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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 CARLOS MORENO, individually, and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 PRETIUM PACKAGING, L.L.C., a
20 Delaware limited liability company, and
21 DOES 1 through 10, inclusive,

22 Defendants.

Case No. 8:19-cv-02500-SB-DFM

[Hon. Stanley Blumenfeld, Jr.]

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS**

Date: August 6, 2021
Time: 8:30 a.m.
Courtroom: 6C

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Wilshire Law Firm (“Class Counsel”) respectfully submits this application
4 for an award of attorneys’ fees and costs to compensate them for their extensive
5 work in achieving a \$1,600,000 non-reversionary settlement of the wage-and-
6 hour class action on behalf of Carlos Moreno (“Moreno” or “Plaintiff”) and the
7 putative class with Defendant Pretium Packaging, L.L.C. (“Pretium” or
8 “Defendant,” and together with Plaintiff, the “Parties”). The settlement brings
9 substantial relief to approximately 745 Class Members, but did not come without
10 extensive effort, skill, delay, and risk. At the same time, the fees Plaintiff seeks
11 on behalf of himself and the putative class—one third of the common fund—
12 would result in a multiplier of 2.88 of their lodestar. The out-of-pocket costs are
13 also documented and reasonably incurred in litigating this case. Both the fees
14 and costs sought are reasonable and warranted under the facts of the case and
15 applicable law.

16 The case presented many challenges and uncertainties, including a
17 vigorous and skilled defense by Defendant, as well as potential factual disputes
18 as to the policies and practices by Defendant that could amount to significant
19 hurdles to the certification of a wage-and-hour class. Even if Plaintiff had
20 prevailed at class certification, there was no guarantee as to the amount of
21 damages that the class could recover at trial. Against this precarious backdrop,
22 Class Counsel took the risk of litigating this case.

23 For the reasons discussed below, Class Counsel’s request for attorney’s
24 fees and costs is appropriate under both the percentage of the fund and lodestar-
25 multiplier approaches. Accordingly, Plaintiff respectfully requests that the Court
26 grant the motion.

27 ///

28 ///

1 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

2 **A. Plaintiff's Claims and Defendant's Defenses**

3 This is a wage-and-hour class action and Private Attorneys General Act
4 ("PAGA") representation action. Plaintiff and putative class members worked in
5 California as hourly-paid, non-exempt employees for Pretium during the class
6 period. Pretium is a packaging solutions company based in Chesterfield,
7 Missouri, that operates numerous locations throughout the United States,
8 including locations in Anaheim, California and Escondido, California.
9 Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Attorneys'
10 Fees and Costs ("Marquez Decl."), ¶ 3.

11 Plaintiff alleges that Defendant's payroll, timekeeping, and wage-and-hour
12 practices resulted in Labor Code violations. Specifically, Plaintiff alleges that
13 Defendant failed to provide employees with legally compliant meal and rest
14 periods, and failed to pay all required meal and rest period premiums for non-
15 compliant meal and rest periods. Plaintiff also alleges that Defendant failed to
16 pay required double overtime for all hours worked in excess of 12 hours per
17 workday and all worktime greater than 8 hours on the 7th consecutive day
18 worked. Based on these allegations, Plaintiff has included claims for failure to
19 pay overtime wages, failure to provide meal periods, failure to authorize and
20 permit rest periods, failure to provide accurate wage statements, unfair business
21 practices, and civil penalties under the PAGA, California Labor Code §§ 2698 *et*
22 *seq.* Marquez Decl., ¶ 4.

23 Defendant denies Plaintiff's allegations and denies any liability to Plaintiff and
24 the putative class members. Specifically, Defendant contends that its wage and hour
25 policies and practices, including those regarding overtime pay, meal periods, rest
26 periods, record keeping, and pay stubs, are lawful and have been lawful throughout
27 the entire class period. Defendant also contends that class certification would be
28 improper in this case. Marquez Decl., ¶ 5.

1 Affirmative Defenses. ECF 41. On July 17, 2020, the Court granted in part and
2 denied in part Plaintiff’s Motion to Strike, which prompted Defendant’s filing of
3 its Second Amended Answer on August 6, 2020. ECF 47, 48.

4 On December 16, 2020, the Parties participated in a full-day mediation
5 session with Hon. Peter D. Lichtman (Ret.). Through the mediation, the Parties
6 reached a settlement of all class and representative claims against Pretium.
7 Marquez Decl., ¶¶ 12, 13, 14.

8 **C. Discovery and Investigation**

9 The Parties have engaged in extensive discovery. Plaintiff served written
10 discovery, including Requests for Production of Documents and Interrogatories,
11 on Defendant. The discovery sought information and documents related to, *inter*
12 *alia*, Defendant’s policies and procedures for compensating its employees,
13 recording its employees’ worktime, providing meal periods, authorizing and
14 permitting rest periods, and furnishing wage statements. The discovery also
15 sought information and documents pertaining to the identification of the class
16 members. Marquez Decl., ¶ 9.

