3) a service award to Plaintiff in the amount of \$10,000.

11 As set forth herein, these requested amounts are well within the range of reasonableness
12 and consistent with recent case authority, including the California Supreme Court’s recent
13 opinion in *Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016). In *Laffitte*, the Court affirmed
14 an award of attorneys’ fee award of \$6,333,333.33, based on 33 1/3% of the \$19 million
15 common fund. The Court further noted that awarding fees based on the common fund is
16 appropriate in wage and hour class actions.

17 Federal courts have followed *Laffitte* in awarding attorneys’ fees based on the common
18 fund, including the Central, Eastern, and Northern District Courts, including awarding fees up to
19 33 1/3% of the common fund. In approving these fee awards, the courts focused on the results
20 obtained for the class, the risks that class counsel faced, and whether the case was taken on a
21 contingency basis. Here, all of these factors are met.

22 Further, as set forth herein, Plaintiff’s requested fee award is reasonable when compared
23 to the lodestar cross-check. Plaintiff’s counsel expended a total of 419.50 hours, for a total
24 lodestar of \$314,625.00 which is more than the fees that are being sought in this matter and
25 results in a negative lodestar multiplier. As set forth below, the amounts sought are consistent
26 with recent awards in similar wage and hour class action settlements and fall well within the

27 _____
28 ¹ The Settlement Agreement contemplated up to \$20,000 for attorney’s costs.

1 range of reasonableness under the facts and circumstances of this case. Further, and critically,
 2 *not one of the 469 Class Members has objected to the requested awards since receiving the*
 3 *court-approved Class Notice explaining the same.*

4 Plaintiff's counsel's request for costs in the amount of \$15,408.13 should also be
 5 awarded, as the Agreement expressly permits recovery of costs up to \$20,000, and California
 6 Labor Code Sections 226(e) and 2699(g)(1) provide the statutory basis for costs.

7 Lastly, as set forth in Plaintiff's Declaration, he has invested significant time and efforts
 8 in the prosecution of this case. Plaintiff helped procure substantial monetary and non-monetary
 9 relief for the Class, assumed the considerable financial and reputational risk serving as the class
 10 representative, and spent significant time and had an impactful effect assisting with the
 11 prosecution of this case. Further, the requested Service Payment is well within the range of
 12 those granted by courts in similar settlements and *not a single Class Member has objected to*
 13 *the sought payment.*

14 In sum, Plaintiff and his counsel respectfully request that this Motion be granted.

15 **II. SUMMARY OF THE CASE**

16 **A. Factual Allegations**

17 Defendant is a publicly listed corporation engaged in metal recycling. Specifically,
 18 Defendant buys, processes and sells recycled metals. Plaintiff worked as a non-exempt heavy
 19 equipment operator at Defendant's facility located in Redwood City, California. (Declaration of
 20 Ricky Manier, Jr. ("Manier Decl.") ¶2). Plaintiff alleges that Defendant failed to pay overtime
 21 wages based on the correct, higher regular rate of pay as to Plaintiff and all other non-exempt
 22 employees who were paid shift pay and overtime wages in the same workweek. (*Id.* at ¶3).
 23 Plaintiff and Class Members earned additional non-discretionary incentive pay, including "Shift
 24 Pay" wages in work weeks in which Plaintiff and Class Members also earned overtime wages.
 25 (*Id.*) Plaintiff asserts that such incentive pay should have been included in the regular rate of pay
 26 for purposes of paying overtime wages to Plaintiff and Class Members. (*Id.*) Defendant,
 27 however, paid Plaintiff and Class Members only 1.5x their base rate of pay for the overtime rate.
 28 (*Id.*) Therefore, Plaintiff asserts that Defendant owes Plaintiff and Class Members additional

1 overtime pay and various penalties and interest.

2 In addition, Plaintiff further alleges that Defendant violated Labor Code § 226(a)(9) by
3 failing to list the applicable rate and hours with respect to the “Shift Pay” wages on wage
4 statements issued to Plaintiff and Class Members. Rather, whenever “Shift Pay” wages were paid
5 to the employees, the pay stubs only showed a flat amount without any applicable rate and hours
6 to show how the “Shift Pay” amount was calculated.

7 Finally, Plaintiff alleges that exempt and non-exempt employees were issued pay stubs
8 that do not identify the legal name of the employer. While the paystubs that were issued to the
9 employees identified by a company named Sims Metal Management- Northwest, this company
10 does not appear on the California Secretary of State website.

