

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 LEE BOND, and RICHARD JAMES,
5 Plaintiff,
6 v.
7 FERGUSON ENTERPRISES, INC.,
8 Defendants.
9

1:09-cv-1662 OWW MJS

[DRAFT] MEMORANDUM
DECISION RE UNOPPOSED
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
(DOC. 41) AND FOR
ATTORNEYS' FEES AND COSTS
(DOC. 48)

10
11 I. INTRODUCTION

12 This is a wage-and-hour class action brought on
13 behalf of truck drivers employed by Ferguson Enterprises
14 Inc., in Kern County, California. Declaration of Craig
15 Ackermann, Doc. 44 ¶ 12; see also First Amended Complaint
16 filed July 30, 2010. The action is brought on behalf of
17 Plaintiffs and approximately 548 current and former
18 employees of Defendants' from July 17, 2005 for alleged
19 violations of state wage-and-hour laws. *Id.*
20

21 The parties have entered into a Joint Stipulation of
22 Settlement Agreement. See Ackermann Decl., Doc. 30 at Ex.
23 1. A January 25, 2011 memorandum decision: (1)
24 conditionally certified a Settlement Class; (2)
25 preliminarily approved the Class Settlement; (3) Class
26 Counsel; (4) appointed Class Representatives; (5)
27 appointed a settlement administrator, (6) approved the
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1 class Notice and related materials for distribution; and
2 (7) required plaintiffs to submit a form of order
3 consistent with the decision within five (5) days
4 following electronic service. Doc. 35. Plaintiffs have
5 filed a motion for final approval of the settlement,
6 Docs. 41-42, along with numerous supporting declarations,
7 Docs. 43-46. Plaintiffs have also moved for approval of
8 their request for attorneys' fees and costs, Docs. 48-49,
9 and filed the supporting declaration of Melissa M.
10 Harnett, Doc. 50. No objections to approval have been
11 received.
12

13 14 II. BACKGROUND

15 Plaintiffs allege that Defendants failed to provide
16 timely off-duty meal periods; failed to pay for missed,
17 on-duty and untimely meal periods; failed to provide
18 accurate itemized wage statements; and failed to pay all
19 wages due upon termination or separation of employment.
20 Plaintiffs sought to certify a class composed of
21 themselves and similarly situated individuals, and sought
22 declaratory relief and recovery of back wages, interest,
23 penalties, attorneys' fees, and costs. See First Amended
24 Complaint ("FAC"), Doc. 21-1.
25

26 From November 2009 through the day of the settlement,
27 the Plaintiffs conducted substantial formal and informal
28

1 discovery concerning the Defendant's policy and
2 practices. Harnett Decl., Doc. 43 at ¶ 42. Among other
3 discovery, Plaintiffs served document requests seeking
4 information on the size of the Class and identity of each
5 of the Class members, and on Defendant's meal break
6 policies, including the persons responsible for
7 developing, implementing and monitoring Defendant's meal
8 break policies. *Id.* at ¶ 45. Defendants produced a
9 variety of responsive documents including all of its meal
10 and rest period policies and several other categories of
11 responsive documents, but objected to most of the class
12 discovery on the grounds that it violated the Class
13 Members' rights to privacy, and was premature and
14 irrelevant to a ruling on a class certification. Harnett
15 Decl., Doc. 31 at ¶ 46. Plaintiff's counsel reviewed the
16 information amassed during discovery including: analysis
17 of thousands of documents produced by Defendant,
18 including time records and payroll data for 34 class
19 members and Defendant's employment records; (2) analysis
20 of Defendant's legal arguments; (3) obtaining more than
21 thirty sworn declarations from former and current truck
22 drivers of Defendant; (4) taking the Rule 30(b)(6)
23 deposition of Defendant's corporate representative; (5)
24 analysis of class-wide violation rates on the automatic
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1 deduction and meal break claims on the basis of a sample
2 of thirty-four (34) class members; (6) analysis of class-
3 wide violations and damages on derivative claims; and (7)
4 research of the applicable law with respect to
5 Plaintiffs' claims. *Id.* at ¶ 4.
6

7 III. SUMMARY OF THE SETTLEMENT

8 The case was resolved with the aid of a mediator, Gig
9 Kyraicou. The Settlement covers approximately 548 current
10 and former truck drivers employed by Defendant in
11 California from July 17, 2005 to the date the court
12 enters an Order of Preliminary Approval ("Class Period"),
13 excluding new truck drivers hired after November 3, 2010
14 and 46 truck drivers who previously signed severance
15 release agreements prior to the filing of the lawsuit
16 ("Class Members"). See Settlement, Doc. 30-1, Exhibit 1,
17 § 6. There will be no reversion of the Gross Settlement
18 Amount to Defendant; see also Declaration of Craig J.
19 Ackermann, Doc. 30 at ¶ 48.
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22
23 A. Gross Settlement Amount.

24 Under the Settlement, Defendant will pay up to
25 \$2,500,000 ("Gross Settlement Amount"). This total sum
26 will cover:
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- 1 • settlement awards to be paid to Class Members who
- 2 timely submit valid claims ("Settlement Awards");
- 3 • any payroll withholding on the Settlement Awards;
- 4 • the Settlement Administrator's reasonable fees and
- 5 expenses (no more than \$18,000);
- 6
- 7 • (subject to court approval) payments to Plaintiffs,
- 8 in addition to their Settlement Awards, of \$11,250
- 9 each in compensation of their services as Class
- 10 Representatives;
- 11 • and (also subject to court approval) payments to
- 12 Class Counsel of no more than 30% of the Gross
- 13 Settlement Amount, or \$675,000, for their reasonable
- 14 attorneys' fees, as well as litigation costs, up to
- 15 \$10,000.
- 16

17 See Settlement, § 6. There will be no reversion of the
18 Gross Settlement Amount to Defendant.

19

20 **B. Payment of Settlement Awards.**

21 After the other amounts are deducted, the balance of
22 the Gross Settlement Amount, approximately \$1,524,500
23 (the "Net Settlement Amount") will be distributed to all
24 Class Members who timely submit valid claims
25 ("Claimants"), based upon the following allocation
26 formula:
27
28

1 The dollar amount payable to each member of the Class
2 will be calculated by taking the "Potential Gross
3 Individual Settlement Proceeds", i.e., the "Net
4 Settlement Amount" (estimated to be slightly more
5 than \$1,500,000) divided by the total number of weeks
6 worked by all members of the Class during the Class
7 Period, and then multiplied by the total number of
8 weeks worked by each individual member of the
9 Settlement Class.

