

1
2 UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF CALIFORNIA
4

5 LEE BOND, and RICHARD JAMES,
6 Plaintiff,
7 v.
8 FERGUSON ENTERPRISES, INC.,
9 Defendants.
10

1:09-cv-1662 OWW MJS

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

11
12 I. INTRODUCTION

13 This is a wage-and-hour class action brought on
14 behalf of truck drivers employed by Ferguson Enterprises
15 Inc., in Kern County, California. Declaration of Craig
16 Ackermann, Doc. 44 ¶ 12; see also First Amended Complaint
17 filed July 30, 2010. The action is brought on behalf of
18 Plaintiffs and approximately 553 current and former
19 employees of Defendants' from July 17, 2005 for alleged
20 violations of state wage-and-hour laws. *Id.*
21

22 The parties have entered into a Joint Stipulation of
23 Settlement Agreement. See Ackermann Decl., Doc. 30 at Ex.
24 1. A January 25, 2011 memorandum decision: (1)
25 conditionally certified a Settlement Class; (2)
26 preliminarily approved the Class Settlement; (3) Class
27 Counsel; (4) appointed Class Representatives; (5)
28

1 appointed a settlement administrator, (6) approved the
2 class Notice and related materials for distribution; and
3 (7) required plaintiffs to submit a form of order
4 consistent with the decision within five (5) days
5 following electronic service. Doc. 35. Plaintiffs have
6 filed a motion for final approval of the settlement,
7 Docs. 41-42, along with numerous supporting declarations,
8 Docs. 43-46. Plaintiffs have also moved for approval of
9 their request for attorneys' fees and costs, Docs. 48-49,
10 and filed the supporting declaration of Melissa M.
11 Harnett, Doc. 50. No objections to approval have been
12 received.
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15 II. BACKGROUND

16 Plaintiffs allege that Defendants failed to provide
17 timely off-duty meal periods; failed to pay for missed,
18 on-duty and untimely meal periods; failed to provide
19 accurate itemized wage statements; and failed to pay all
20 wages due upon termination or separation of employment.
21 Plaintiffs sought to certify a class composed of
22 themselves and similarly situated individuals, and sought
23 declaratory relief and recovery of back wages, interest,
24 penalties, attorneys' fees, and costs. See First Amended
25 Complaint ("FAC"), Doc. 21-1.
26

27 From November 2009 through the day of the settlement,
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1 the Plaintiffs conducted substantial formal and informal
2 discovery concerning the Defendant's policy and
3 practices. Harnett Decl., Doc. 43 at ¶ 42. Among other
4 discovery, Plaintiffs served document requests seeking
5 information on the size of the Class and identity of each
6 of the Class members, and on Defendant's meal break
7 policies, including the persons responsible for
8 developing, implementing and monitoring Defendant's meal
9 break policies. *Id.* at ¶ 45. Defendants produced a
10 variety of responsive documents including all of its meal
11 and rest period policies and several other categories of
12 responsive documents, but objected to most of the class
13 discovery on the grounds that it violated the Class
14 Members' rights to privacy, and was premature and
15 irrelevant to a ruling on a class certification. Harnett
16 Decl., Doc. 31 at ¶ 46. Plaintiff's counsel reviewed the
17 information amassed during discovery including: analysis
18 of thousands of documents produced by Defendant,
19 including time records and payroll data for 34 class
20 members and Defendant's employment records; (2) analysis
21 of Defendant's legal arguments; (3) obtaining more than
22 thirty sworn declarations from former and current truck
23 drivers of Defendant; (4) taking the Rule 30(b)(6)
24 deposition of Defendant's corporate representative; (5)

1 analysis of class-wide violation rates on the automatic
2 deduction and meal break claims on the basis of a sample
3 of thirty-four (34) class members; (6) analysis of class-
4 wide violations and damages on derivative claims; and (7)
5 research of the applicable law with respect to
6 Plaintiffs' claims. *Id.* at ¶ 4.
7

8 III. SUMMARY OF THE SETTLEMENT

9 The case was resolved with the aid of a mediator, Gig
10 Kyraicou. The Settlement covers approximately 553 current
11 and former truck drivers employed by Defendant in
12 California from July 17, 2005 to the date the court
13 enters an Order of Preliminary Approval ("Class Period"),
14 excluding new truck drivers hired after November 3, 2010
15 and 46 truck drivers who previously signed severance
16 release agreements prior to the filing of the lawsuit
17 ("Class Members"). See Settlement, Doc. 30-1, Exhibit 1,
18 § 6. There will be no reversion of the Gross Settlement
19 Amount to Defendant; see also Declaration of Craig J.
20 Ackermannn, Doc. 30 at ¶ 48.
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23 A. Gross Settlement Amount.