17 Defendant provided written responses to Plaintiff’s discovery and produced
18 more than 8,300 pages of documents in response to the written discovery. The
19 documents produced by Defendant pertained to Defendant’s wage-and-hour
20 policies and procedures, including employee handbooks and other policy
21 documents, personnel files, job descriptions, contact information for the putative
22 class members, and a sampling of putative class member pay and time records.
23 Marquez Decl., ¶ 10.

24 The Class Counsel reviewed and analyzed these records and hired an
25 expert to conduct an analysis of the putative class members’ pay and time records
26 and to prepare a damages model. The expert analyzed the time and pay records
27 for the putative class members at both the Anaheim and Escondido locations to
28 determine whether Defendant paid overtime correctly, paid double overtime

1 correctly, provided timely and compliant meal periods, and provided any
2 premiums for noncompliant meal and rest periods. Plaintiff's expert also
3 calculated the total amount of unpaid double overtime, unpaid overtime, late
4 meal periods, short meal periods, and missed meal periods. Moreover, Plaintiff's
5 expert conducted a detailed analysis of the frequency and severity of the recorded
6 late, short, and missed meal periods based on the time and pay records
7 throughout the class period. In addition to their factual investigation, Plaintiff's
8 counsel investigated the applicable law regarding the claims and defenses to the
9 claims asserted in the litigation. Thus, Plaintiff and the Class Counsel are
10 familiar with the facts of the case and the legal issues raised by the pleadings and
11 were able to act intelligently in negotiating the Settlement. Marquez Decl., ¶ 11.

12 **D. Settlement Negotiations**

13 The Parties engaged in a significant amount of investigation, class-wide
14 discovery, and analysis prior to reaching the proposed settlement. Defendant
15 responded to Plaintiff's written discovery, provided extensive information on the
16 company's wage and hour policies and practices, provided the contact
17 information for the Class Members, and produced over 8,300 pages of relevant
18 documents. It was only after the exchange of a substantial amount of data and
19 information that the Parties participated in a full-day mediation session and
20 ultimately reached settlement of the case. Marquez Decl., ¶ 12.

21 On December 16, 2020, the Parties participated in private mediation with
22 the experienced neutral Hon. Peter D. Lichtman (Ret.). Judge Lichtman (Ret.)
23 was the former head of the Los Angeles Superior Court Mandatory Settlement
24 Program and served as a chair of the county's Complex Civil Litigation
25 Department. After extensive negotiations and discussions regarding the strengths
26 and weakness of Plaintiff's claims and Defendant's defenses, the Parties were
27 able to reach an agreement at the mediation regarding the key terms and
28 provisions of the settlement. Ultimately, the Parties agreed to a settlement

1 through multiple arm's length negotiations. Marquez Decl., ¶ 12.

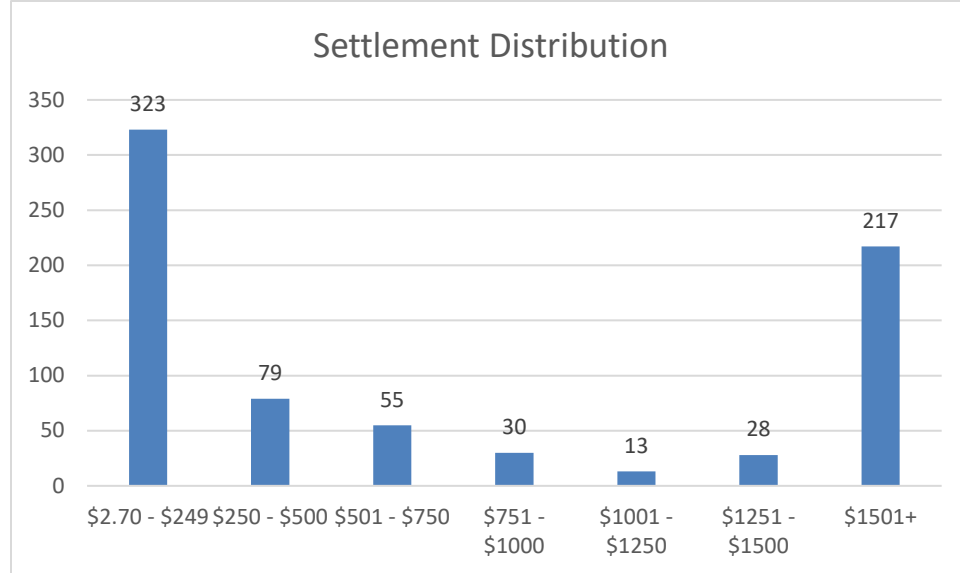
2 Under the Settlement Agreement, Pretium will pay \$1,600,000 to resolve
3 this litigation. Marquez Decl., ¶ 13.

4 **E. Preliminary Approval and Overwhelming Support for the**
5 **Settlement**

6 The Court granted Plaintiff's Motion for Preliminary Approval of the
7 Settlement on March 12, 2021. ECF 54. The initial order granting preliminary
8 approval required Plaintiff to file a motion requesting attorneys' fees and costs
9 by July 16, 2021. *Id.* That deadline meant that the motion for attorneys' fees and
10 costs could be filed after the anticipated deadline of June 24, 2021 for class
11 members to opt-out or object to the settlement. See ECF 55, at 2. However, the
12 Ninth Circuit has held that class counsel must apply for attorneys' fees before the
13 deadline for class members to object to a class action settlement. *See In re*
14 *Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 993 (9th Cir.
15 2010). As such, the Parties jointly moved to the Court to modify the Order. ECF
16 55; Marquez Decl., ¶ 16.

