

The Law Office of Daniel Feder  
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Attorneys for Plaintiffs,  
and all others similarly situated

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LESLIE AVANT, on behalf of himself and all others  
similarly situated,

Plaintiff,

vs.

VXL ENTERPRISES LLC, *et al.*,

Defendants.

JOHNNYE DUFF, *et al.*,

Plaintiffs,

vs.

VXL ENTERPRISES LLC, *et al.*,

Defendants.

Case No. 4:21-cv-02016-YGR

**PLAINTIFFS’ NOTICE MOTION AND  
MOTION FOR AWARD OF  
ATTORNEYS’ FEES & EXPENSES  
AND NAMED PLAINTIFFS’ SERVICE  
AWARDS; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: January 16, 2024

Time: 2:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers  
Ctrm.: 1

The Law Office of Daniel Feder  
235 Montgomery Street, Suite 1019 ♦ San Francisco, CA 94104

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on January 16, 2024, at 2:00 p.m. in Courtroom 1  
3 before Hon. Yvonne Gonzalez Rogers of the United States District Court, Northern District of  
4 California, Plaintiffs Leslie Avant, Johnnye Duff and Janelle Hernandez Avitia (“Plaintiffs” or  
5 “Named Plaintiffs”) shall move this Court for an Order awarding Class Counsel reasonable  
6 attorneys’ fees and costs and awarding Plaintiffs service awards.

7 Specifically, Plaintiffs move this Court for an Order awarding Class Counsel reasonable  
8 attorneys’ fees of 30% (or \$360,000) plus reimbursement of actual out-of-pocket costs of  
9 \$17,798.36.<sup>1</sup> Plaintiffs also move for an Order granting service awards in the amount of \$5,000 to  
10 each of the three Named Plaintiffs to be paid out of the Gross Settlement Amount in recognition of  
11 their service to the Settlement Class.

12 The Motion is based on this notice, the following Memorandum of Points and Authorities,  
13 the Declaration of Eric Lechtzin, the Declaration of Daniel Feder, and all other records, pleadings,  
14 and papers on file in this action and such other evidence or argument as may be presented to the  
15 Court at the hearing on this Motion.

16 Dated: October 10, 2023

Respectfully submitted,

17 /s/ Eric Lechtzin

18 Eric Lechtzin (SBN: 248958)  
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25 <sup>1</sup> Class Counsel also requests that the Court order that in the event of a sale (or any other business  
26 combination that would cause VXL to cease to exist), upon which VXL is obligated to pay an  
27 additional \$350,000 to the Gross Settlement Fund, the Court approve that VXL shall pay an  
28 additional thirty percent (30%) of such amount as attorneys’ fees minus any additional Settlement  
Administrator Costs.

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**Statutes**

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1 **I. INTRODUCTION**

2 Plaintiffs Leslie Avant, Johnnye Duff, and Janelle Hernandez Avitia and their counsel  
3 move the Court for recovery of attorneys’ fees and costs, as well as approval of service awards to  
4 Plaintiffs for their efforts and results obtained for the benefit of the Class.<sup>2</sup>

5 On August 16, 2023, the Court granted preliminary approval of the non-reversionary  
6 Settlement in the amount of \$1.2 million to be paid in three annual installments of \$400,000.<sup>3</sup> See  
7 ECF 139. The Settlement provides Class Members with a sum certain payment of amounts and  
8 provides an average pre-tax recovery of approximately \$7,425.00 per class member based on the  
9 net settlement amount (*i.e.*, after deductions for the proposed fees, costs, service awards, Avant’s  
10 individual contract claim amount, and claims administration expenses) and assuming no Class  
11 members request exclusion from the Settlement. Each Class Member will automatically receive a  
12 payment without the need for submitting a claim form.

13 The fee that Class Counsel Edelson Lechtzin LLP (“Edelson Lechtzin”) and the Law  
14 Offices of Daniel Feder (“Feder Law”) (together referred to herein as “Class Counsel”) seek here –  
15 30% of the Gross Settlement Amount, equivalent to \$360,000 – is within the typical range of  
16 attorneys’ fees awarded in this Circuit and merits a slight upward adjustment from the 25%

17 <sup>2</sup> Unless otherwise stated, all capitalized terms herein are intended to have the same meaning that  
18 they are given in the Amended Settlement Agreement. See Amended Settlement Agreement filed  
19 at ECF 139-1.

20 <sup>3</sup> The Settlement also provides that Defendant VXL shall not declare or file for bankruptcy without  
21 providing Class Counsel at least fourteen (14) days written notice of its intention to do so and  
22 provides a stipulation by VXL that in the event VXL files for bankruptcy, VXL will agree that  
23 Plaintiffs and the Settlement Class Members will each have a priority wage claim in the amount of  
24 their pro rata portion of the \$1.2 million. The Settlement also provides that VXL shall pay an  
25 additional \$350,000 to the Gross Settlement Fund in the event of a sale (or any other business  
26 combination that would cause VXL to cease to exist), which will be distributed up to 30% for  
27 Attorneys’ Fees and any Settlement Administrator costs. The remaining amount will be distributed  
28 to Settlement Class Members. VXL’s obligation to pay this amount ends seven (7) days after  
payment in full of the Gross Settlement Amount.