10 Settlement, § 7(a). A Claim Form, which will be mailed to
11 Class Members with the Notice of Proposed Class Action
12 Settlement and Fairness Hearing ("Notice"), will include
13 for each Class Member the number of weeks actively worked
14 during the Class Period and the Class Member's estimated
15 Settlement Amount. Ackermann Decl., Doc. 31 at ¶ 52.

16 For tax purposes, one-third (1/3) of each Settlement
17 Award will be deemed wages and two-thirds (2/3) will be
18 treated as penalties and interest. Settlement Awards will
19 be subject to applicable tax withholding and reporting.
20 Settlement, § 7(c).

21 The formula relies upon objective evidence of the
22 number of weeks worked during the Class Period. Class
23 Members can review and confirm this information, and the
24 Claim Form permits Class Members to challenge the number
25 of weeks worked. Settlement, § 7(e).

26 C. Distribution of Unclaimed Funds and Uncashed Checks.

27 If less than 60% of the Gross Settlement Amount is
28 claimed and distributed to all Claimants, then each

1 Claimant's Settlement Award will be proportionately
2 increased, up to a maximum of 1.5 times their original
3 Settlement Award, until the total individual Settlement
4 Awards equals 60% of the Net Settlement Amount. If the
5 combined total of all Claimants' Settlement Awards at 1.5
6 times the original amount is still less than 60% of the
7 Gross Settlement Amount, the balance of the funds will be
8 paid to a 501(c)(3) nonprofit organization, to be agreed
9 upon by the parties and approved by the court.

10 Settlement, § 6(a).

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13 D. Scope of the Release.

14 The Settlement provides that all Class Members other
15 than those who elect not to participate in the Settlement
16 shall have released the "Released Parties" from the
17 "Released Claims." The Notice contains the following
18 release:

19 For purposes of this Notice and the Settlement
20 Agreement, the "Released Claims" of the Settlement
21 Class are defined as: All claims, demands, rights,
22 liabilities, and causes of action, whether brought
23 directly, representatively, or in any capacity, that
24 were or could have been asserted in the Lawsuit based
25 upon the facts alleged therein, whether in tort,
26 contract, statute, rule, ordinance, order,
27 regulation, or otherwise, including state, federal,
28 and local laws, whether for economic damages, non-
economic damages, restitution, penalties, punitive
damages, wages, premium payments, liquidated damages,
attorneys' fees, or any other type of recovery
thereon, arising out of any act, omission,
transaction, or event that occurred or is alleged to
have occurred up to the date of this Agreement.

1 Claims specifically included in this release without
2 limitation are those for alleged failure to provide
3 meal or rest breaks, alleged failure to pay for all
4 hours worked based on the application of an
5 "automatic lunch deduction" (including claims for
6 unpaid overtime, whether known or unknown, arising
7 during the Class Period for the Class Members based
8 on the claims reasonably related to those alleged in
9 the Lawsuit), alleged failure to provide accurate
10 itemized wage statements, alleged failure to provide
11 timely pay upon termination, alleged unfair
12 competition by means of the foregoing, and any other
13 claims arising out of alleged failure to pay wages or
14 penalties or for any other claims asserted in the
15 Lawsuit. This release shall be in addition to, and
16 not in lieu of, any release previously executed by
17 any member of the Settlement Class.

11 With respect to the Released Claims, Plaintiffs and
12 the members of the Settlement Class stipulate and
13 agree that, upon the effective date of the
14 settlement, all of them shall be deemed to have, and
15 by operation of the Final Judgment shall have,
16 expressly waived and relinquished, to the fullest
17 extent permitted by law, the provisions, rights and
18 benefits of Section 1542 of the California Civil
19 Code, or any other similar provision under federal or
20 state law that purports to limit the scope of a
21 general release. Section 1542 provides:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
19 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF
21 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
22 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
23 SETTLEMENT WITH THE DEBTOR.

22 Settlement Class Members shall fully and finally
23 release and discharge Ferguson, and each of their
24 past, present, or future officers, directors, owners,
25 shareholders, employees, agents, principals, heirs,
26 representatives, accountants, auditors, attorneys,
27 consultants, insurers, and reinsurers, and their
28 respective successors and predecessors in interest,
subsidiaries, affiliates, parents, and each of their
company-sponsored employee benefit plans, and all of
their respective officers, directors, employees,

1 administrators, fiduciaries, trustees, and agents
2 ("Released Parties"), from the Released Claims.

3 See Notice, Doc. 30, Ex. 1-A, § 5.

4 E. Objections and Opt-Out Process

5 Any Class Member who so wishes may object or elect
6 not to participate in the Settlement. The Notice fully
7 explains the objection and opt-out procedures. See
8 Notice, § 3.
9

10 F. Class Representative Payments; Class Counsel
11 Attorneys' Fees Payment and Class Counsel Litigation
12 Expenses Payment.

13 The settlement also permits Plaintiffs and their
14 counsel to seek by separate motion:

- 15 • payments to Plaintiffs, in addition to their
16 Settlement Awards, of \$11,250 each in
17 compensation of their services as Class
18 Representatives; and
- 19 • payments to Class Counsel of no more than 30% of
20 the Gross Settlement Amount, or \$675,000, for
21 their reasonable attorneys' fees, as well as
22 litigation costs, up to \$10,000.
23

24 See Settlement, § 6(b), (d).

25 III. DISCUSSION

26 A. Certification of a Class for Settlement

27 As the Class has only been conditionally certified,
28

1 final certification is required and is governed by
2 Federal Rule of Civil Procedure Rule 23.

3
4 1. Rule 23(a) Requirements.

5 Federal Rule of Civil Procedure 23(a) states in
6 pertinent part that "[o]ne or more members of a class may
7 sue or be sued as representative parties on behalf of
8 all." As a threshold matter, in order to certify a class,
9 a court must be satisfied that

10 (1) the class is so numerous that joinder of all
11 members is impracticable (the "numerosity"
12 requirement); (2) there are questions of law or
13 fact common to the class (the "commonality"
14 requirement); (3) the claims or defenses of
15 representative parties are typical of the claims
16 or defenses of the class (the "typicality"
17 requirement); and (4) the representative parties
18 will fairly and adequately protect the interests
19 of the class (the "adequacy of representation"
20 requirement).

21 *In re Intel Secs. Litig.*, 89 F.R.D. 104, 112 (N.D. Cal.
22 1981) (citing Fed. R. Civ. P. 23(a)).

23 a. Numerosity.