11 On the other hand, Defendant denies that it has engaged in any alleged unlawful conduct
12 and maintains that it has complied with California law and properly paid its employees in all
13 respects. As for Plaintiff’s overtime claim, Defendant asserts that Plaintiff’s claims are
14 preempted based on Collective Bargaining Agreements (“CBA”) that provide an exemption
15 under the Labor Management Relations Act (the “LMRA”). The LMRA provides that claims
16 that require interpretation of a CBA are preempted, such that the claims cannot be raised in a
17 civil action. With respect to Plaintiff’s wage statement claim Defendant disputed the merits of
18 Plaintiff’s claims, and further, argued that any violation were technical in nature and would not
19 meet Labor Code section 226’s injury requirement.

20 Had Defendant prevailed on any of these arguments, then Plaintiff and the Class would
21 have been left without or with a significantly reduced recovery. This settlement provides
22 concrete relief now to class members.

23 **B. Procedural Background**

24 *1. Summary of the Litigation*

25 On January 3, 2019, Plaintiff filed a putative class action Complaint in the Contra Costa
26 Superior Court, asserting claims against Defendant for alleged violation of the California Labor
27 Code for unpaid overtime wages and for failure to provide accurate itemized wage statements
28 and claims for interest, attorneys’ fees and costs. (Declaration of Edward W. Choi (“Choi Decl.”))

1 ¶2) Specifically, Plaintiff alleged that whenever overtime wages and non-discretionary
2 incentives, including, but not limited to “Shift Pay” was paid in the same workweek, that the
3 regular rate of pay for purposes of calculating overtime wages was inaccurate. Further, Plaintiff
4 alleged that Defendant violated Labor Code §226(a) by failing to list the applicable rate and
5 hours with respect to the “Shift Pay” wages on wage statements and by identify the legal name of
6 the employer on wage statements or shift differential wages were paid, the corresponding wage
7 statements failed to show the accurate rates of pay, in violation of Labor Code § 226(a). (Choi
8 Decl. ¶3).

9 On February 8, 2019, Defendant filed a Notice of Removal and an Answer to Removed
10 Complaint in the United States District Court, Northern District of California, alleging that the
11 United States District Courts have original jurisdiction over actions under section 301 of the
12 Labor Management Relations Act (“LMRA”), 29 U.S.C. §185(a). (Choi Decl. ¶4)

13 On April 24, 2019, the Parties stipulated to leave for Plaintiff to file a First Amended
14 Complaint after the expiration of the PAGA notice period. (Choi Decl. ¶5). On April 26, 2019,
15 Plaintiff filed his First Amended Complaint to include a cause of action for PAGA (“Operative
16 Complaint”). (*Id.* at ¶6)

17 After the filing of the First Amended Complaint, the Parties agreed to private mediation.
18 (*Id.* at ¶ 9). Defendant claims that the allegations have no merit and do not give rise to liability.
19 (*Id.*).

20 Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement on June 26,
21 2020. (Doc No. 42). The Court issued an Order Denying Motion for Preliminary Approval of
22 Class Action Settlement without prejudice on November 12, 2020. (Doc No. 45) (the
23 “November 12 Order”).

24 On February 18, 2021, Plaintiff filed a Renewed Motion for Preliminary Approval of
25 Class Action Settlement (Doc No. 46).

26 On July 27, 2021, the Court issued an order requiring declaration regarding the number of
27 members in different classes (Doc No. 50).

28 On September 2, 2021, this Court granted Plaintiff’s Renewed Motion for Preliminary

1 Approval of Class Action Settlement. (Doc No. 52) (the “Order Granting Preliminary
2 Approval”).

3 *2. Summary of Investigations and Discovery*

4 The Parties have served their Initial Disclosures, propounded and responded to written
5 discovery and engaged in an extensive meet and confer process regarding discovery. (Choi Decl.
6 at ¶7). In connection with written discovery, Plaintiff also obtained and reviewed Defendant’s
7 document production, including policy documents, class contact information, and class time and
8 payroll data. (*Id.* at ¶8). In sum, as evidenced from the docket from the time of removal to the
9 instant settlement, this case has been substantively litigated by both Parties.