1 “benchmark” under the factors established for determining fee awards.<sup>4</sup> Class Counsel also seek  
2 reimbursement of out-of-pocket costs of \$17,798.36, all of which were reasonable and necessary to  
3 litigate this case.

4 Finally, Plaintiffs seek the Court’s approval of a service award of \$5,000 for each Named  
5 Plaintiff as recognition for the key role they played in obtaining relief, as contemplated by the  
6 Amended Settlement Agreement. For the reasons set forth below, the Court should award the  
7 proposed service award to the Plaintiffs as fair and reasonable compensation for their efforts in  
8 bringing this matter for the benefit of others.

## 9 **II. OVERVIEW OF CLASS COUNSEL’S WORK ON THE CASE**

10 Since the first Complaint was filed in this Action, Class Counsel have devoted 711.5 hours  
11 to the prosecution of this action, with a combined lodestar amount of \$588.827. *See* Declaration of  
12 Eric Lechtzin (“Lechtzin Decl.”), ¶ 16; Declaration of Daniel Feder (“Feder Decl.”), ¶ 8. Class  
13 Counsel diligently litigated this case, engaging in discovery and motion practice as needed to  
14 prosecute the claims, while also demonstrating a willingness to participate in attempts to settle the  
15 Action. The procedural history of this action has been documented in Plaintiffs’ Motion for  
16 Preliminary Approval of Settlement (“Preliminary Approval Motion”). *See* ECF 128. Pursuant to  
17 the U.S. District Court for the Northern District of California Procedural Guidance for Class  
18 Action Settlements, the full procedural history and background facts will be set forth in Plaintiffs’  
19 Motion for Final Approval of the Settlement.

## 20 **III. ARGUMENT**

### 21 **A. Legal Standard For Fee Awards In Common Fund Cases**

22 In a class action settlement, a court may award reasonable attorneys’ fees and nontaxable  
23 costs that are authorized by law or by the parties’ agreement. Fed. R. Civ. P. 23(h). Courts have the  
24 power to award reasonable attorneys’ fees and costs where, as here, a litigant proceeding in a

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25 <sup>4</sup> Additionally, Class Counsel requests up to 30% minus any additional Settlement Administrator  
26 costs of the additional \$350,000 that would be added to the Gross Settlement Fund in the event of a  
27 sale (or any other business combination that would cause VXL to cease to exist).

1 representative capacity secures a “substantial benefit” for a class of persons. *See, e.g., Hendricks v.*  
 2 *Starkist Co.*, No. 13-cv-00729-HSG, 2016 WL 5462423, at \*10 (N.D. Cal. Sept. 29, 2016); *Staton*  
 3 *v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). Where, as here, “a settlement produces a  
 4 common fund for the benefit of the entire class, courts have discretion to employ either the lodestar  
 5 method or the percentage-of-recovery method” to assess the reasonableness of the fee award. *In re*  
 6 *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). *See also Gomez-Gasca v.*  
 7 *Future AG Mgmt., Inc.*, No. 19-CV-2359-YGR, 2020 WL 6149688, at \*4 (N.D. Cal. Oct. 20,  
 8 2020) (Gonzalez Rogers, J.) (“The Court analyzes an attorneys’ fee request based on either the  
 9 ‘lodestar’ method or a percentage of the total settlement fund made available to the class, including  
 10 costs, fees, and injunctive relief.”) (*citing Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th  
 11 Cir. 2002)).

12 **B. Class Counsel’s Fee Request is Fair and Reasonable under the Percentage of**  
 13 **Recovery Method**

14 “The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of  
 15 the total settlement value, with 25% considered the benchmark.” *Vasquez v. Coast Valley Roofing,*  
 16 *Inc.*, 266 F.R.D. 482, 491–492 (E.D. Cal. 2010) (granting 33.3% fee award and collecting cases)  
 17 (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)); *Staton*, 327 F.3d at 952. However,  
 18 the exact percentage varies depending on the facts of the case, and in “most common fund cases,  
 19 the award exceeds that benchmark.” *Vasquez*, 266 F.R.D. at 491–492 (citations omitted); *In re*  
 20 *Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33% of \$12  
 21 million common fund).