24 Here, the proposed class is comprised of all
25 individuals who have been employed by Defendant in
26 California as truck drivers from July 17, 2005 to January
27 25, 2011, excluding new truck drivers from November 3,
28 2010 and 46 drivers who previously signed severance
release agreements prior to the filing of this lawsuit.
There are approximately 548 Class Members. Courts have

1 routinely found the numerosity requirement satisfied when
2 the class comprises 40 or more members. *Ansari v. New*
3 *York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998).

4 Numerosity is also satisfied where joining all Class
5 members would serve only to impose financial burdens and
6 clog the court's docket. *In re Intel Secs. Litig.*, 89
7 F.R.D. at 112. Here, the joinder of approximately 548
8 individual former employees would only further clog this
9 court's already overburdened docket.

11
12 b. Common Questions of Fact and Law.

13 Commonality exists when there is either a common
14 legal issue stemming from divergent factual predicates or
15 a common nucleus of facts resulting in divergent legal
16 theories. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
17 (9th Cir. 1998). It does not require that all questions
18 of law or fact be common to every single member of the
19 class. To satisfy the commonality requirement, plaintiffs
20 need only point to a single issue common to the class.
21 *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir.
22 2007); *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 655 (C.D.
23 Cal. 2000).

24
25 Here, Class Members share the following legal and
26 factual questions:

- 27 • Whether Defendant automatically deducted thirty
28

1 minutes worth of working time on the basis of
2 the unverified assumption that truck drivers
3 always took a half-hour, off-duty meal break and
4 in lieu of keeping contemporaneous or accurate
5 meal break records;

- 6 • Whether Defendant failed to compensate truck
7 drivers for missed or untimely meal breaks with
8 an extra hour of premium pay;
- 9 • Whether Defendant failed to implement a
10 systematic daily method of relieving Class
11 Members of their duties for meal breaks;
- 12 • Whether Defendant failed to pay former employees
13 all wages due at termination; and
- 14 • Whether the above practices violate the Labor
15 Code and Wage Orders.

16 Every Class Member was paid under the same pay
17 practices as every other class members. The commonality
18 requirement is satisfied.

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20
21
22 c. Typicality.

23 Typicality is satisfied if the representatives'
24 claims arise from the same course of conduct as the class
25 claims and are based on the same legal theory. See, e.g.,
26 *Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir.
27 1995) (claims are typical where named plaintiffs have the
28

1 same claims as other members of the class and are not
2 subject to unique defenses). Because every class member
3 was paid under the same pay practices as every other
4 class member, the Class Representatives' claims are
5 typical of those of the other Class Members. The
6 typicality requirement is satisfied.
7

8 d. Fair and Adequate Representation.

9 The final Rule 23(a) requirement is that the class
10 representative fairly and adequately protect the
11 interests of the class. Fed. R. Civ. P. 23(a)(4). "The
12 proper resolution of this issue requires that two
13 questions be addressed: (a) do the named plaintiffs and
14 their counsel have any conflicts of interest with other
15 class members and (b) will the named plaintiffs and their
16 counsel prosecute the action vigorously on behalf of the
17 class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
18 462 (9th Cir. 2000).
19
20

21 Both requirements are satisfied here. Class counsel,
22 Craig J. Ackermann, Esq., of Ackermann & Tilajef, P.C.,
23 and Melissa M. Harnett, Esq., of Wasserman, Comden,
24 Casselmand & Esensten, L.L.P, have significant experience
25 litigating class actions, serving as class counsel,
26 representing plaintiffs in wage and hour litigation. See
27 Harnett Decl., Doc. 31, ¶¶13-32. Ackermann Decl., Doc.
28

1 30, ¶¶70-71. Class counsel have no conflicts with the
2 class, Harnett Decl., Doc. 31, ¶¶ 5, 7, and have devoted
3 a significant amount of time to the lawsuit, Ackermann
4 Decl., Doc. 30, ¶ 72; Harnett Decl., Doc. 31, ¶ 11.

5 In addition, the Class Representatives' interests are
6 completely aligned with those of the class. The Class
7 Representatives' interest is in maximizing their
8 recovery. Although they will each receive an additional
9 \$11,250, this amount is reasonable compensation for their
10 time and expense they devoted to pursuing this case. See
11 Harnett Decl., Doc. 31, ¶ 9.

12
13
14 2. Certification of a Class under Rule 23(b)(3).

15 Once the threshold requirements of Rule 23(a) are
16 satisfied, a class may be certified only if the class
17 action satisfies the requirements of Rule 23(b)(1),
18 (b)(2), and/or (b)(3). Here, the parties agree for
19 purposes of the Settlement only that certification of the
20 Class is appropriate under Rule 23(b)(3) because
21 "questions of law or fact common to the members of the
22 class predominate over any questions affecting only
23 individual members, and ... a class action is superior to
24 other available methods for the fair adjudication of the
25 controversy." Fed. R. Civ. P. 23(b)(3).

1 **B. The Terms of the Preliminary Approval Have Been**
2 **Satisfied.**

3 The January 25, 2011 preliminary approval of the
4 Settlement and conditional certification of the Class
5 ordered that the Class be sent notice of the Settlement,
6 approved the form of notice proposed by the parties,
7 approved the forms of claims for settlement share and
8 election not to participate, and set the hearing for
9 final approval. Doc. 35. The Settlement Administrator,
10 Simpluris, has carried out the preliminary approval order
11 to the extent possible. See generally Bui Declaration,
12 Doc. 40. On February 14, 2011, Class Notice Packets were
13 mailed to class members to all five hundred and fifty-two
14 (552) Class Members. *Id.* at ¶ 7. On March 11, 2011, the
15 Settlement Administrator mailed a reminder to class
16 members who had not yet submitted a Claim form or an Opt
17 Out and to do so by the March 21, 2011 deadline. Bui
18 Decl., Doc. 40, at ¶ 8. By April 21, 2011, one hundred
19 and sixteen (116) Class Notice Packets were returned by
20 U.S. Postal Service as undeliverable. *Id.* at ¶ 12. The
21 Settlement Administrator remailed two-hundred and ninety-
22 two (292) Class Notice Packets to either a newfound
23 address, a forwarding address provided by the U.S. Postal
24 Service, or to an address at the request of the Class
25 Member. *Id.* Despite the Settlement Administrator's best
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1 efforts, fifty-nine (59) Class Notice Packets remain
2 undeliverable because the administrator was unable to
3 find a deliverable address. *Id.*