10 **C. The Court Granted Preliminary Approval of the Settlement**

11 On September 2, 2021 this Court granted preliminary approval of the Settlement. Order
12 Granting Renewed Motion for Preliminary Approval of Class Action Settlement. (Docket No.
13 52). Having reviewed Plaintiff’s Renewed Motion for Preliminary Approval of Class Action
14 Settlement and the substantive terms of the Settlement, the Court (1) preliminarily approved the
15 settlement; (2) provisionally certified the Shift Differential Overtime Class and the Wage
16 Statement Class; (3) appointed Diversity Law Group, P.C., Polaris Law Group, LLP, Hyun
17 Legal, APC, and Law Offices of Choi & Associates, as Settlement Class Counsel; (4) appointed
18 Phoenix Settlement Administrators as settlement administrator; (5) ordered the dissemination of
19 the class notice by October 1, 2021; (6) ordered Plaintiff’s Motion for Attorneys’ Fees and
20 Expenses and Incentive Awarded to be filed by November 10, 2021; (7) set a deadline for class
21 members to comment upon or Object to the Proposed Settlement and Motion for Fees by
22 December 16, 2021; (8) set a deadline to file Plaintiff’s Motion for Final Approval of Settlement
23 Agreement, and for the parties to respond to any comments or objection by January 6, 2022; and
24 (9) set a Final Approval Hearing for January 27, 2022 at 2:00 p.m. (Doc No. 52).

25 **D. Distribution of the Notice**

26 On October 12, 2021, the Court-approved Class Notice was mailed to each Class
27 Member via First Class regular mail. (Declaration of Elizabeth Kruckenberg (“Admin Decl.” ¶5)
28 After skip tracing and re-mailing undeliverable packets, a stellar 100% of the Class has been

1 successfully noticed. (*Id.* at ¶6). In accordance with the Court’s instructions, the Class Notice
 2 informed Class Members about the terms of the Settlement, including the fact that Plaintiff
 3 would request: (1) an award of attorneys’ fees of up to \$300,000.00 to be paid from the gross
 4 settlement amount, (2) reimbursement of reasonable litigation expenses, and (3) a Service
 5 Payment of up to \$10,000.00. See Class Notice; Exhibit A to the Admin Decl. ***Not one of the***
 6 ***469 Class Members have objected in any way, to any degree, to the terms of the Settlement***
 7 ***including class Counsel’s requested award of fees and costs or Plaintiff’s requested Service***
 8 ***Payment.*** (Admin. Decl. ¶9). Further, none of the Class Members have opted out of the
 9 Settlement. (*Id.* ¶8). The overwhelmingly positive reaction of the Class is a clear indication of
 10 its approval of the Settlement and the sought fees, costs, and Service Payments.

11 **III. ATTORNEY FEE AWARDS IN COMMON FUND CASES**

12 **A. The Award Requested**

13 The fee sought relates to all efforts expended by Class Counsel for the complete handling
 14 of the class/representative Actions, including any additional work remaining to be performed by
 15 Class Counsel in securing final Court approval of the Settlement, and later following through to
 16 ensure that the Settlement is fairly administered and fully implemented. As shown above, a
 17 significant amount of work on the part of Class Counsel went into achieving this resolution.
 18 Based upon the factors relating to approval of percentage of the fund fee awards, class counsel
 19 submit that the effort and result justify the requested percentage fee requested. As a secondary
 20 “cross-check” to the percentage of the common fund award, Class Counsel are also providing
 21 this Court with time and task charts in their declarations, which break down the tasks and time
 22 spent by each firm, so that the Court can conduct a lodestar analysis.

23 Judge Marilyn Patel remarked, in an oft-quoted and prescient ruling, that in essence the
 24 task of tracking the tasks was itself a potential morass of its own making and, thus, favored the
 25 application of the percentage of the fund approach. *In re Activision Securities Litigation*, 723 F.
 26 Supp. 1373, 1375 (N.D. Cal. 1989). Notwithstanding Judge Patel’s observation, a time and task
 27 chart is offered here because it shows in this case that Class Counsel’s lodestar is \$314,625.00,
 28 which approximates 33 1/3% of the common fund with a negative multiplier. As discussed in

1 more detail below, under the common fund, or lodestar approach, Class Counsel’s fees are
2 reasonable and should be awarded.