17 On March 25, 2021, the Court entered an Amended Order Granting Motion
18 for Preliminary Approval of Class Action Settlement. ECF 56; Marquez Decl., ¶
19 17. Notice went out to 745 class members on April 26, 2021. The deadline for
20 class members to opt out or object is June 25, 2021. Marquez Decl., ¶ 18.

21 The reaction of the Class to the settlement has been overwhelmingly
22 positive. Indeed, so far, no class member has opted out of the settlement, and no
23 class member has objected to the settlement. Marquez Decl., ¶ 19. Even after
24 deducting attorneys' fees and costs, administration costs, and the service awards
25 to the named plaintiff, class members will receive approximately \$1,321.03 on
26 average and 74 class members will receive the maximum amount of \$5,240.85.
27 *Id.* at ¶ 20. The chart below is a frequency distribution of each class member's
28 net settlement share:



12 *Id.*

13 **F. Class Counsel Has Expended Substantial Amount of Work**

14 Class Counsel undertook significant work to prosecute this case. This
15 included drafting of pleadings, legal research, fact-intensive interviews of
16 Plaintiff, factual investigation, written discovery practice, analysis of documents
17 and records, mediation preparation, and settlement negotiations. Marquez Decl.,
18 ¶ 23. Class Counsel has submitted detailed time records kept
19 contemporaneously. As Class Counsel’s declaration makes clear, the time
20 reported in the chart above was devoted to necessary and worthwhile tasks, and
21 was calculated at counsel’s reasonable billing rates. These figures do not include
22 any time spent after filing this motion, such as any follow up work related to
23 administering the settlement. Marquez Decl., ¶ 44. Class Counsel also seek
24 reimbursement of costs in the amount of \$14,053.28. Marquez Decl., ¶ 47.

25 Class Counsel request a fee award as a percentage of the total fund;
26 however, class counsel’s fee requested is also supported, or “cross-checked,” by
27 a lodestar with a multiplier of 2.88. The Class Counsel worked 306.2 hours on
28 this case. The Class Counsel request the Court find fair and reasonable the

1 requested hourly rate of \$750 for Justin F. Marquez, a 2008 graduate of Notre
2 Dame Law School who has been practicing complex class action litigation since
3 2010 and has successfully argued an appeal in the Ninth Circuit concerning
4 CAFA jurisdiction. The Class Counsel also request the Court find fair and
5 reasonable the requested hourly rate of \$700 for Robert J. Dart; \$500 for
6 Benjamin H. Haber; \$300 for Rachel J. Vinson; and \$400 for Ronghua Guan.

7 **III. ARGUMENT**

8 **A. Plaintiff Is Entitled to Attorneys' Fees Under California Law**

9 Pursuant to Federal Rules of Civil Procedure 23(h), the Court may award
10 reasonable attorneys' fees and nontaxable costs "authorized by law and by
11 agreement of the parties." If a negotiated class action settlement includes an
12 award of attorney's fees, that fee award must be evaluated in the overall context
13 of the settlement. *Knisley v. Network Assocs.*, 312 F.3d 1123, 1126 (9th
14 Cir.2002). A district court must therefore "carefully assess the reasonableness of
15 a fee amount spelled out in a class action settlement agreement." *Staton v.*
16 *Boeing*, 327 F.3d 939, 963 (9th Cir. 2003).

17 "In a diversity action, the question of attorney's fees is governed by state
18 law." *Kabatoff v. Safeco Ins. Co. of America*, 627 F.2d 207, 210 (9th Cir. 1980);
19 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002), *cert. denied*,
20 537 U.S. 1018 (2002) (same). This is a diversity action because Pretium
21 removed this case under CAFA. ECF 1; *see also Visendi v. Bank of America,*
22 *N.A.*, 733 F.3d 863, 867 (9th Cir. 2013) (noting that CAFA amended the diversity
23 jurisdiction statute). Thus, California law governs the attorneys' fee award here
24 because Plaintiff's claims arise under California law. Plaintiff is entitled to an
25 award of reasonable attorneys' fees and costs under California law. *See* Cal. Lab.
26 Code §§ 218.5; 1194; Cal. Code of Civ. Proc. § 1021.5.

27 Under California law, the court is empowered to award reasonable
28 attorneys' fees and costs when a litigant proceeding in a representative capacity

1 has achieved a “substantial benefit” for a class of persons. *Serrano v. Priest*, 20
 2 Cal.3d 25, 38 (1977) (“*Serrano III*”). There are two methods of calculating
 3 attorneys’ fees in civil class actions: (1) the lodestar/multiplier method, and (2)
 4 the percentage of recovery method. *Wershba v. Apple Computer, Inc.*, 91
 5 Cal.App.4th 224, 254 (2001); *see also Vizcaino*, 290 F.3d at 1047 (citing *In re*
 6 *Wash. Pub. Power Supply Sys. Litig.*, 19 F.3d 1291, 1295–96 (9th Cir.1994)).
 7 The district court has discretion in common fund cases to choose either method.
 8 *Vizcaino*, 290 F.3d at 1047.