4 Despite these difficulties, three-hundred and forty-
5 two (342) (61.96%) claim forms were received and accepted
6 by the Settlement Administrator. *Id.* at ¶ 14. As of April
7 22, 2011, the Settlement Administrator has received one
8 (1) deficient Claim Form because they did not sign their
9 form; two (2) untimely Claim Forms; and fifteen (15) opt-
10 outs. *Id.* at ¶¶ 17-19. Additionally, no class member has
11 submitted to an objection to the Settlement. *Id.* at ¶ 21.
12
13

14 C. Approval of the Settlement.

15 "The court must approve any settlement ... of the
16 claims ... of a certified class." Fed. R. Civ. P.
17 23(e)(1)(A). A settlement may be approved only after a
18 hearing and on finding that it is fair, reasonable, and
19 adequate. Fed. R. Civ. P. 23(e)(1)(C). Such approval is
20 required to make sure that any settlement reached is
21 consistent with plaintiffs' fiduciary obligations to the
22 class. See *Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995,
23 996 (9th Cir. 1985). The court also serves as guardian
24 for the absent class members who will be bound by the
25 settlement, and therefore must independently determine
26 the fairness of any settlement. *Id.* However, the district
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28

1 court's role in intruding upon what is otherwise a
2 private consensual agreement is limited to the extent
3 necessary to reach a reasoned judgment that the agreement
4 is not the product of fraud or collusion between the
5 negotiating parties, and that the settlement, taken as a
6 whole, is fair, reasonable, and adequate to all
7 concerned. *FDIC v. Alshuler*, 92 F.3d 1503, 1506 (9th Cir.
8 1996). Therefore, the settlement hearing is not to be
9 turned into a trial or rehearsal for trial on the merits.
10 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615,
11 625 (9th Cir. 1982). Ultimately, the district court's
12 determination is nothing more than an amalgam of delicate
13 balancing, gross approximations, and rough justice. *Id.*

14
15
16 In determining whether a settlement agreement is
17 fair, adequate, and reasonable to all concerned, a
18 district court may consider some or all of the following
19 factors: (1) the strength of the Plaintiff's case (2) the
20 risk, expense, complexity, and likely duration of further
21 litigation; (3) the risk of maintaining class action
22 status throughout the trial; (4) the amount offered in
23 settlement; (5) the extent of discovery completed; (6)
24 the stage of the proceedings; (7) the views and
25 experience of counsel; (8) any opposition by class
26 members; (9) the presence of a governmental participant.
27
28

1 *Linney v. Cellular Alaska Pshp.*, 151 F.3d 1234,1242 (9th
2 Cir. 1998). This list of factors is not exclusive and the
3 court may balance and weigh different factors depending
4 on the circumstances of each case. *Torrisi v. Tucson*
5 *Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).
6

7 1. The Relative Strengths of the Parties' Cases
8 Supports Approval of the Settlement.

9 If the litigation proceeds, Plaintiffs would face
10 significant risks. Ackermann Decl. at ¶¶ 66-9. For
11 example, the primary issue in this case revolves around
12 the provision of meal periods. However, the meaning of an
13 employer's obligation to provide meal periods under
14 California law is currently before the California Supreme
15 Court (see *Brinkley v. Public Storage, Inc.*, 198 P.3d
16 1087, 87 Cal.Rptr 674 (Jan. 14, 2009) (review granted)
17 and *Brinker Restaurant Corp. v. Superior Court*, 196 P.3d
18 216, 85 Cal.Rptr 388 (Oct. 22, 2008) (review granted). A
19 defense ruling in *Brinker* could impair Plaintiff's
20 ability to proceed on these causes of action.
21

22 Plaintiffs also face the risk that the class may not
23 be certified. The issue of whether missed meal break
24 claims for truckers may be certified is currently pending
25 before the California Supreme Court in *Brinker*. If the
26 Court adopts the *Brinker* standard, then class
27 certification of Plaintiffs' missed meal break claims
28

1 would be more difficult. See *Brown v. Federal Express*,
2 249 FRD 580, 585 (C.D. Cal. 2008) (denying class
3 certification of employees alleging employers denied them
4 meal breaks and rest breaks, and failed to pay additional
5 one hour of pay to employees who missed meal breaks.)

6
7 In light of these risks, the significant recovery is
8 fair, reasonable, and adequate, and is in the best
9 interest of the Settlement Class in light of all known
10 facts and circumstances.

11
12 2. The Settlement Amount is Fair and Reasonable.

13 The Settlement provides for a payment of up to
14 \$2,250,000 by Defendants. The average settlement share is
15 \$2,781.93 per employee. Ackermann Decl., Doc. 44 at ¶ 71.
16 All Settlement shares will be distributed to each
17 Claimant on the basis of the number of weeks actively
18 worked by each Claimant during the Class Period. Harnett
19 Decl., Doc. 43 at ¶ 60.

20
21 The Class Representative Payments and the Class
22 Counsel Attorneys' Fees Payment are appropriate, and are
23 separately approved below.

24
25 Finally, the expected Settlement Administrator's fees
26 and costs of approximately \$18,000 are reasonable in
27 light of the amount of work achieved. *Id.* at ¶ 64.

1 3. The Release is Appropriate.

2
3 As part of the Settlement, Class Members release the
4 following claims: "all wage and hour related claims,
5 demands, rights, liabilities and causes of action,
6 whether brought directly, representatively, derivatively,
7 or in any capacity that were or could have been asserted
8 in the Lawsuit based upon the facts alleged therein"
9 "arising out of any act, omission, transaction, or event
10 affecting wage and hour related rights that occurred or
11 is alleged to have occurred up to the date of this
12 Agreement." See Ackermann Decl., Doc. 44 at Exhibit A.
13 These released claims appropriately track the breadth of
14 Plaintiffs' allegations in the action and the settlement
15 does not release unrelated claims that class members may
16 have against defendants.
17
18

19 4. The Settlement Was the Product of Informed,
20 Arm's Length Negotiations.

21 The Settlement was reached after informed, arm's
22 length negotiations between the parties. See Ackermann
23 Decl., Doc. 44 at ¶¶ 63-4. Plaintiffs' counsel had access
24 to documents including all of the Defendant's meal and
25 rest period policies, their database of timekeeping
26 entries, and names and addresses of members of the class.
27 *Id.* at ¶¶ 27, 31. Plaintiffs' counsel reviewed and
28

1 analyzed thousands of pages of material. *Id.* at ¶ 31.
2 Counsel was also informed by numerous interviews with
3 witnesses to the allegations. *Id.* at ¶ 32, 34. In
4 addition, there is no evidence of collusion.
5

6 5. Reaction of the Class Members.