22 Courts in the Ninth Circuit routinely approve payments of attorneys’ fees greater than the  
 23 25% benchmark, including in wage and hour class actions. *See, e.g., Gomez-Gasca v. Future AG*  
 24 *Mgmt., Inc.*, No. 19-CV-2359-YGR, 2020 WL 6149688, at \*5 (N.D. Cal. Oct. 20, 2020) (Gonzalez  
 25 Rogers, J.) (granting fee award equal to 30% of the gross settlement amount); *Bautista-Perez v.*  
 26 *Juul Labs, Inc.*, No. 20-CV-01613-HSG, 2022 WL 2239838, at \*9 (N.D. Cal. June 22, 2022)  
 27 (granting fee award of 30%, or \$525,000, of the gross settlement amount); *Zamora v. Lyft, Inc.*,

1 No. 3:16-CV-02558-VC, 2018 WL 4657308, at \*3 (N.D. Cal. Sept. 26, 2018) (one-third award is  
2 “consistent with the Ninth Circuit authority and the practice in this District.”)

3 The Ninth Circuit has identified certain factors that may be relevant in determining whether  
4 the requested fee is “reasonable” under the “circumstances of the case,” including: (1) the results  
5 achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent  
6 nature of the fee and the financial burden carried by the Plaintiff; and (5) awards made in similar  
7 cases. *Vizcaino*, 290 F.3d at 1048–1050; *see also Hightower v. JPMorgan Chase Bank, N.A.*, No.  
8 CV111802PSGPLAX, 2015 WL 9664959, at \*11 (C.D. Cal. Aug. 4, 2015) (citing *Vizcaino*, 290  
9 F.3d at 1048–50). Other courts have considered two additional factors: (6) reactions from the class;  
10 and, in its discretion, (7) a lodestar cross-check. *See Barnes v. The Equinox Grp., Inc.*, No. C 10-  
11 3586 LB, 2013 WL 3988804, at \*4 (N.D. Cal. Aug. 2, 2013).

12 **1. Class Counsel Achieved a Fair, Reasonable, and Adequate Result for the**  
13 **Settlement Class**

14 The Settlement Agreement preliminary approved by the Court resolves the claims of the  
15 101 Class Members for a total non-reversionary settlement of \$1,200,000 to be paid in three annual  
16 installments. The Settlement provides Class Members with an average recovery pretax of  
17 approximately \$7,425.00 per Class Member (this amount divides the net recovery by total number  
18 of Class Members). Lechtzin Decl., ¶ 9. In light of the risks, described below, the settlement  
19 amount is fair, reasonable, and adequate and within the average recovery. *See* Dkt. 139 (granting  
20 preliminary approval of the settlement, noting: “The amount offered in settlement compares  
21 favorably to other wage-and-hour-settlements approved in California and around the count[r]y.”);  
22 *Roe v. SFBSC Mgmt., LLC*, No. 14-CV-03616-LB, 2022 WL 17330847, at \*20 (N.D. Cal. Nov.  
23 29, 2022) (granting final approval of a settlement in which class members received an estimated  
24 average recovery of \$274.35 (5% of the average damages per dancer), plus injunctive relief for  
25 claims related to misclassification of class members as independent contractors ); *Ma v. Covidien*  
26 *Holding, Inc.*, No. SACV 12-02161-DOC, 2014 WL 360196, at \*5 (C.D. Cal. Jan. 31, 2014)  
27 (finding that settlement providing “9.1% of the total value of the action [was] ‘within the range of

1 reasonable, ’ “ where settlement provided approximately \$2,500/person for 974 class members,  
2 before fees, costs and enhancements were subtracted).<sup>5</sup>

3 Courts have also recognized the benefits to class members of receiving payments sooner  
4 rather than later, where litigation could extend for years on end, thus significantly delaying any  
5 payments to class members. *See California v. eBay, Inc.*, No. 5:12-CV-05874-EJD, 2015 WL  
6 5168666, at \*4 (N.D. Cal. Sept. 3, 2015) (“Since a negotiated resolution provides for a certain  
7 recovery in the face of uncertainty in litigation, this factor weighs in favor of settlement”); *Rothe v.*  
8 *Battelle Mem’l Inst.*, No. 1:18-CV-03179-RBJ, 2021 WL 2588873, at \*6 (D. Colo. June 24, 2021)  
9 (“it is prudent for the parties to ‘take the bird in the hand instead of a prospective flock in the  
10 bush.’”) (citation omitted).

11 Thus, this *Vizcaino* factor supports the reasonableness of the 30% attorneys’ fee award.

## 12 **2. The Risks of Litigating this Case Were Substantial**

13 “Risk is a relevant circumstance.” *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1020  
14 (E.D. Cal. 2019) (citing *Vizcaino*, 290 F.3d at 1048, and awarding 33 1/3% fee). There are many  
15 risks inherent in litigating a class action, including: class certification, decertification, a decision  
16 on the merits, potential appeals, and Defendants’ inability to satisfy a judgment. Each of these  
17 events can result in no recovery whatsoever to Class Members or Class Counsel. Courts routinely  
18 find that this factor supports a fee request above the benchmark. *See Hightower*, 2015 WL  
19 9664959, at \*11 (approving 30% fee request in part because “the risk of no recovery for Plaintiff,  
20 as well as for Class Counsel, if they continued to litigate, were very real”); *In re Nuvelo, Inc. Sec.*  
21 *Litig.*, No. C 07-04056 CRB, 2011 WL 2650592, at \*2 (N.D. Cal. July 6, 2011) (approving 30%  
22 fee request and noting that “[i]t is an established practice to reward attorneys who assume  
23 representation on a contingent basis with an enhanced fee to compensate them for the risk that they

24 <sup>5</sup> In *Roe*, 2022 WL 17330847, the settlement recovered is approximately 14% of the total damages  
25 of \$6.5 million when including the value of the injunctive relief. By comparison, Plaintiffs’  
26 settlement provides approximately \$7,425.00 per Class Member and approximately 15.8% of total  
27 potential damages.