3 **B. Courts, Including the California Supreme Court, Have Endorsed and Followed the**
4 **Percentage of the Fund Approach**

5 The U.S. Supreme Court consistently has recognized that “a litigant or a lawyer who
6 recovers a common fund for the benefit of persons other than himself or his client is entitled to a
7 reasonable attorney's fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472,
8 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970). The purpose of this doctrine is
9 largely to avoid unjust enrichment, by spreading the litigation costs proportionally among all the
10 beneficiaries so that the active beneficiary does not bear the entire burden alone. It provides that
11 when a litigant’s efforts create or preserve a fund from which others derive benefits, the litigant
12 may require the passive beneficiaries to compensate those who created the fund.

13 Every United States Supreme Court case that has considered the award of attorney's fees
14 under the common fund doctrine has determined those fees as a percentage of the recovery. *See*,
15 *e.g.*, *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773 (11th Cir. 1991) (citing *Blum v.*
16 *Stenson*, 465 U.S. 886, 900 n.16 (1984)) (noting that the percentage of recovery method is the
17 appropriate method to award attorney's fees in common fund cases); *Sprague v. Ticonic Nat'l*
18 *Bank*, 307 U.S. 161, 165 n.2 (1939); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 128
19 (1885); *Internal Improvement Fund Trs. v. Greenough*, 105 U.S. 527, 532 (1881).

20 Moreover, the Ninth Circuit has recognized a “ground swell of support for mandating a
21 percentage-of-the-fund approach in common fund cases.” *Florida v. Dunne*, 915 F.2d 542, 545
22 (9th Cir. 1990); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995)
23 (affirming attorney's fee of 33% of the recovery); *Morris*, 54 F. App'x at 663 (affirming fee
24 award of 33% of the recovery). Although the Ninth Circuit has typically found that 25% of the
25 common fund is “benchmark,” numerous courts in the Ninth Circuit have awarded higher
26 amounts. *See Stetson v. West Publishing Corp.*, Case No. 13-57061, at *11 (9th Cir. May 11,
27 2016). The twenty-five percent benchmark may be adjusted upward or downward depending on
28 the circumstances presented by the particular case. Indeed, the Ninth Circuit and district courts

1 therein have routinely permitted recovery in the amount of 33.33%, 40% and even up to 50% of
2 the common fund. *See, e.g., In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal.
3 1989) (listing Ninth Circuit cases).

4 Seeking a fee based on a percentage of the gross recovery, which is what Class Counsel
5 is seeking here, is appropriate and even desirable in cases like this. *See* Newberg on Class
6 Actions, Fourth Edition, vol. 4, p. 556, §14.6 (noting that percentage of the fund awards are
7 preferable because they align the interests of the attorney with the client, as the attorney is not
8 incentivized to bill unnecessary hours to generate a greater fee); *Boeing*, 444 U.S. at 478. Unlike
9 the lodestar method which can encourage class counsel to devote unnecessary hours to generate a
10 substantial fee, under the POR [percentage of recovery] method, the more the attorney succeeds
11 in recovering money for the client, and the fewer legal hours expended to reach that result, the
12 higher dollar amount of fees the lawyer earns. Thus, one of the primary advantages of the POR
13 method is that it is thought to equate the interests of class counsel with those of the class
14 members and encourage class counsel to prosecute the case in an efficient manner.

15 The California Supreme Court has also held that the award of attorneys' fees in common
16 fund wage and hour class action settlements should start with the percentage method. *See*
17 *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of
18 federal and state courts in holding that when class action litigation establishes a monetary fund
19 for the benefit of the class members, and the trial court in its equitable powers awards class
20 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
21 choosing an appropriate percentage of the fund created.").

22 Indeed, the California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
23 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
24 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
25 "extraordinarily high or low [should] the trial court consider whether the percentage method
26 should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at 505.

1 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
2 percent of the common fund is consistent with, and in the range of, awards in other class action
3 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014).

4 Federal courts have followed *Laffitte*, 1 Cal. 5th 480, in awarding attorneys’ fees in
5 class actions based on the percentage of the fund approach. For example, the Central District
6 Court followed *Laffitte* in awarding \$13,500,000 in attorneys’ fees in *Spann v. J.C. Penney*
7 *Corp.*, 211 F. Supp. 3d 1244, 1262 (C.D. Cal. 2016). *Spann* involved claims for unfair
8 advertising under California statutes. *Id.* The case settled for \$50 million and the plaintiffs’
9 counsel sought 27% of the common fund based on a multiplier of 3.07. Judge Olguin granted
10 final approval and approved the attorneys’ fees pursuant to *Laffitte*:

11 “The percentage method calculates the fee as a percentage share of
12 a recovered common fund or the monetary value of plaintiffs’
13 recovery.” [Citation]. **This method is typically used when a
14 common fund is created.** [Citation]. California has recognized
15 that most fee awards based on either a **lodestar or percentage
calculation are 33 percent** and has endorsed the federal
16 benchmark of 25 percent.”