7 "The reactions of the members of a class to a
8 proposed settlement is a proper consideration for the
9 trial court." *Vasquez v. Coast Valley Roofing*, 266 F.R.D.
10 482 (E.D. Cal. 2010) (citing 5 Moore's Fed. Practice §
11 23.85[2][d]). Class Representative's opinion of the
12 settlement are especially important as "[t]he
13 representatives' views may be important in shaping the
14 agreement and will usually be presented at the fairness
15 hearing; they may be entitled to special weight because
16 the representatives may have a better understanding of
17 the case than most members of the class." *Manual for*
18 *Complex Litigation*, Third, § 30.44 (1995).
19
20

21 Here, the Class Representatives strongly support the
22 settlement. See Declaration of Lee Bond, Doc. 45, at ¶ 8-
23 9; Declaration of James Burkhart, Doc. 46, at ¶ 8-9. Each
24 of these Class Representatives and their attorneys have
25 extensive understanding of the merits of this settlement
26 having participated extensively in the strategy,
27 formulation, filing, litigation and negotiation process.
28

1 See Bond Decl. at ¶ 3-8; Burkhart Decl. at ¶ 3-8. There
2 have been no objections to the Settlement by Class
3 Members or any other members of the public.

4 The settlement is fair and reasonable.

5
6 D. Class Counsel's Requested Fees and Costs.

7 By separate motion, Plaintiffs' counsel also requests
8 approval of payments for attorneys' fees and costs in the
9 amount of \$675,000 and \$10,000, respectively. Courts
10 have long recognized the "common fund" or "common
11 benefit" doctrine, under which attorneys who create a
12 common fund or benefit for a group of persons may be
13 awarded their fees and costs to be paid out of the fund.
14 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.
15 1998). "[A] lawyer who recovers a common fund for the
16 benefit of persons other than himself or his client is
17 entitled to a reasonable attorney's fee from the fund as
18 a whole." *Staton v. Boeing Co.*, 327 F.3d 938, 972 (9th
19 Cir. 2003) (quoting *Boeing Co. v. Van Gemert*, 444 U.S.
20 472, 478 (1980)). Awarding a percentage of the common
21 fund is particularly appropriate "'when each member of a
22 certified class has an undisputed and mathematically
23 ascertainable claim to part of a lump-sum judgment
24 recovered on his behalf.'" *Id.* (quoting *Boeing Co.*, 444
25 U.S. at 478-79).

1 Here, where the Settlement requires lump sum
2 allocations to each Settlement Class and applies
3 distribution formulas pursuant to which each Class Member
4 who submits a valid claim will receive a mathematically
5 ascertainable payment, application of the percentage of
6 common fund doctrine is appropriate.
7

8 The typical range of acceptable attorneys' fees in
9 the Ninth Circuit is 20% to 33 1/3% of the total
10 settlement value, with 25% considered the benchmark.
11 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000);
12 *Hanlon*, 150 F.3d at 1029; *Staton*, 327 F.3d at 952.
13 However, the exact percentage varies depending on the
14 facts of the case, and in "most common fund cases, the
15 award exceeds that benchmark." *Knight v. Red Door Salons,*
16 *Inc.*, 2009 WL 248367 (N.D. Cal. 2009); see also *In re*
17 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D.
18 Cal. 1989) ("nearly all common fund awards range around
19 30%").
20

21 Class Counsel seeks an attorney's fee award of
22 \$675,000, or thirty percent (30%), of the Maximum
23 Settlement Value. When assessing whether the percentage
24 requested is reasonable, courts look to factors such as:
25 (a) the results achieved; (b) the risk of litigation; (c)
26 the skill required, (d) the quality of work; (e) the
27
28

1 contingent nature of the fee and the financial burden;
2 and (f) the awards made in similar cases. *Vizcaino v.*
3 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.2002); *Six*
4 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301
5 (9th Cir.1990).

6
7 1. The Results Achieved.

8 The individual claims in this case concerned
9 defendants' failure to pay class members for missed, on-
10 duty and untimely meal periods; unpaid wages on days when
11 no off-duty meal break was taken; failure to pay all
12 wages due upon termination or separation of employment;
13 and failure to provide proper rest and meal periods. Such
14 claims would not ordinarily produce large recoveries per
15 claimant. Here, the recovery of up to \$2,250,000 will
16 provide the 383 claimants with an average recover of
17 approximately \$2,781.93 per claimant. Ackermann Decl.,
18 Doc. 44 at ¶ 71.

19
20
21 2. The Risks Involved.

22 There was some risk in pursuing this case. One of the
23 primary issues involved in this case has to do with the
24 timely provision of rest and meal periods - an issue that
25 is currently before the California Supreme Court in the
26 *Brinker* and *Brinkley* cases. It is unknown what the
27 outcome of the Supreme Court's decision will be an
28

1 adverse decision that could be prejudicial to the
2 recovery in this case.

3 The Defendants also posed serious defenses to the
4 claims. And defense counsel demonstrated that they were
5 competent in defense of their client.

6 Plaintiffs' Counsel invested \$587,315, in lodestar
7 time and \$10,000 in costs in litigating this case with no
8 guarantee of recovery.
9

10
11 3. The Skill Required.

12 This is a garden-variety wage and hour class action,
13 focused primarily on meal breaks, which required more
14 accounting analysis than actual legal resources. The
15 case required locating and contacting over 500 members of
16 the class, communicating with over 250 class members to
17 ensure they received appropriate forms, obtaining new
18 contact information for some members of the class,
19 directing the work of the settlement administrator and
20 litigating cutting-edge legal theories surrounding rest
21 and meal periods. Harnett Decl., Doc. 43 at ¶ 87. This is
22 entirely administrative work that could be accomplished
23 by paralegals. Class Counsel has extensive experience in
24 class action wage and hour litigation of this nature. See
25 *id.* at ¶¶ 5-28; Ackermann Decl., Doc. 44 at ¶¶ 4-11.
26
27
28

1 4. The Contingent Nature of the Fee and the
2 Financial Burden.

3 This case was conducted on a contingent fee basis
4 against a well-represented Defendant. Counsel has
5 received no money from plaintiffs or any other source to
6 litigate this case. See Ackermann Decl. Doc., 43 at ¶¶
7 78-89. The plaintiffs are all low-wage workers who could
8 not meaningfully contribute to any such expenses.
9 Plaintiffs' counsel accepted this risk. Class Counsel was
10 effective in effectuating a \$2,250,000 settlement.
11

12 5. Awards in Similar Cases.