9 Class Counsel’s fee request is justified under either method. Class Counsel
 10 obtained an excellent result for the Class after thorough investigation, litigation,
 11 mediation, and finally, negotiation of a settlement. Class Counsel has also
 12 expended a substantial amount of work in the case. The positive reaction of the
 13 Class further demonstrates that Class Counsel’s fee request is reasonable in light
 14 of the results achieved.

15 **B. Counsel Request an Award of Fees Based on the “Common Fund”**
 16 **Method**

17 California courts have long awarded attorneys’ fees as a percentage of the
 18 benefit created by counsel in pursuing claims on behalf of a class. The California
 19 Supreme Court held that “when a number of persons are entitled in common to a
 20 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of
 21 all results in the creation or preservation of that fund, such plaintiff or plaintiffs
 22 may be awarded attorneys’ fees out of the fund.” *Serrano III*, 20 Cal.3d at 34.

23 The purpose of the common fund doctrine/percentage approach is to
 24 “spread litigation costs proportionally among all the beneficiaries so that the
 25 active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes Air*
 26 *West, Inc.* 557 F.2d 759, 769 (9th Cir. 1977). In *Quinn v. State of California*, 15
 27 Cal.3d 162, 167 (1995), the California Supreme Court stated: “[O]ne who
 28 expends attorneys’ fees in winning a suit which creates a fund from which others

1 derive benefits may require those passive beneficiaries to bear a fair share of the
2 litigation costs.” Similarly, in *City and County of San Francisco v. Sweet*, 12
3 Cal.4th 105, 110 (1995), the California Supreme Court recognized that the
4 common fund doctrine has been applied “consistently in California when an
5 action brought by one party creates a fund in which other persons are entitled to
6 share.”

7 The California Supreme Court recently affirmed in *Laffitte v. Robert Half*
8 *Int’l Inc.*, 1 Cal.5th 480 (2016) that, “when class action litigation establishes a
9 monetary fund for the benefit of the class members, and the trial court in its
10 equitable powers awards class counsel a fee out of that fund, the court may
11 determine the amount of a reasonable fee by choosing an appropriate percentage
12 of the fund created.” *Id.* at 503. The court explained: “The recognized
13 advantages of the percentage method—including relative ease of calculation,
14 alignment of incentives between counsel and the class, a better approximation of
15 market conditions in a contingency case, and the encouragement it provides
16 counsel to seek an early settlement and avoid unnecessarily prolonging the
17 litigation—convince us the percentage method is a valuable tool that should not
18 be denied our trial courts.” *Id.* (internal citations omitted).

19 A number of other courts have recognized the advantages of awarding fees
20 as a percentage of the common fund over the alternative lodestar approach, which
21 usually involves wading through voluminous and often indecipherable time
22 records. *See, e.g., In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375
23 (N.D. Cal. 1989); *see also Lealao v. Beneficial California, Inc.*, 82 Cal. App 4th
24 19, 28 (2000) (discussing findings of task force commissioned by the Third
25 Circuit, which concluded that the percentage method is superior). The Ninth
26 Circuit now routinely uses the percentage of the common fund approach to
27 determine the award of attorney’s fees. *See, e.g., In re Pacific Enterprises*
28 *Securities City and County of San Francisco Litigation*, 47 F.3d 373, 378-79 (9th

1 Cir. 1994) (approving attorney’s fee of 33 1/3%).

2 Class Counsel seeks an award of \$533,333.33 in attorneys’ fees, equivalent
3 to 33 1/3% of the \$1.6 million non-reversionary settlement, on the “percentage of
4 recovery/ common fund” theory. That figure is reasonable because it falls within
5 the range that California district courts usually award in wage and hour class
6 actions, and this settlement provided substantial benefits to class members and
7 advanced the public interest.

8 **1. The Standard Fee Award in Class Actions Has Resolved**
9 **Itself as One-Third of the Recovery in Common Fund Cases**

10 According to a leading treatise on class actions, “No general rule can be
11 articulated on what is a reasonable percentage of a common fund. Usually 50%
12 of the fund is the upper limit on a reasonable fee award from a common fund in
13 order to assure that the fees do not consume a disproportionate part of the
14 recovery obtained for the class, although somewhat larger percentages are not
15 unprecedented.” *See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) §
16 14.03. Attorneys’ fees that are fifty percent of the fund are typically considered
17 the upper limit, with *thirty to forty percent commonly awarded in cases where*
18 *the settlement is relatively small. See id; see also Van Vranken v. Atlantic*
19 *Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
20 where 30-50 percent was awarded involved “smaller” settlement funds of under
21 \$10 million).