17 *Id.* at *12 (citing *Laffitte*, 1 Cal.5th at 489, emphasis added).

18 Thus, the *Spann* Court noted that the percentage method is followed in common fund
19 cases and that California courts have generally awarded 33% in attorneys’ fees. *Id.*

20 Similarly, the Eastern District in *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No.
21 113CV00474DADBAM, 2017 WL 749018, at *7 (E.D. Cal. Feb. 27, 2017), followed *Laffitte* in
22 awarding 33% of the common fund. As the *Emmons* Court explained, “[t]he California Supreme
23 Court recently held that the percentage-of-fund method of calculating attorneys’ fees survives in
24 California courts.” *Id.*; see also *Zepeda v. Ulta Salon, Cosmetics & Fragrance, Inc.* U.S.D.C.
25 E.D. Cal. Case No. 1:17-cv-00853-DAD (Dkt. No. 55) (awarding \$1,133,333.33 (1/3) of the
26 common fund of \$3,400,000).

27 Likewise, the Northern District Court in *Villalpando v. Exel Direct Inc.*, No. 3:12-CV-
28 04137-JCS, 2016 WL 7740854, at *2 (N.D. Cal. Dec. 12, 2016), cited *Laffitte* when awarding
33% of the common fund:

1 Plaintiffs' fee request of \$ 4,500,000 represents one-third of the
2 Settlement Fund, which is reasonable under both applicable law,
3 and in light of the contingent risk, Counsel's documented lodestar,
4 the complex and protracted nature of the case, and strong result for
5 the Class.

6 *Id.*

7 Further, in *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 894 (C.D. Cal. 2016),
8 the Central District Court further reiterated that, “[i]n diversity actions ..., the Ninth Circuit
9 **applies state law to determine the right to fees and the method for calculating fees.**” *Id.*
10 (Emphasis added, citing *Mangold v. Cal. Public Util. Comm'n*, 67 F.3d 1470, 1478 (9th Cir.
11 1995)).

12 Courts consider the following factors in issuing an award under the common fund
13 approach:

14 [T]he extent to which class counsel achieved exceptional results
15 for the class, whether the case was risky for class counsel, whether
16 counsel’s performance generated benefits beyond the cash
17 settlement fund, the market rate for the particular field of law (in
18 some circumstances), the burdens class counsel experienced while
19 litigating the case (e.g., cost, duration, foregoing other work), and
20 whether the case was handled on a contingency basis.

21 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (internal
22 quotation marks omitted) (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir.
23 2002)).

24 Here, Plaintiff and his counsel respectfully request that this Court award 30% of the
25 common fund, which is less than the 1/3 fee awarded in follow *Laffitte* and other cases cited
26 above. Plaintiff’s counsel meets the factors for a common fund award pursuant to the factors
27 above. Moreover, through this case, Plaintiff and his counsel have conferred a benefit to the
28 class beyond a significant monetary recovery.

With respect to the market rate for similar cases, numerous courts have awarded 1/3 of
the common fund in class action settlements. *Vandervort*, 8 F. Supp. 3d at 1209-10 (C.D. Cal.
2014) (court awarded 33 1/3%); *Kearney v. Hyundai Motor Am.*, No. SACV 09-1298-JST, 2013
WL 3287996, at *5-9 (C.D. Cal. June 28, 2013) (granted attorneys’ fees and costs of \$993,000 in