13 The requested fee is comparable to similar wage and
14 hour cases litigated in the Central Valley. For example,
15 this court has awarded the following fees:

- 16 • 33.3% in *Vasquez v. Coast Valley Roofing*, 266 F.R.D.
17 482 (E.D. Cal. 2010), Case No. 1:07-cv-00227 OWW DLB;
18 • 30% in *Vasquez v. Aartman*, E.D. Cal. Case No. 1:02-
19 CV05624 AWI LJO;
20 • 31.25% in *Baganha v. California Milk Transport*, Case
21 No. 1:01-cv-05729 AWI LJO;
22 • 33.3% in *Randall Willis et al. v. Cal Western*
23 *Transport*, and *Earl Baron et al. v. Cal Western*
24 *Transport*, Coordinated Case No. 1:00-cv-05695 AWI
25 LJO;
26 LJO;
27 LJO;
28

- 1 • 33.3% in *Benitez, et al. v. Jeff Wilbur and Lisa*
2 *Wilbur*, Case No. 1:08-cv-01122 LJO GSA;
3 • 33.3% in *Chavez, et al. v. Petrissans*, Case No. 1:08-
4 cv-00122 LJO GSA.

5
6 Based on the overall success, skill employed, legal
7 risks associated with Plaintiffs' claims, the financial
8 risks borne by Plaintiffs' Counsel, and similar awards
9 made in similar cases, under a percentage-of-fund
10 approach the requested attorney's fee award of 30% of the
11 total recovery (or \$675,000) is reasonable under the
12 circumstances.

13
14 6. Lodestar Cross-Check.

15 Calculation of the lodestar amount may be used as a
16 cross-check to assess the reasonableness of the
17 percentage award. *Fernandez v. Victoria Secret Stores*,
18 2008 WL 8150856 (C.D. Cal 2008); *Vizacaino v. Microsoft*
19 *Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002). First, the
20 court must calculate the lodestar amount by multiplying
21 the number of hours reasonably expended on the litigation
22 by a reasonable hourly rate. *Cunningham v. County of Los*
23 *Angeles*, 879 F.2d 481 (9th Cir. 1988). Next, the court
24 may increase or reduce the presumptively reasonable
25 lodestar fee. *Quesada v. Thomason*, 850 F.2d 537, 539 (9th
26 Cir. 1998) (citing *City of Riverside v. Rivera*, 477 U.S.
27
28

1 561 (1986)).

2 The billing records of Class Counsel Wasserman,
3 Comden, Casselman & Esensten, L.L.P and Ackermann &
4 Tilajef, P.C. reveal the following hours billed by
5 thirteen lawyers and three paralegals:
6

7	NAME	HOURS	RATE	TOTAL
8	<u>Wasserman, Comden, Casselman &</u> <u>Esensten, L.L.P.</u>			
9	Steven Wasserman, partner	1.6	\$750	\$1,200.00
10	Melissa Harnett, partner	109.2	\$670	\$73,164.00
11	Cathy Garcia, associate	52.4	\$600	\$31,440.00
12	Jesse Levin, associate	229.2	\$290	\$66,468.00
13	Scarlett, associate	21.5	\$500	\$10,750.00
14	Jordan Esensten, associate	8	\$290	\$2,320.00
15	Alan Juavan, paralegal	181.4	\$180	\$32,652.00
16	Andreas Nielsen, paralegal	90.9	\$180	\$16,362.00
17	Dale Gordon, paralegal	78.6	\$180	\$14,148.00
18	Susan House,	9	\$180	\$1,620.00
19	<u>Ackermann & Tilajef, P.C.</u>			
20	Craig Ackermann, partner	123.5	\$550	\$67,925
21	Tatiana Hernandez, associate	355.12	\$325	\$115,414
22	Barry Goldstein, consultant	16.2	\$725	\$17,617.50
23	Rachelle Tsarovsky, associate	70.9	\$325	\$23,043.50
24	Charlie Stein, associate	49.49	\$225	\$11,135.25
25	Pablo Orozco, associate	236.33	\$225	\$53,174.25
26	Devin Coyle, associate	7.7	\$225	\$1,732.50
27	Akiva Feinstein, legal assistant	152.6	\$175	\$26,705
28	Rosie Salinas, paralegal	96.3	\$150	\$14,445
	Jonathan Melmed	40	\$150	\$6,000
	Total	1929.94		\$587,316.00

20 See Memorandum in Support of Plaintiff's Motion for
21 Attorney's Fees and Costs, Doc. 49 at 11.

22 The number of hours billed in this case will not be
23 approved. Although considerable discovery took place and
24 preparation for mediation was required, similar cases
25 have reached settlement with fewer than 500 billed hours
26 of attorney time. See *Alvarado v. Nederend*, 1:08-cv-
27 01099 OWW DLB (wage and hour class action involving
28

1 unsettled issues related to meal and rest breaks with
2 approximately 150 class members reached settlement after
3 Class Counsel expended fewer than 350 hours). No two
4 cases have the exact same litigation requirements, but
5 nothing in the record justifies more than five times the
6 effort expended in *Alvarado*.
7

8 Likewise, the hourly rates presented by counsel are
9 higher than normally permitted under federal law.¹
10 Prevailing hourly rates in the Eastern District of
11 California are in the \$400/hour range. One more general
12 way to examine the reasonableness of hourly rates is to
13 compare them to the Laffey Matrix, a widely recognized
14 compilation of attorney and paralegal rate data used in
15 the District of Columbia, frequently used in fee awards
16 cases. The Laffey Matrix reflects a paralegal rate of
17 \$161, a 1-3 year lawyer rate of \$294, a 4-7 year lawyer
18 rate of \$361, an 8-10 year lawyer rate of \$522, an 11-19
19 year lawyer rate of \$589, and a 20+ year lawyer rate of
20 \$709. The district court in *Fernandex v. Victoria Secret*
21 *Stores, LLC* 2008 WL 8150856, *15 increased the Laffey
22 Matrix amounts by the difference between the cost of
23
24

25
26 ¹ These hourly rates were apparently approved without a written
27 decision in *Padilla et al v. Young's Market Company, LLC*, 2:09-cv-
28 08730 DMG RC (C.D. Cal. 2010) and separately in state court in
Williams v. BioTab Nutraceuticals, Inc., et al., LASC Case No. BC
414808 (2011). These cases have no precedential value, especially
in a different District, where prevailing rates are lower.