22 The settled-for 33 1/3% fee award is consistent with the average fee award
23 in similar class actions. Indeed, the custom and practice in class actions is to
24 award approximately one-third of a fund as a fee award. *See Chavez v. Netflix,*
25 *Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008) (“Empirical studies show that,
26 regardless whether the percentage method or the lodestar method is used, fee
27 awards in class actions average around one-third of the recovery.”). “California
28 district courts usually award attorneys’ fees in the range of 30–40% in wage and

1 hour class actions that result in the recovery of a common fund under \$10
 2 million.” *Miller v. CEVA Logistics USA, Inc.*, 2015 WL 4730176, at * 8 (E.D.
 3 Cal. Aug. 10, 2015). In *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482,
 4 491–92 (E.D. Cal. 2010), the court cited to five recent wage and hour cases
 5 where federal judges approved fee awards ranging from 30% to 33% and
 6 approved a percentage of the fund award of 33% to class counsel. Likewise, in
 7 *Singer v. Becton Dickinson and Co.*, 2010 WL 2196104 (S.D. Cal. 2010), the
 8 court approved attorneys’ fees of 33.33% of the common fund and held this
 9 award is similar to awards in three other wage and hour class actions where fees
 10 ranged between 33.3% and 40%. In *Romero v. Producers Dairy Foods, Inc.*,
 11 2007 WL 3492841, at *1–4 (E.D. Cal. Nov. 14, 2007), the court approved an
 12 award of 33% of common fund.

13 Thus, Class Counsel’s fee request is in line with the prevailing guidelines
 14 established in California case law and academic literature and is consistent with
 15 awards in California. Accordingly, Plaintiffs respectfully request that the Court
 16 approve the attorneys’ fees as negotiated by the parties and requested here.

17 **2. This Matter Involves A “Fee-Shifting” Provision of The** 18 **Labor Code**

19 As this litigation culminated in a settlement that provided for a recovery of
 20 unpaid wages, including unpaid overtime compensation, Plaintiff is entitled to
 21 recover reasonable attorneys’ fees and costs under the California Labor Code.
 22 California Labor Code § 1194 provides, in part:

23 [A]ny employee receiving less than the legal minimum wage or the
 24 legal overtime compensation applicable to the employee is entitled to
 25 recover in a civil action the unpaid balance of the full amount of this
 26 minimum wage or overtime compensation, including interest
 thereon, reasonable attorney’s fees, and costs of suit.

27 Cal. Lab. Code § 1194.

28 Class Counsel is also entitled to a fee award under California’s private

1 attorney general statute, California Code of Civil Procedure § 1021.5. “The
2 award of attorneys fees is proper under Section 1021.5 if ‘(1) plaintiff’s action
3 has resulted in the enforcement of an important right affecting the public
4 interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been
5 conferred on the general public or a large class of persons’ and (3) ‘the necessity
6 and financial burden of private enforcement are such as to make the award
7 appropriate.’” *Press v. Lucky Stores*, 34 Cal.3d 311, 317-318 (1983). The
8 fundamental objective of the statute is “to encourage suits enforcing public
9 policies by providing substantial attorneys’ fees to successful litigants in such
10 cases.” *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 565 (2004).

11 This action resulted in the enforcement of an important right affecting the
12 public interest, as Plaintiff sought to enforce Class Members’ rights to recover
13 statutory wages arising from Pretium’s alleged failure to pay overtime
14 compensation and failure to provide meal and rest breaks. *See Murphy v.*
15 *Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1113 (2007) (noting that
16 “health and safety concerns” are what motivated the Industrial Wage
17 Commission to adopt mandatory meal and rest periods). Indeed, the California
18 Supreme Court stated that “Labor Code section 1194 confirms “a clear public
19 policy ... that is specifically directed at the enforcement of California’s minimum
20 wage and overtime laws for the benefit of workers.” [citation omitted].” *Sav-on*
21 *Drug Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 340 (2004).

22 This action also conferred a significant benefit on a large class of persons.
23 Notice was sent to 745 Class Members, and their average net settlement amount
24 is approximately \$1,321.03. Marquez Decl., ¶ 20. The Settlement provides a
25 significant monetary benefit, in that it permits all persons who worked for
26 Pretium during the applicable class period to obtain compensation for unpaid
27 wages, missed meal and rest periods, unpaid overtime, and related penalties.
28 Because, so far, no class member has objected to the settlement and no class

1 member has opted out, the reaction here has been overwhelmingly positive.

2 Finally, the necessity and financial burden of private enforcement render
3 an award appropriate. Without the incentive of an attorneys' fee award, Plaintiff
4 could not have afforded to hire counsel to pursue this case, as the cost of
5 litigating this matter far outweighed Plaintiff's potential recovery. *See Ryan v.*
6 *California Interscholastic Federation*, 94 Cal.App.4th 1033, 1044 (2001) ("As to
7 the necessity and financial burden of private enforcement, an award is
8 appropriate where the cost of the legal victory transcends the claimants' personal
9 interest; in other words, where the burden of pursuing the litigation is out of
10 proportion to the plaintiff's individual stake in the matter.").