1 might be paid nothing at all”).

2 Recovery of alleged damages and penalties at trial would require complete success and  
3 certification of all of Plaintiffs’ claims, which would be a difficult and uncertain accomplishment.  
4 Lechtzin Decl., ¶¶ 10-12. Plaintiffs’ meal and rest break claims and off-the-clock work claims  
5 would be particularly challenging as Plaintiffs would be forced to rely upon workers’ testimony  
6 (which may be conflicting) to prove such claims. *See, e.g., Seever v. Carrols Corp.*, 528 F. Supp.  
7 2d 159, 169 (W.D.N.Y. 2007) (observing “plaintiffs’ claims that they worked off-the-clock ... are  
8 supported solely by the testimony of plaintiffs themselves ... which vary dramatically between the  
9 plaintiffs and are uncorroborated by any other evidence.”); *Hall v. Best Buy Co.*, 274 F.R.D. 154,  
10 170 (E.D. Pa. 2011) (concluding that there “existed substantial barriers to proving liability for off-  
11 the-clock work” that was unsupported by video tape evidence); *Koike v. Starbucks Corp.*, No. C  
12 06-3215 VRW, 2008 WL 7796650, at \*9 (N.D. Cal. June 20, 2008), *aff’d*, 378 F. App’x 659 (9th  
13 Cir. 2010) (lack of common proof of off-the-clock overtime was fatal to such claims). *See also*  
14 *Heredia v. Eddie Bauer LLC*, No. 16-CV-06236-BLF, 2020 WL 1492710, at \*1 (N.D. Cal. Mar.  
15 27, 2020) (noting decertification of the class based on variations in the employees’ experiences  
16 regarding exit inspections); *In re AutoZone, Inc., Wage & Hour Emp. Pracs. Litig.*, 289 F.R.D.  
17 526, 539 (N.D. Cal. 2012), *aff’d*, 789 F. App’x 9 (9th Cir. 2019) (finding common issues did not  
18 predominate where there was no common answer to the question of why off-the-clock work  
19 occurred, and pointing to putative class member declarations attesting to never having performed  
20 or reported any off-the-clock work); *Hernandez v. Sysco Corp.*, No. 16-CV-06723-JSC, 2020 WL  
21 533005, at \*8 (N.D. Cal. Feb. 3, 2020) (denying certification of meal and rest break classes, noting  
22 that “Courts routinely decline to certify meal and rest break classes” due to individualized issues).

23 Finally, there was a substantial risk related to Defendants’ financial ability to pay.  
24 Specifically, Defendants represented that they had serious financial concerns about their ability to  
25 pay any judgment or settlement amount beyond a certain point. Lechtzin Decl. ¶¶ 7-8.

1                   **3. Counsel Have Demonstrated Skill Throughout the Litigation of this Matter**  
2                   **and Have Background in this Field of Law**

3                   Prosecuting class actions requires an “extraordinary commitment of time, resources, and  
4 energy from Class Counsel,” and many times, settlements “simply [are not] possible but for the  
5 commitment and skill of Class Counsel.” *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08  
6 1365 CW, 2010 WL 1687829, at \*2 (N.D. Cal. Apr. 22, 2010). *See also Freeze v. PVH Corp.*, No.  
7 CV 19-1694 PSG (EX), 2021 WL 2953161, at \*8 (C.D. Cal. Jan. 7, 2021) (finding the skill  
8 displayed by Class Counsel in successfully negotiating a settlement after mediation “without  
9 wasted effort or years of needless, costly litigation,” weighed in favor of a slight upward departure  
10 from the 25 percent benchmark.)

11                   Here, Class Members have been represented by counsel who have extensive experience in  
12 class action and employment litigation, including wage and hour class actions. Lechtzin Decl. ¶¶ 3,  
13 Exhibit A (resume). Feder Decl. ¶ 2. Class Counsel’s expertise in this area of law, coupled with  
14 their willingness to take on risky cases, justify the fee request.