1 class settlement involving recall of vehicles, without any immediate financial payout to the
 2 class); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 at *22-*23 (C.D. Cal. Nov.
 3 18, 2014) (awarded 1/3 of the common fund based on a 2.58 multiplier of the lodestar); *Birch v.*
 4 *Office Depot, Inc.*, No. 06CV1690 DMS (WMC), slip opin. (S.D. Cal. Sept. 28, 2007) (awarding
 5 a 40% fee on a \$16 million break claim wage and hour class action); *In re Pacific Enterprises*
 6 *Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming fee award equal to 33% of fund); *Cordy*
 7 *v. USS-Posco Indus.*, No. 12-CV-00553-JST, 2014 WL 212587, at *3 (N.D. Cal. Jan. 17, 2014)
 8 (“a proposed attorney's fee award of not more than 33% appears to be reasonable”); *Barbosa v.*
 9 *Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (“The Settlement
 10 Agreement's provision of \$430,000 in attorneys' fees (33 percent of the total settlement amount),
 11 is fair and reasonable in light of the awards of attorneys' fees in similar wage-and-hour cases in
 12 this district.”); *In re Heritage Bond Litigation*, 2005 U.S. Dist. LEXIS 13555 (C.D. Cal. June 10,
 13 2005) (33 1/3% awarded); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO,
 14 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012) (court approving attorneys' fees in the amount of 33
 15 percent of the common fund); *Benitez v. Wilbur*, No. 1:08-cv-01122 LJO GSA, Doc. No. 52
 16 (E.D. Cal., Dec. 15, 2009) (awarding 33.3 percent of the benefit to the class in attorneys' fees);
 17 *Chavez v. Petrissans*, Case No. 1:08-cv-00122 LJO GSA, Doc. No. 89 (E.D. Cal. Dec. 15,
 18 2009) (court approved awards of attorneys' fees of 33.3 percent of the common fund); *Romero v.*
 19 *Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270 (E.D. Cal. 2007) (33 1/3%
 20 awarded); *In re Heritage Bond Litigation*, 2005 U.S. Dist. LEXIS 13555 (C.D. Cal. June 10,
 21 2005) (33 1/3% awarded); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492-93 (E.D.
 22 Cal. 2010) (33 1/3% awarded); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416
 23 at *22-*23 (S.D. Cal. June 1, 2010) (33 1/3% awarded); *Rippee v. Boston Mkt. Corp.*, No.
 24 05CV1359 BTM (JMA), slip op. (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a \$3.75
 25 million wage and hour class action).

26 In sum, Plaintiff and his counsel respectfully request that the Court award 30% of the
 27 common fund pursuant to *Laffitte* and all of the authority cited above.

28 ///

1 **IV. THE LODESTAR CALCULATION “CROSS-CHECK”**

2 It has been noted that it is sometimes helpful to courts to “cross-check” a percentage
 3 award by employing a lodestar with a multiplier analysis. While the lodestar method is generally
 4 considered inappropriate in a common fund case where real cash benefits (as opposed to coupons
 5 or non-monetary benefits) are made available to class members, its use can provide further
 6 validation of the appropriateness of the percentage award approach. *See In re Prudential Ins.*
 7 *Co. of Am. Sales Practice Litig.*, 106 F. Supp. 2d 721 (D.N.J. 2000). Such is the case here. The
 8 declarations of Class Counsel evidence the fact that they devoted approximately 374.50 hours of
 9 time to this litigation to date. (Lee Decl. ¶ 7; Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶
 10 11; Choi Decl. ¶22, Exh. A; Declaration of William L. Marder (“Marder Decl.”) ¶ 10).

11 To the extent that any argument is made that the time spent was duplicative, Class
 12 Counsel took measures to ensure there was minimal duplication of work within their own
 13 actions.² More importantly, as recently noted by the Ninth Circuit in *Stetson v. West Publishing*
 14 *Corp.*, Case No. 13-57061, at *13 (9th Cir. May 11, 2016), “some amount of duplicative work is
 15 ‘inherent in the process of litigating over time.’”

16 In addition, as explained above, Class Counsel expect to expend an additional 45 hours
 17 after the final approval hearing to administer the settlement and respond to any inquiries from
 18 class members. (Lee Decl. ¶7; Hyun Decl. ¶ 12; Choi Decl. ¶12; Marder Decl. ¶ 10). Thus, Class
 19 Counsel will have expended 419.50 total hourhours. Applying the various hourly rates of the
 20 law firms and lawyers who dedicated their efforts to this matter, a lodestar of \$314,625.00 is
 21 established for the amount of work spent through final approval. (Lee Decl. ¶7; Hyun Decl. ¶
 22 12; Choi Decl. ¶22; Marder Decl. ¶ 10).

23 Based on the lodestar of \$314,625.00, the percentage award sought by Class Counsel, if
 24 converted to the lodestar method, would entail negative multiplier. Thus, as set forth in the
 25 Introduction to this motion, the fee application is supported whether by the cross-check
 26

27
 28 ² Moreover, to the extent there is some overlap amongst attorneys in reviewing and making edits,
 identical to the way defense firms staff and handle cases, each attorney is assigned to handle a
 task and other attorneys review the work and provide edits and/or comments.