11 **C. The Lodestar Method Also Supports Class Counsel's Fee Request**

12 Class Counsel's fee application is also reasonable based on the lodestar
13 method. The lodestar figure is calculated by multiplying the hours spent on the
14 case by the reasonable hourly rates for the region and attorney experience. *In re*
15 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011). A
16 reasonable hourly rate is the prevailing rate charged by attorneys of similar skill
17 and experience in the relevant community. *Chalmers v. City of Los Angeles*, 796
18 F.2d 1205, 1210 (9th Cir. 1986). The moving party meets its burden in this
19 regard by submitting "declarations evidencing the reasonable hourly rate for their
20 services and establishing the number of hours spent working on the case" as
21 "California case law permits fee awards in the absence of detailed time sheets."
22 *Wershba*, 91 Cal.App.4th at 254-55; *Dunk v. Ford Motor*, 48 Cal.App.4th 1794,
23 1810 (1996); *Nightengale v. Hyundai Motors America*, 31 Cal.App.4th 99, 103
24 (1994). The hours spent and the reasonable hourly compensation are computed
25 to arrive at a "lodestar" figure which may then be augmented or diminished by
26 the court taking into account various "multiplier" factors. *See Ramos v.*
27 *Countrywide Home Loans, Inc.*, 82 Cal.App.4th 615, 622 (2000) (citing *Serrano*,
28 20 Cal.3d at 48-49).

1 Here, Class Counsel’s lodestar is \$185,500, which is based on
 2 approximately 306.2 hours of attorney time at their customary hourly rates.
 3 Marquez Decl., ¶¶ 27-46. Applying a 2.88 multiplier is appropriate based on the
 4 contingent risk incurred by Class Counsel, the difficulty of the questions
 5 involved, the substantial benefit conferred on the Class and State of California as
 6 a result of the Settlement, and the skill displayed by Class Counsel. As such,
 7 Plaintiff’s request for \$533,333.33 in attorneys’ fees is reasonable under the
 8 lodestar method.

9 1. Class Counsel’s Hours Are Reasonable

10 The lodestar method requires the Court to determine a “touchstone” or
 11 lodestar figure based on a compilation of time spent and reasonable hourly
 12 compensation for each attorney. *Graham*, 34 Cal.4th at, 579. Generally, hours
 13 are reasonable if they were “reasonably expended in pursuit of the ultimate result
 14 achieved in the same manner that an attorney traditionally is compensated by a
 15 fee-paying client.” *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983). The Court
 16 “should defer to the winning lawyer’s professional judgment as to how much
 17 time he was required to spend on the case.” *Moreno v. City of Sacramento*, 534
 18 F.3d 1106, 1112 (9th Cir. 2008).

19 Here, Class Counsel expended a significant amount of time litigating the
 20 case to achieve an excellent result on behalf of the Class. To date, Class Counsel
 21 has collectively spent approximately 306.2 hours litigating this case. Marquez
 22 Decl., ¶ 41. In the event that Court grants final settlement approval, Class
 23 Counsel will spend additional time monitoring administration of the settlement
 24 after final approval. *Id.*

25 The number of hours that Class Counsel devoted to this case is reasonable.
 26 *See, e.g., Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001) (fee award should be
 27 “fully compensatory [and] absent circumstances rendering the award unjust, an
 28 attorney fee award should ordinarily include compensation for all the hours

1 reasonably spent.”) (emphasis in original); *Serrano III*, 20 Cal. 3d at 49 (counsel
 2 are entitled to compensation for all hours reasonably expended); *Hensley*, 461
 3 U.S. at 435-36; *Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir.
 4 2000); *Cabrales v. County of Los Angeles*, 935 F.2d 1050, 1052-53 (9th Cir.
 5 1991). As discussed above, Class Counsel was required to expend considerable
 6 time and resources to investigate, litigate, and successfully settle these claims for
 7 the benefit of the Class.

8 2. Class Counsel’s Hourly Rates Are Reasonable

9 The established standard when determining a reasonable hourly rate is the
 10 “rate prevailing in the community for similar work performed by attorneys of
 11 comparable skill, experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*,
 12 523 F.3d 973, 979 (9th Cir. 2008) (quoting *Barjon v. Dalton*, 132 F.3d 496, 502
 13 (9th Cir. 1997)). This rule applies even when, as here, the attorneys representing
 14 the named Plaintiff performed the work on a contingent fee basis. *See, e.g.*,
 15 *Robertson v. Fleetwood Travel Trailers*, 144 Cal.App.4th 785, 818 (2006);
 16 *Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989).

17 Class Counsel provide a declaration to support their lodestar hourly rates.
 18 These hourly rates are reasonable in light of their significant experience,
 19 expertise, and skill. Rates are reasonable if they are “within the range of
 20 reasonable rates charged by and judicially awarded comparable attorneys for
 21 comparable work.” *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th
 22 740, 783 (2002). The trial court may “find hourly rates reasonable based on
 23 evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor*
 24 *America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

25 Class Counsel are experienced litigators who specialize in employment
 26 law, with a substantial wage and hour class action practice. Marquez Decl., ¶¶
 27 27-40. For example, Class Counsel Justin F. Marquez briefed, argued, and won
 28 *Yocupicio v. PAE Group, LLC*, 795 F.3d 1057 (9th Cir. 2015), an important

1 decision concerning CAFA jurisdiction cited in several leading treatises such as
2 Wright & Miller's *Federal Practice & Procedure*, and *Newberg on Class*
3 *Actions*, and he was the primary author of the class certification and expert briefs
4 in *ABM Industries Overtime Cases*, 19 Cal.App.5th 277 (2017), a wage and hour
5 class action for over 40,000 class members for off-the-clock, meal period, split
6 shift, and reimbursement claims. Given the skill and experience of Class
7 Counsel in this case, and the excellent result achieved for the Class, Class
8 Counsel's hourly rates are reasonable.