15                   **4. Class Counsel Undertook a Significant Financial Risk**

16                   The contingent nature of the fee considers “the burdens class counsel experienced while  
17 litigating the case (e.g., cost, duration, foregoing other work)” and weighs in favor of granting the  
18 requested fee award. *Carlin*, 380 F. Supp. 3d at 1021. Substantial fee awards encourage attorneys  
19 to incur the risks of litigating cases on behalf of clients who cannot pay hourly rates and would  
20 therefore not otherwise have realistic access to courts. That access is particularly important for the  
21 effective enforcement of public protection statutes, such as the wage laws at issue here. *See Reiter*  
22 *v. Sonotone Corp.*, 442 U.S. 330, 344 (1979) (“private suits provide a significant supplement to the  
23 limited resources available to [government enforcement agencies] for enforcing [public protection]  
24 laws and deterring violations.”). By incentivizing plaintiff’s attorneys to take on risky and  
25 important litigation, fee awards serve an important purpose.

26                   Here, Class Counsel undertook the risk of this litigation on a completely contingent fee  
27 basis, expending time and incurring expenses with the understanding that there was no guarantee  
28 of compensation or reimbursement. Moreover, while Class Counsel has always been prepared to



1 advance as many resources and as much time as is necessary to effectively litigate a case, financial  
 2 burdens are heavier on small practices such as Class Counsel’s law firms than on larger ones. *See,*  
 3 *e.g., Lee v. Glob. Tel\*link Corp.*, No. 215CV02495ODWPLA, 2018 WL 4625677, at \*11 (C.D.  
 4 Cal. Sept. 24, 2018) (awarding lodestar multiplier of 3.0 and noting that “class counsel are both  
 5 small firms and litigated this contingency fee case for approximately two years without any  
 6 guarantee of payment.”); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL  
 7 6473804, at \*10 (C.D. Cal. Nov. 18, 2014) (“Both of the firms representing the Class are small  
 8 firms with fewer than fifteen attorneys. Firms of this size face even greater risks in litigating large  
 9 class actions with no guarantee of payment. The Court finds that the considerable risk in this case  
 10 due to the uncertain legal terrain, coupled with Counsel’s contingency fee arrangement, weigh in  
 11 favor of an increase from the benchmark rate.... Decisions in analogous wage and hour suits have  
 12 found awards of one third of the common fund appropriate.”); *Frederick v. Range Res.-*  
 13 *Appalachia, LLC*, No. C.A. 08-288 ERIE, 2011 WL 1045665, at \*12 (W.D. Pa. Mar. 17, 2011)  
 14 (noting that counsel’s work on the case was “a significant investment of time and resources,  
 15 particularly considering that counsel is a sole practitioner.”)

16 The contingent nature of litigating a class action and the financial burden assumed justifies  
 17 the requested fee, as Class Counsel litigated with no payment and no guarantee that the time or  
 18 money expended would result in any recovery.<sup>6</sup>

#### 19 **5. The Requested Fee Award is Equivalent to Awards in Similar Cases**

20 Many fee awards in class settlements of common fund wage and hour action in this Circuit  
 21 exceed the 25% benchmark. *See, e.g., Roe*, 2022 WL 17330847, at \*20 (granting fee award of 33%  
 22 in wage and hour case alleging misclassification of dancers as independent contractors); *Romero v.*  
 23 *Producers Dairy Foods, Inc.*, No. 1:05CV0484 DLB, 2007 WL 3492841, at \*4 (E.D. Cal. Nov. 14,

24 <sup>6</sup> *See Hightower*, 2015 WL 9664959, at \*10 (“any law firm undertaking representation of a large  
 25 number of affected employees in wage and hour actions inevitably must be prepared to make a  
 26 tremendous investment of time, energy, and resources with the very real possibility of an  
 27 unsuccessful outcome and no fee recovery of any kind.”) (internal quotations omitted) (citing  
 28 *Vizcaino*, 290 F.3d at 1051).

1 2007) (in a wage and hour action class actions, fee awards “average around one-third of the  
2 recovery” and awarding fees in that amount) (citing 4 Newberg and Conte, Newberg on Class  
3 Actions § 14.6 (4th ed. 2007)); *Lusby v. GameStop Inc.*, No. C12-03783 HRL, 2015 WL 1501095,  
4 at \*9 (N.D. Cal. Mar. 31, 2015) (in wage and hour action, awarding fees in the amount of one-third  
5 of common fund); *Burden v. SelectQuote Ins. Servs.*, No. C 10-5966 LB, 2013 WL 3988771, at \*4  
6 (N.D. Cal. Aug. 2, 2013) (same, also noting that “[a]warding fees at a rate higher than the 25%  
7 benchmark is appropriate in cases involving a relatively small settlement fund”); *Barbosa v.*  
8 *Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (same); *Barnes*, 2013 WL  
9 3988804, at \*4; (same); *Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010 WL  
10 2196104, at \*8 (S.D. Cal. June 1, 2010) (same). These similar cases further support Plaintiffs’  
11 request.