1 lodestar/multiplier method discussed herein, or by the percentage of the common fund discussed
2 in the preceding sections.

3 **A. Plaintiff's Counsel's Lodestar Is Reasonable**

4 The hourly rates employed by Class Counsel, as declared to in the attorney declarations,
5 are reasonable. Courts have found that reasonable rates are those charged by private attorneys
6 of comparable skill, reputation, and experience for similar litigation, as measure by the
7 prevailing rates charged by corporate attorneys of equal caliber. *See In re Walgreen Co. Wage*
8 *and Hour Litig.*, CV 11-7664 PSG, at 13 (FFMx) (C.D. Cal. Oct. 3, 2014) (finding that hourly
9 rates up to \$820 were reasonable) (citing *Clifford v. American Drug Stores*, 2005 WL 2002376
10 (Ct. App. Cal. Aug 22, 2005) (confirming attorneys' fees award with attorney hourly rate of
11 \$800 per hour).

12 The background and experience of Plaintiff's counsel are fully set forth in the
13 declarations filed in support of this Motion. The basic hourly rates listed for each firm are fair,
14 and representative of the combination of years of experience and the clear successes they have
15 had in the past in connection with class action litigation. As discussed in their supporting
16 declarations, Class Counsel are a group of well-experienced litigators, including class action
17 litigation. (Lee Decl. ¶¶9-11; Hyun Decl. ¶¶ 3-6; Choi Decl. ¶¶19-20; Marder Decl. ¶¶4-9).
18 Under California law, counsel are entitled to compensation for all hours reasonably spent on the
19 matter. *Ketchum vs. Moses*, 24 Cal. 4th 1122, 1133 (2001). Reasonableness of hours is assessed
20 by "the entire course of the litigation, including pretrial matters, settlement negotiations,
21 discovery, litigation tactics, and the trial itself ..." *Vo v. Las Virgenes Municipal Water Dist.*, 79
22 Cal. App. 4th 440, 447 (2000). In addition, the attached time and task charts clearly reflect the
23 many hours which were necessarily spent on the case.

24 In the Procedural History section above and in the accompanying attorney and Plaintiff
25 declarations, the nature and extent of the proceedings held throughout the Actions are set forth in
26 detail. Without repeating the same, it is incorporated herein. The total hours and billings thus
27 generated are all supported herein. In sum, it is submitted that the reasonableness of Class
28 Counsel's lodestar is manifest. Accordingly, the question becomes whether the negative

1 multiplier suggested, which then yields a total lodestar billing roughly equivalent to the
 2 percentage of the common fund set forth above, is reasonable by marketplace standards. As
 3 discussed below, Class Counsel submit that the requested multiplier is reasonable and consistent
 4 with other cases, including this Court's own opinion, *Vandervort*, 8 F. Supp. 3d at 1209-10.

5 **V. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
 6 **OF COSTS**

7 The request for reimbursement of costs, in the amount of \$15,408.13 is fair and
 8 reasonable. The settlement provides that Class Counsel may seek actual litigation costs which
 9 were not expected to exceed \$20,000.00. All costs incurred and sought are necessary litigation
 10 related costs benefitting the Class Members, which have been detailed in the supporting
 11 declarations of Class Counsel. (Lee Decl. ¶12, Exh. B; Choi Decl. ¶23, Exh. B; Hyun Decl. ¶13,
 12 Exh. B). The authority for the Court to award costs is the parties' Settlement Agreement and
 13 Labor Code Section 226(e) and 2699(g)(1). Further, pursuant to the Settlement Agreement,
 14 Defendant has agreed not to oppose any request for reimbursement of costs. Pursuant to all of the
 15 authority cited above, Class Counsel respectfully request that their costs be awarded.

16 **VI. THE REPRESENTATIVE SERVICE PAYMENT SHOULD BE APPROVED**

17 Plaintiff respectfully requests that the full amount of the service payment be awarded to
 18 him for his efforts that he undertook on behalf of the Class Members. It is commonly held that it
 19 is appropriate to recognize the role of the representative plaintiff without whose actions and
 20 courage the benefits of the settlement, which are conferred on the class as a whole, would never
 21 have been achieved. The criteria courts may consider in relation to incentive payments include:
 22 1) the risk to the class representative in commencing the suit, both financial and otherwise; 2) the
 23 notoriety and personal difficulties encountered by the class representative; 3) the amount of time
 24 and effort spent by the class representative; 4) the duration of the litigation; and 5) the personal
 25 benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *See*
 26 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412 (2010) (citing
 27 *Stanton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003)). Each of these factors favors the
 28 service awards requested in the present case.