9 **3. Application of a Positive Multiplier Is Appropriate**

10 Once this lodestar figure has been determined, the Court may take into
11 account other "enhancement" factors to adjust the lodestar award. While Plaintiff
12 seeks only a modest multiplier of 2.88 here, the overall reasonableness of
13 Plaintiff's request is underscored by the fact that a significantly higher multiplier
14 would be justified under applicable law.

15 As the California Supreme Court has held, contingency fees should be
16 higher than fees for the same legal services paid concurrently with the provision
17 of the services. *Ketchum*, 24 Cal.4th at 1132-33; *see also Fischel v. Equitable*
18 *Life Assurance Soc'y of the United States*, 307 F.3d 997, 1008 (9th Cir. 2002). "A
19 lawyer who both bears the risk of not being paid and provides legal services is
20 not receiving the fair market value of his work if he is paid only for the second of
21 these functions. If he is paid no more, competent counsel will be reluctant to
22 accept fee award cases." *Ketchum*, 24 Cal.4th at 1133. Application of that rule is
23 particularly appropriate where the case is brought to redress important rights of
24 vulnerable persons. *Id.* A risk enhancement is "earned compensation; unlike a
25 windfall, it is neither unexpected nor fortuitous. Rather it is intended to
26 approximate market-level compensation for such services which typically pay a
27 premium for the risk of nonpayment or delay in payment of attorney's fees." *Id.*
28 at 1138.

1 Multipliers normally range from two to four or higher. *Wershba*, 91
2 Cal.App.4th at 255; *see also Vizcaino*, 290 F.3d at 1051 n.6 (“most” common
3 fund cases apply a multiplier of 1.0-4.0); *Been v. O.K. Industries, Inc.*, 2011 WL
4 4478766, *11 (E.D. Okla. 2011) (citing a study “reporting [an] average multiplier
5 of 3.89 in survey of 1,120 class action cases” and finding that a multiplier of 2.43
6 would be “per se reasonable”).)

7 Factors considered in determining whether a lodestar multiplier is
8 appropriate generally include: (1) the risks presented by the contingent nature of
9 the case; (2) the novelty and difficulty of the questions involved and the skill
10 requisite to perform the legal service properly; (3) the nature of the opposition;
11 (4) the preclusion of other employment by the attorney due to acceptance of the
12 case; and (5) the result obtained and the importance of the lawsuit to the public.
13 *Serrano III*, 20 Cal. 3d at 48-49.

14 All of these factors favor approval of a multiplier along the lines of those
15 approved in the cases above. To date, Class Counsel have incurred \$185,500 in
16 attorneys’ fees and advanced \$14,053.28 in litigation costs and expenses. After
17 reimbursement of their reasonable out-of-pocket expenses, Class Counsel’s fee
18 request represents a modest multiplier of 2.88 of the lodestar fees incurred in
19 prosecuting this case (which will decrease further after additional time required
20 for settlement approval and implementation). Indeed, according to *Brulee v. DAL*
21 *Glob. Servs., LLC*, in which Mr. Marquez also served as leading counsel, “[t]he
22 Ninth Circuit has noted that multipliers range from 1.0-4.0 and a ‘bare majority’
23 fall within the range of 1.5-3.0.” *Brulee v. DAL Glob. Servs., LLC*, No. CV 17-
24 6433 JVS(JCGX), 2018 WL 6616659, at *11 (C.D. Cal. Dec. 13, 2018); *see also*
25 *Vizcaino*, 290 F.3d at 1051 n.6 (finding that a “bare majority” of multipliers in
26 common fund cases fall in the 1.5 to 3.0 range); *Singh v. Roadrunner Intermodal*
27 *Servs., LLC*, No. 1:15-cv-01497-DAD-BAM, 2019 WL 316814, at *10 (E.D.
28 Cal. Jan. 24, 2019) (finding that a multiplier of approximately 2.03 is “clearly in

1 the range that courts have found to be acceptable”).

2 **a) *Risks presented by the contingent nature of recovery***

3 The major consideration in determining the necessity of a multiplier is the
4 contingent nature of the award. *Ketchum*, 24 Cal.4th at 1132-33; *see also*
5 *Fischel*, at 1008. In determining what multiplier to award the probability of
6 success must be assessed *ex ante*, that is as viewed from the outset of the case.
7 *See e.g., Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991). Further,
8 the possibility of no recovery is only one of the uncertainties involved in taking
9 on such a case. Other uncertainties are the amount that will be recovered,
10 uncertainty as to the cost, both in effort and expenses, and uncertainty about how
11 much time will pass before the recovery is obtained. *See e.g., Ketchum*, 24
12 Cal.4th at 1132-1133, 1138.