#### 12 **6. The Reaction of the Class (or Lack Thereof) Supports the Fee Request**

13 “It is established that the absence of a large number of objections to a proposed class action  
14 settlement raises a strong presumption that the terms of a proposed class settlement action are  
15 favorable to the class members.” *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221  
16 F.R.D. 523, 528–29 (C.D. Cal. 2004). Here, notice of the Settlement was sent via regular mail and  
17 email to 101 Settlement Class Members on September 6, 2023. Lechtzin Decl. ¶ 6. As of this date,  
18 October 9, 2023, halfway through the notice period, not one Class Member has objected to the  
19 Settlement, and not one Class Member has requested exclusion. *Id.* The lack of objections by Class  
20 Members to the Settlement or the fee provision further supports the reasonableness of Class  
21 Counsel’s request for attorneys’ fees.

#### 22 **7. A Lodestar Calculation Confirms the Reasonableness of the Requested Fee Award**

23 “In cases where courts apply the percentage-of-the-fund method to calculate fees, they  
24 should use a rough calculation of the lodestar as a cross-check to assess the reasonableness of the  
25 percentage award.” *In re Am. Apparel, Inc. S’holder Litig.*, No. CV1006352MMMJCGX, 2014  
26 WL 10212865, at \*20 (C.D. Cal. July 28, 2014); *Vizcaino*, 290 F.3d at 1050 (“the lodestar may  
27 provide a useful perspective on the reasonableness of a given percentage award”). The lodestar is  
28

1 calculated by “multipl[ying] the number of hours reasonably expended by the reasonable hourly  
 2 rate.” *Gomez-Gasca*, 2020 WL 6149688, at \*4; *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir.  
 3 2016) (“[A] court calculates the lodestar figure by multiplying the number of hours reasonably  
 4 expended on a case by a reasonable hourly rate.”). As detailed in Class Counsel’s accompanying  
 5 declarations and charts, Class Counsel has, to date, collectively spent 711.5 hours litigating this  
 6 case, for a current lodestar of \$588,827. This figure does not include time spent preparing this  
 7 Motion, nor does it include the additional time that will be spent responding to Class Member  
 8 inquiries regarding the settlement over the next two months, preparing the motion for final  
 9 approval, and attending the final approval hearing. This amount exceeds the requested fee, further  
 10 supporting this Motion. *See Zamora*, 2018 WL 4657308, at \*3 (finding that “lodestar multiplier of  
 11 0.86 strongly supports the 33 1/3% fee award”); *Moreno v. Cap. Bldg. Maint. & Cleaning Servs.,*  
 12 *Inc.*, No. 19-CV-07087-DMR, 2021 WL 4133860, at \*6 (N.D. Cal. Sept. 10, 2021) (“A negative  
 13 multiplier ‘strongly suggests the reasonableness of [a] negotiated fee.’”) (citation omitted); *Kastler*  
 14 *v. Oh My Green, Inc.*, No. 19-CV-02411-HSG, 2022 WL 1157491, at \*8 (N.D. Cal. Apr. 19, 2022)  
 15 (granting requested fee award which was approximately one-third of the Gross Settlement Fund,  
 16 stating “Plaintiffs’ counsel took the case on a contingency fee basis with the risk of no payment  
 17 should Defendant become insolvent. The Court is also aware that continued litigation presents  
 18 significant risk of zero recovery for both Class Members and attorneys. Most significantly, the  
 19 requested award is a negative multiplier of the lodestar.”)<sup>7</sup>

20 \_\_\_\_\_  
 21 <sup>7</sup> Moreover, Class Counsel are not requesting a multiplier on their lodestar, and in fact, are seeking  
 22 substantially less than their lodestar. In contrast, courts frequently approve attorneys’ fee requests  
 23 in which the lodestar multiplier is several times the attorneys’ fees. *See, e.g., Vizcaino*, 290 F.3d at  
 24 1051, n. 6 (affirming district court’s percentage based fee award that represented multiplier of 3.65  
 25 and noting that “most” multipliers in common fund cases range from 1.0 to 4.0); *McKenzie v. Fed.*  
 26 *Exp. Corp.*, No. CV 10-02420 GAF PLAX, 2012 WL 2930201, at \*10 (C.D. Cal. July 2, 2012) (in  
 27 wage and hour action, approving percentage-based fee award that represented multiplier of 3.2);  
 28 *Morgret v. Applus Techs., Inc.*, No. 1:13-CV-01801-JLT, 2015 WL 3466389, at \*17 (E.D. Cal.  
 June 1, 2015) (in wage and hour action, approving percentage-based fee award that represented  
 multiplier of 3.9); *Buccellato v. AT & T Operations, Inc.*, No. C10-00463-LHK, 2011 WL  
 3348055, at \*2 (N.D. Cal. June 30, 2011) (in wage and hour action, approving percentage-based

1 Both the hourly rates and the associated hours are reasonable. As to the rates, the Court  
2 must determine “prevailing market rates in the relevant community,” with the relevant community  
3 being “the forum district.” *Anderson v. Nextel Retail Stores, LLC*, No. CV074480SVWFFMX,  
4 2010 WL 11506729, at \*2 (C.D. Cal. June 30, 2010) (“the Court must determine ‘prevailing  
5 market rates in the relevant community. [] The relevant community includes ‘attorneys practicing  
6 in the forum district’—that is, the Central District of California.”) (citations omitted).