1 living increase provided to Judicial branch employees in
2 the Washington D.C. area and that provided to employees
3 in the Los Angeles area. That difference is 2.94 percent
4 as of the 2011 pay tables. Taking the top bracket as an
5 example, the adjusted Laffey Rate for a 20+ year lawyer
6 is \$729 ($\$709 * 1.0294$). Mr. Wasserman's rate of \$750 is
7 slightly higher than the adjudged Laffey Matrix for an
8 attorney with 20+ years in practice. The \$670 billed by
9 Ms. Harnett is approximately 10 percent higher than the
10 11-19 year attorney rate of \$606. The other employees of
11 Wasserman, Comden, Casselman & Esensten, L.L.P. appear to
12 be billing at similarly inflated rates. The hourly rates
13 billed by Ackermann & Tilajef, P.C. seem more reasonable,
14 although the \$175/hour rate for a "legal assistant" is
15 unjustified.

16
17
18 Because the lodestar is being used here as a cross-
19 check, the court may use a "rough calculation of the
20 lodestar," *Fernandez*, 2008 WL 8150856, it is appropriate
21 to roughly haircut the lodestar. The hourly rates of the
22 Wasserman, Comden, Casselman & Esensten, L.L.P. are least
23 10% over the appropriate Laffey Matrix levels, and are
24 reasonably subject to a 10% haircut on that basis.
25 Ackermann & Tilajef, P.C.'s rate billed for their legal
26 assistant will be lowered to \$100. This results in the
27
28

1 following recalculation of the lodestar.

2	NAME	HOURS	RATE	ADJUSTED RATE	TOTAL
3	<u>Wasserman, Comden, Casselman & Esensten, L.L.P.</u>				
4	Steven Wasserman, partner	1.6	\$750	\$675	\$1,080
5	Melissa Harnett, partner	109.2	\$670	\$603	\$65,848
6	Cathy Garcia, associate	52.4	\$600	\$540	\$28,296
7	Jesse Levin, associate	229.2	\$290	\$261	\$59,821
8	Scarlett, associate	21.5	\$500	\$450	\$9,675
9	Jordan Esensten, associate	8	\$290	\$261	\$2,088
10	Alan Juavan, paralegal	181.4	\$180	\$162	\$29,387
11	Andreas Nielsen, paralegal	90.9	\$180	\$162	\$14,726
12	Dale Gordon, paralegal	78.6	\$180	\$162	\$12,733
13	Susan House, Ackermann & Tilajef, P.C.	9	\$180	\$162	\$1,458
14	Craig Ackermann, partner	123.5	\$550	\$550	\$67,925
15	Tatiana Hernandez, associate	355.12	\$325	\$325	\$115,414
16	Barry Goldstein, consultant	16.2	\$725	\$725	\$17,617.50
17	Rachelle Tsarovsky, associate	70.9	\$325	\$325	\$23,043.50
18	Charlie Stein, associate	49.49	\$225	\$225	\$11,135.25
19	Pablo Orozco, associate	236.33	\$225	\$225	\$53,174.25
20	Devin Coyle, associate	7.7	\$225	\$225	\$1,732.50
21	Akiva Feinstein, legal assistant	152.6	\$175	\$100	\$15,260.00
22	Rosie Salinas, paralegal	96.3	\$150	\$150	\$14,445.00
23	Jonathan Melmed	40	\$150	\$150	\$6,000.00
24	<u>Total</u>	1929.9 4			\$550,859.00

18 The lodestar with adjusted hourly rates is
19 \$550,859.00. In addition, the hours billed are excessive
20 and are reasonably subject to a 30% haircut, resulting in
21 a total lodestar of \$385,601.00

22 The amount requested by Class Counsel of \$675,000.00
23 is greater than its lodestar amount of \$385,601.00.
24 However, adjustments to increase or decrease the lodestar
25 amount are sometimes appropriate to justify use of a
26 "lodestar multiplier." *Clark v. City of Los Angeles*, 803
27

1 F.2d 987, 991 (9th Cir. 1986); see also *Fischel v.*
2 *Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1008
3 (9th Cir. 2002). "It is an established practice in the
4 private legal market to reward attorneys for taking the
5 risk of non-payment by paying them a premium over their
6 normal hourly rates for winning contingency cases."
7 *Fischel*, 307 F.3d at 1008 (citing *In re Washington Public*
8 *Power Supply System Securities Litig. v. Continental Ins.*
9 *Co.*, 19 F.3d 1291, 1299 (9th Cir. 2002)). Generally, a
10 district court has discretion to apply a multiplier to
11 the attorney's fees calculation to compensate for the
12 risk of nonpayment. *Fischel*, 307 F.3d at 1008; see also
13 *In re Coordinated Pretrial Proceedings in Petroleum*
14 *Products Antitrust Litig. v. Exxon Corp.*, 109 F.3d 602
15 (9th Cir. 1997).

16
17
18 The "lodestar multiplier" is calculated by dividing
19 the percentage fee award by the lodestar calculation.
20 *Fischel*, 307 F.3d at 1008. Here, the multiplier of 1.75
21 is calculated by dividing \$675,000.00 by \$385,601.00. To
22 determine whether the lodestar multiplier is reasonable
23 the following factors may be considered: (1) the amount
24 involved and the results obtained, (2) the novelty and
25 difficulty of the questions involved, (3) the skill
26 requisite to perform the legal service properly, (4) the
27
28

1 preclusion of other employment by the attorney due to
2 acceptance of the case, (5) the customary fee, (6)
3 whether the fee is fixed or contingent, (7) time
4 limitations imposed by the client or the circumstances,
5 (8) the amount involved and the results obtained (9) the
6 experience, reputation, and ability of the attorneys,
7 (10) the 'undesirability' of the case, (11) the nature
8 and length of the professional relationship with the
9 client, and (12) awards in similar cases. *Id.* (citing
10 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 6 (9th Cir.
11 1975)).

12
13 First, Class Counsel achieved a good result and
14 generated a significant benefit for the class amounting
15 to the Maximum Settlement Amount of \$2,250,000 for the
16 benefit of a class of approximately 553 members. Based on
17 the claims rate, the 342 Class Members who submitted
18 claims will receive \$952,018.56 in the aggregate, an
19 average of \$2,783.68. See Bui Decl., Doc. 40.

20
21 Second, Plaintiff's meal break claims presented
22 arguable questions for Class Counsel because California's
23 meal break law is currently in flux with *Brinker*
24 currently pending before the California Supreme Court.