1 Moreover, prior and subsequent to the filing of this lawsuit, Plaintiff regularly remained
2 in communications with counsel, including meeting with counsel. (Manier Decl. ¶4). Plaintiff
3 provided documents and information regarding the facts alleged and the claims that were
4 litigated. (*Id.*). Plaintiff spent substantial time and effort in prosecuting this case on behalf of
5 the class and the State of California as a private attorney general, and placed himself at risk for
6 the benefit of the Class. (*Id.* at ¶6) Plaintiff’s estimated time spent on this case is set forth in his
7 accompanying Declaration. (*Id.*)

8 Further, as noted above, Plaintiff filed claims against a major employer. (Manier Decl.
9 ¶7). This is a risk that is serious and significant. (*Id.*) It is a risk that he bore for the Class, as
10 Class Members have not needed to take that risk in order to receive the benefits provided in this
11 settlement. (*Id.* at ¶6) Plaintiff also executed a general release, which included other potentially
12 viable claims, but executed the release for the benefit of the class. (*Id.* at ¶8). Additionally, as
13 noted above, given that future employers are less likely to hire individuals who have filed
14 lawsuits against their previous employers, Plaintiff may certainly face significant risks in not
15 being able to find suitable employment. When seeking employment, one will have to reveal the
16 name of his or her former employer to the prospective employer. Should the prospective
17 employer simply “google” Plaintiff and Defendant’s names, they will likely find articles on this
18 settlement, as it has been reported on websites such as Law360.com.

19 Plaintiff took these risks upon himself from which the whole Class benefitted. Class
20 members did not have to file individual lawsuits, nor did they have to bear the risks of payment
21 of fees and costs should they not prevail. Class members also do not have to face the risk of
22 potential retaliation or risk of future employment, due to Plaintiff’s efforts. In short, Plaintiff
23 sacrificed a significant amount of time, effort, and his own rights in bringing about the benefits
24 to the class.

25 The payment of enhancement award to a successful class representative is appropriate
26 and the amount of \$10,000 to Plaintiff is within the typically accepted range. *See e.g. Van*
27 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award
28 of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D.

1 Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$ 35,000);
 2 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
 3 Incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,
 4 251-252 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin.*
 5 *Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007)
 6 (awarding \$25,000 Incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142
 7 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in
 8 ERISA case); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 1:17-cv-00853-DAD-EPG, Doc
 9 No. 55 (E.D. Cal. March 27, 2020) (awarding \$10,000 for each class representative for a wage
 10 and hour class action); and *Alvarez v. AmerisourceBergen Drug Corporation*, Case No. 8:19-
 11 CV-02253-MCS-KES, Doc No. 39 (C.D. Cal. June 7, 2021) (awarding \$10,000 for class
 12 representative enhancement in a wage and hour class action). Moreover, a \$10,000 service
 13 payment represents a mere 1% of the gross settlement amount. For such reasons, Plaintiff
 14 respectfully requests that this Court find the service payment amount of \$10,000 to Plaintiff as
 15 fair, reasonable and adequate and that the service payment be awarded to Plaintiff.

16 VII. CONCLUSION

17 Plaintiff and Class Counsel respectfully submit that the motion for approval of attorneys'
 18 fees, costs, and representative service payment should be granted. Whether analyzed under the
 19 percentage of the fund approach, which is the dominant view, or via the cross-check approach
 20 under the loadstar/multiplier approach, the fees are fully supported. This case has been litigated
 21 from the onset in light of significant obstacles, demanded an extraordinary effort on the part of
 22 Class Counsel and Plaintiff, and further required substantial costs advanced. Based on the
 23 foregoing, Plaintiff and Class Counsel respectfully request that this Motion be granted in its
 24 entirety.

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1 DATED: November 10, 2021

LAW OFFICES OF CHOI & ASSOCIATES

2
3 By: /S/ Edward W. Choi
4 Edward W. Choi, Esq.
5 Attorney for Plaintiff and the Class
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