7 Class Counsel’s hourly rates are comparable to, or lower than, rates charged by other law  
8 firms in California prosecuting claims on behalf of workers and consumers. For example, in *Nitsch*  
9 *v. DreamWorks Animation SKG Inc.*, No. 14-CV-04062-LHK, 2017 WL 2423161, at \*9 (N.D. Cal.  
10 June 5, 2017), the court found that hourly rates of up to \$1,200 per hour—above Class Counsel’s  
11 hourly rates here—for plaintiffs’ class action lawyers based in California were “fair, reasonable,  
12 and market-based, particularly for the ‘relevant community’ in which counsel work.” *See also*  
13 *Fleming v. Impax Lab'ys Inc.*, No. 16-CV-06557-HSG, 2022 WL 2789496, at \*9 (N.D. Cal. July  
14 15, 2022) (hourly rates range from \$760 to \$1,325 for partners, \$895 to \$1,150 for counsel, and  
15 \$175 to \$520 for associates); *Philips v. Munchery Inc.*, No. 19-CV-00469-JSC, 2021 WL 326924,  
16 at \*10 (N.D. Cal. Feb. 1, 2021) (finding rates of \$650 and \$950 for attorneys practicing between  
17 15-30 years reasonable); *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983,  
18 at \*14 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020)  
19 (rates from \$650 to \$1,250 for partners or senior counsel were reasonable).

### 20 C. Reimbursement of Class Counsel’s Litigation Costs Should Be Approved

21 In addition to being entitled to reasonable attorneys’ fees, the FLSA and California Labor  
22 Code both provide for the reimbursement of costs. *See* 29 U.S.C. § 216(b); Cal. Lab. Code § 1194;  
23 *see also Emetoh v. FedEx Freight, Inc.*, No. 17-CV-7272-YGR, 2020 WL 6216763, at \*6 (N.D.  
24 Cal. Oct. 22, 2020) (Class counsel is entitled to reimbursement of reasonable out-of-pocket

25 

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fee award that represented multiplier of 4.3). Thus, awarding here a negative multiplier of Class  
26 Counsel’s lodestar is eminently reasonable, and supports the 30% of the recovery sought here by  
27 Class Counsel.

1 expenses) (citing Fed. R. Civ. P. 23(h)); *Cunha v. Hansen Nat. Corp.*, No. EDCV 08-1249-  
2 GW(JCX), 2015 WL 12697627, at \*5 (C.D. Cal. Jan. 29, 2015) (“[A] private plaintiff, or [its]  
3 attorney, whose efforts create, discover, increase or preserve a fund to which others also have a  
4 claim is entitled to recover from the fund the costs of [its] litigation....”).

5 Here, Class Counsel’s current expenses total \$17,798.36. Lechtzin Decl. ¶ 30. Class  
6 Counsel’s costs include reasonable out-of-pocket expenditures. Under the “common fund  
7 doctrine,” “attorneys may recover their reasonable expenses that would typically be billed to  
8 paying clients in non contingency matters.” *Cunha*, 2015 WL 12697627, at \*5. *See also Harris v.*  
9 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may recover reasonable expenses  
10 that would typically be billed to paying clients in non-contingency matters). The expenses incurred  
11 in this litigation to date are described in the accompanying declarations of the law firms involved  
12 in this litigation. *See* Lechtzin Decl. ¶¶ 27-30; Feder Decl. ¶ 9.

13 These expenses are of the type typically billed by attorneys to paying clients in the  
14 marketplace and include such costs as mediation fees, expert fees, court costs, copying and  
15 printing costs, travel expenses, and computerized research. *See id.* These costs are routinely found  
16 to be reasonable and awarded reimbursement by courts in the Ninth Circuit. *See, e.g., In re*  
17 *Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (awarding  
18 reimbursement for expenses for meals, hotels, and transportation; photocopies; telephone; filing  
19 fees; messenger and overnight delivery; online legal research; and mediation fees, which it found  
20 to be “reasonable and necessary”).

21 All of these expenses were reasonable and necessary for the successful prosecution of this  
22 case. Further, no Settlement Class Member has objected to the request for costs. Lechtzin Decl. ¶  
23 29. Class Counsel therefore requests reimbursement of costs in the amount of \$17,798.36.

24 **D. The Court Should Approve Service Awards to the Named Plaintiffs**

25 “[N]amed Plaintiffs ... are eligible for reasonable incentive payments.” *See Staton*, 327  
26 F.3d at 977. The purpose of such awards is “to compensate class representatives for work done on  
27 behalf of the class [and] make up for financial or reputational risk undertaken in bringing the

1 action...” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). *See also Hubbard*  
 2 *v. RCM Techs. (USA), Inc.*, No. 19-CV-6363-YGR, 2021 WL 5016058, at \*6 (N.D. Cal. Oct. 28,  
 3 2021) (same). Here, subject to the Court’s approval, the enhancement payments of up to \$5,000 for  
 4 each of the three Named Plaintiffs are intended to compensate Plaintiffs for the critical role they  
 5 played in this case, and the time, effort, and risks undertaken in helping secure the result obtained  
 6 on behalf of the Class Members. Lechtzin Decl. ¶ 32.