25
26 Third, Class Counsel competently performed. Class
27 Counsel avoided protracted litigation by conducting
28

1 significant investigation of the class claims, and
2 efficiently communicating and exchanging information with
3 Defense counsel so that the parties could successfully
4 mediate the case. In preparation for this case, Class
5 Counsel investigated the potential claims and class
6 members; comprehensively reviewed thousands of pages of
7 documents; interviewed a number of current and former
8 drivers of the Defendant; and deposed Defendant's
9 corporate representative about a number of important
10 topics. See Ackermann Decl., Doc. 44 at ¶ 36; Harnett
11 Decl., Doc. 43 at ¶ 55.
12

13 Lastly, Class Counsel undertook considerable
14 financial risks in this litigation by accepting this case
15 on a contingency basis. Harnett Decl., Doc. 43 at ¶ 92.
16 There was no guarantee they would recoup their fees or
17 costs. *Id.* Class Counsel has not received any payment for
18 their time or their expenses, which they began incurring
19 over two years ago. *Id.* Additionally, Class Counsel had
20 to forego other work in order to maintain this case. *Id.*
21

22 Based on the overall success, the skill with which
23 the case was prosecuted, the substantial legal risks
24 associated with Plaintiffs' claims, and the financial
25 risks borne by Plaintiffs' Counsel, Plaintiff's request
26 for a multiplier of 1.75 of its lodestar is reasonable.
27
28

1 See, e.g. *Steiner v. Am. Broadcasting Co., Inc.*, 248 Fed.
2 Appx. 780, 783 (9th Cir. 2007) (approving multiplier of
3 6.85 and citing cases with comparable or higher
4 multipliers); *Vizcaino*, 290 F.3d at 1051 (finding no
5 abuse of discretion in awarding a multiplier of 3.65).
6

7 E. Class Counsel's Request for Costs.

8 Class Counsel incurred out-of-pocket costs totaling
9 approximately \$11,364.46. The bulk of the incurred costs
10 included Settlement Administrator fees for notice costs,
11 payment to court reporters for depositions, mediation
12 costs, legal research, and in-house copies of documents.
13 See *Acerkmen Decl.*, Doc. 44 at Exhibit 13. Such costs are
14 routinely reimbursed in these types of cases. See, *In re*
15 *United Energy Corp. Sec. Litig.*, 1989 WL 73211, at *6
16 (C.D. Cal. 1989) (quoting Newberg, *Attorney Fee Awards*, §
17 2.19 (1987)); see e.g. *Vasquez*, 266 F.R.D. at 493 (Class
18 Counsel litigation expenses payment of approximately
19 \$9,000 was fair and reasonable in similar case).
20
21

22 Here, the actual costs incurred are greater than the
23 estimated \$10,000, which was included in the Class Notice
24 and to which no Class Member objected. Plaintiff's
25 request, which is capped at \$10,000 is reasonable.
26

27 F. Class Representative Enhancement.

28 Pursuant to the Settlement, Plaintiff seeks an

1 enhancement in the amount of \$7,500 to the named
2 Plaintiffs Lee Bond and Richard James Burkhart. Ackermann
3 Decl., Doc. 44 at ¶ 47. This payment is intended to
4 recognize the time and efforts that the named Plaintiffs
5 spent on behalf of the Class Members. *Id.*; see also
6 Declarations of Lee Bond and Richard James Burkhart,
7 Docs. 45-46.

9 "Courts routinely approve incentive awards to
10 compensate named plaintiffs for the services they provide
11 and the risks they incurred during the course of the
12 class action litigation." *Ingram v. The Coca-Cola*
13 *Company*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (internal
14 quotations and citations omitted). In *Coca-Cola*, the
15 Court approved service awards of \$300,000 to each named
16 plaintiff in recognition of the services they provided to
17 the class by responding to discovery, participating in
18 the mediation process, and taking the risk of stepping
19 forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at
20 694; see, e.g., *Van Vranken v. Atl. Richfield Co.*, 901 F.
21 Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000
22 participation award to plaintiffs); *Glass v. UBS*
23 *Financial Services, Inc.*, 2007 WL 221862, at *17 (N.D.
24 Cal. Jan. 26, 2007) (approving \$25,000 enhancement to
25 each named plaintiff).
26
27
28

1 In this case, among other things, the named
2 Plaintiffs: (1) provided significant assistance to Class
3 Counsel; (2) endured lengthy interviews; (3) provided
4 written declarations; (4) searched for and produced
5 relevant documents; (5) and prepared and evaluated the
6 case for mediation, which was a full day session
7 requiring very careful consideration, evaluation and
8 approval of the terms of the Settlement Agreement on
9 behalf of the Class. See Declarations of Lee Bond and
10 Richard James Burkhart, Docs. 45-46. Moreover, as with
11 any plaintiff who files a civil action, Plaintiffs
12 undertook the financial risk that, in the event of a
13 judgment in favor of Defendant in this action, they could
14 have been personally responsible for the costs awarded in
15 favor of the Defendant. See, e.g., *Whiteway v. Fed Ex*
16 *Kinkos Office & Print Services, Inc.*, No. C 08-2320 SBA,
17 2007 WL 4531783, at **2-4 (N.D. Cal. Dec. 17, 2007).

20
21 G. Claims Administrator Fee.

22 The Class Notice provided that the Claims
23 Administrator would receive a fee of up to \$18,000
24 Plaintiffs request that the full amount of \$18,000 be
25 approved as Simpluris' fee. Doc. 41. The Declaration of
26 Michael Bui, a Case Manager at Simpluris, explains the
27 tasks undertaken by Simpluris to accomplish notify the
28

1 Class of the settlement and administer its terms. Mr. Bui
2 estimates administration costs of \$18,000, taking into
3 consideration both costs incurred to date and those
4 anticipated to be incurred in the future. This request is
5 substantially lower than previous administrator fees
6 awarded in this District. See *Vasquez*, 266 F.R.D. at 483-
7 84 (\$25,000 administrator fee awarded in wage and hour
8 case involving 177 potential class members).
9

10 IV. CONCLUSION

11 For all the reasons set forth above:

12 (1) The Settlement Class is CERTIFIED;

13 (2) The Class Settlement is APPROVED;

14 (3) The payment of \$675,000 in attorney's fees (30%
15 of the Maximum Settlement Value and \$10,000 in costs is
16 APPROVED;

17 (4) The payment of \$11,250 enhancement to each of
18 the named Plaintiffs Lee Bond and Richard James Burkhart
19 is APPROVED;

20 (5) The payment of \$18,000 to the Settlement
21 Administrator is APPROVED;

22 Plaintiffs shall submit a form of order consistent
23 with this decision within five (5) days following
24 electronic service.
25
26
27
28