13 Class Counsel have been the only counsel to represent Class Members in
14 this matter and have borne the entire risk and costs of litigation purely on a
15 contingency basis. Class Counsel’s outlay of time and money in this case has
16 been significant. In all, Class Counsel have spent approximately 306.2 hours
17 investigating, analyzing, researching, litigating, and negotiating a favorable
18 resolution of this case, and have incurred \$14,334.278 in necessary litigation
19 expenses.

20 Class Counsel bore the substantial risk of an uncertain outcome in agreeing
21 to prosecute this class action case on a contingency fee basis, as well as the
22 difficulties and delay inherent in such litigation. There was the prospect of the
23 enormous cost inherent in class action litigation, as well as extensive negotiations
24 with a corporate defendant who vigorously opposed Plaintiff’s claims. Class
25 Counsel risked significant time and expense to ensure the successful class
26 settlement.

27 The risks presented in this case were significant. There is potentially a
28 great deal of factual disputes and applicable defenses as to liabilities. The

1 potential factual disputes may impose substantial difficulties to class
 2 certification. And even if Plaintiff and the Class had prevailed at class
 3 certification, there was no guarantee that they could successfully prove liability
 4 or damages at trial. *See, e.g., Duran*, 59 Cal.4th 1 (reversing liability and
 5 damage award in outside salesperson class action judgment because of flaws in
 6 plaintiff's statistical survey).

7 These risks illustrate the recognition by the California Supreme Court in
 8 *Ketchum* that, if multipliers are not awarded to class counsel in the cases that are
 9 successfully settled, counsel's fees are essentially being cut because the lodestar
 10 in and of itself would not account for contingent risk. 24 Cal.4th at 1133.

11 **b) *Difficulty of the questions involved and the skill required***

12 Class Counsel are skilled attorneys who have had success in wage-and-
 13 hour class actions. Marquez Decl., ¶¶ 27-41. This case required experienced and
 14 competent lawyers and expertise in the issues presented herein. To obtain such
 15 an attorney on the free market, a client must pay the market rate. While most
 16 class actions are complex and involve some risk, Class Counsel had to overcome
 17 several major obstacles in prosecuting this case. Defendant's contentions
 18 underscore the risk of prevailing at class certification and trial, and any of these
 19 obstacles could have prevented recovery completely.

20 **c) *Vigorous opposition by Defendants***

21 Counsel who skillfully overcome difficult issues or uncompromising
 22 opposition in the litigation are entitled to a fee enhancement. *Serrano III*, 20
 23 Cal.3d at 49. Here, before eventually agreeing to the settlement, Defendant
 24 asserted a vigorous defense. Marquez Decl., ¶ 5. The Parties engaged in
 25 extensive discussions about the claims and defenses of the case in the mediation.
 26 Marquez Decl., ¶ 13.

27 Further, proceeding to trial would have added years to the resolution of this
 28 case because of the difficult legal and factual issues raised and the likelihood of

1 appeals.

2 **d) *The extent to which litigation precluded other***
3 ***employment would justify an enhancement***

4 There are only so many cases that Class Counsel can take at any one time.
5 Consequently, there were other meritorious cases presented to Class Counsel that
6 would have generated substantial fees, but were declined, during the pendency of
7 this action in order to devote the attention necessary to achieve favorable results.
8 Marquez Decl., ¶ 25.

9 **e) *The result obtained would justify an enhancement***

10 The results obtained in litigation can properly be used to enhance a lodestar
11 calculation where an exceptional effort produced excellent results. *Graham*, 34
12 Cal.4th at 582. Here, the final settlement fund figure of \$1.6 million represents
13 approximately 33% of the approximate \$4.99 million outer end of what Plaintiff
14 and the putative could have possibly been awarded in a class action trial.
15 Considered against the risks of continued litigation, and the importance of the
16 employment rights and a speedy recovery, the relief provided under the
17 Settlement represents a very strong result for the Class. *See Brulee*, 2018 WL
18 6616659, at *11 (finding that the results achieved and the skills required in
19 prosecuting the case ensured the reasonableness of the attorneys’ fees award).

20 **D. Class Counsel’s Costs Are Reasonable**

21 Class Counsel are entitled to recover the out-of-pocket costs and litigation
22 expenses they reasonably incurred in investigating, prosecuting, and settling this
23 case. *Staton*, 327 F.3d at 974. Accordingly, the Settlement Agreement provides
24 for reimbursement of costs. ECF 53-3, Settlement Agreement, at ¶¶ 5.2.1, 5.4.1.

25 Class Counsel seeks reimbursement of costs in the amount of \$14,053.28.
26 Marquez Decl., ¶ 47. These costs were reasonably incurred in prosecuting this
27 action on behalf of the Class and should be approved by the Court. *Id.*

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IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court enter an order awarding Class Counsel the full amount of attorneys’ fees and costs requested.

Dated: June 3, 2021

Respectfully submitted,

WILSHIRE LAW FIRM

By: /s/ Justin F. Marquez

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