7 The amounts of the service awards are fair when compared to the payments approved in  
 8 similar cases by Courts in this District. *See, e.g., Emetoh*, 2020 WL 6216763, at \*6 (Gonzalez  
 9 Rogers, J.) (approving \$7,500 service award, crediting “the substantial risk of litigation especially  
 10 given the employment context.”); *Guidlbaud v. Sprint/United Management Co., Inc.*, No. 3:13-cv-  
 11 04357-VC-, ECF No. 181 (N.D. Cal. Apr. 15, 2016) (approving \$10,000 service payments for each  
 12 class representative in FLSA and California state law wage and hour action); *Villalpando v. Exel*  
 13 *Direct Inc.*, No. 3:12-CV-04137-JCS, 2016 WL 7785852, at \*2 (N.D. Cal. Dec. 9, 2016)  
 14 (approving \$15,000 service awards to each of three class representatives in light of important  
 15 assistance, time and effort, and risks taken to represent the class). In evaluating the appropriateness  
 16 of service awards, courts may consider “relevant factors includ[ing] the actions the plaintiff has  
 17 taken to protect the interests of the class, the degree to which the class has benefitted from those  
 18 actions....the amount of time and effort the plaintiff expended in pursuing the litigation... and  
 19 reasonabl[e] fear[s of] workplace retaliation.” *Staton*, 327 F.3d at 977 (citation omitted).

20 Here, each Named Plaintiff has expended substantial time assisting in the prosecution of  
 21 the claims, including providing valuable information and documents to counsel, assisting in the  
 22 drafting of pleadings, discussing the facts of the case with Class Counsel and responding to  
 23 discovery requests. *See* Declaration of Leslie Avant (“Avant Decl.”) ¶¶ 4-7, Declaration of  
 24 Johnnye Duff (“Duff Decl.”) ¶¶ 4-6, Declaration of Janelle Hernandez Avitia (“Avitia Decl.”) ¶¶  
 25 4-6. Additionally, Plaintiff Avant attended two settlement conferences and Plaintiffs Duff and  
 26 Avitia attended one settlement conference. *See* Avant Decl. ¶ 8, Duff Decl. ¶ 7, Avitia Decl. ¶ 7.  
 27 The requested Service Awards are also reasonable in light of the reputational risk Named Plaintiffs

1 took by publicly affiliating themselves with a lawsuit against their former employer. Plaintiffs’  
2 efforts supports the service awards sought here. *See* Avant Decl. ¶¶ 9-12, Duff Decl. ¶¶ 8-10,  
3 Avitia Decl. ¶¶ 8-10

4 The Service Awards should also be approved because the Notice of Settlement  
5 disseminated to the Class Members outlined the amounts of the proposed service award, and to  
6 date, no Class Members have objected. *See National Rural Telecommunications Cooperative*, 221  
7 F.R.D. at 528–29. In addition, in evaluating proposed service awards, courts compare the overall  
8 settlement benefits and the range of recovery available to the class members to the representative  
9 plaintiff’s proposed service award.<sup>8</sup> Here, the \$15,000 amount of the proposed service award is  
10 quite modest in comparison to the overall benefits of the settlement and recovery to the class,  
11 representing a little over 1% (1.25%) of the total funds that the Defendants will expend to settle  
12 this lawsuit. The modest amount of this requested service award in relation to the total Settlement  
13 amount weighs in favor of its appropriateness.

14 Plaintiffs invested significant time and effort in litigating this case on behalf of the Class  
15 Members through its successful resolution. The proposed service awards, to which no Class  
16 Member has objected, should be finally approved.

#### 17 **IV. CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion.

19  
20 Date: October 10, 2023

Respectfully Submitted,

/s/ Eric Lechtzin

Eric Lechtzin (SBN: 248958)

**EDELSON LECHTZIN LLP**

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22  
23 <sup>8</sup> *See, e.g., Staton*, 327 F.3d at 976–77; *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal.  
24 2008). *See, e.g., Alvarez v. Farmers Ins. Exch.*, No. 3:14-CV-00574-WHO, 2017 WL 2672710  
25 (N.D. Cal. Jan. 17, 2017) (finding service awards of \$10,000 each, which, in aggregate,  
26 “constitutes 1.8% of the total settlement value” to be reasonably proportional). The purpose of the  
27 inquiry is to ensure that the service awards have not compromised the ability of the representative  
plaintiffs to act in the best interest of the class. *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d  
1157, 1163 (9th Cir. 2013).

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