24 Under the Settlement, Defendant will pay up to
25 \$2,250,000 ("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 • (subject to court approval) payments to Plaintiffs,
- 7 in addition to their Settlement Awards, of \$11,250
- 8 each in compensation of their services as Class
- 9 Representatives;
- 10 • and (also subject to court approval) payments to
- 11 Class Counsel of no more than 30% of the Gross
- 12 Settlement Amount, or \$675,000, for their reasonable
- 13 attorneys' fees, as well as litigation costs, up to
- 14 \$10,000.
- 15
- 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
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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).

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1 III. DISCUSSION

2 A. Certification of a Class for Settlement

3 As the Class has only been conditionally certified,
4 final certification is required and is governed by
5 Federal Rule of Civil Procedure Rule 23.
6

7 1. Rule 23(a) Requirements.

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

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

25
26 *In re Intel Secs. Litig.*, 89 F.R.D. 104, 112 (N.D. Cal.
27 1981) (citing Fed. R. Civ. P. 23(a)).
28

29 a. Numerosity.

30 Here, the proposed class is comprised of all
31 individuals who have been employed by Defendant in
32 California as truck drivers from July 17, 2005 to January
33 25, 2011, excluding new truck drivers from November 3,
34

1 2010 and 46 drivers who previously signed severance
2 release agreements prior to the filing of this lawsuit.
3 There are approximately 553 Class Members. Courts have
4 routinely found the numerosity requirement satisfied when
5 the class comprises 40 or more members. *Ansari v. New*
6 *York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998).

7
8 Numerosity is also satisfied where joining all Class
9 members would serve only to impose financial burdens and
10 clog the court's docket. *In re Intel Secs. Litig.*, 89
11 F.R.D. at 112. Here, the joinder of approximately 553
12 individual former employees would only further clog this
13 court's already overburdened docket.
14

15 b. Common Questions of Fact and Law.

16 Commonality exists when there is either a common
17 legal issue stemming from divergent factual predicates or
18 a common nucleus of facts resulting in divergent legal
19 theories. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
20 (9th Cir. 1998). It does not require that all questions
21 of law or fact be common to every single member of the
22 class. To satisfy the commonality requirement, plaintiffs
23 need only point to a single issue common to the class.
24 *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir.
25 2007); *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 655 (C.D.
26 Cal. 2000).
27
28

1 Here, Class Members share the following legal and
2 factual questions:

- 3 • Whether Defendant automatically deducted thirty
4 minutes worth of working time on the basis of
5 the unverified assumption that truck drivers
6 always took a half-hour, off-duty meal break and
7 in lieu of keeping contemporaneous or accurate
8 meal break records;
- 9 • Whether Defendant failed to compensate truck
10 drivers for missed or untimely meal breaks with
11 an extra hour of premium pay;
- 12 • Whether Defendant failed to implement a
13 systematic daily method of relieving Class
14 Members of their duties for meal breaks;
- 15 • Whether Defendant failed to pay former employees
16 all wages due at termination; and
- 17 • Whether the above practices violate the Labor
18 Code and Wage Orders.
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22 Every Class Member was paid under the same pay
23 practices as every other class members. The commonality
24 requirement is satisfied.

25
26 c. Typicality.

27 Typicality is satisfied if the representatives'
28 claims arise from the same course of conduct as the class

1 claims and are based on the same legal theory. See, e.g.,
2 *Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir.
3 1995) (claims are typical where named plaintiffs have the
4 same claims as other members of the class and are not
5 subject to unique defenses). Because every class member
6 was paid under the same pay practices as every other
7 class member, the Class Representatives' claims are
8 typical of those of the other Class Members. The
9 typicality requirement is satisfied.
10

11
12 d. Fair and Adequate Representation.

13 The final Rule 23(a) requirement is that the class
14 representative fairly and adequately protect the
15 interests of the class. Fed. R. Civ. P. 23(a)(4). "The
16 proper resolution of this issue requires that two
17 questions be addressed: (a) do the named plaintiffs and
18 their counsel have any conflicts of interest with other
19 class members and (b) will the named plaintiffs and their
20 counsel prosecute the action vigorously on behalf of the
21 class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
22 462 (9th Cir. 2000).
23

24 Both requirements are satisfied here. Class counsel,
25 Craig J. Ackermann, Esq., of Ackermann & Tilajef, P.C.,
26 and Melissa M. Harnett, Esq., of Wasserman, Comden,
27 Casselmand & Esensten, L.L.P, have significant experience
28

1 litigating class actions, serving as class counsel,
2 representing plaintiffs in wage and hour litigation. See
3 Harnett Decl., Doc. 31, ¶¶13-32. Ackermann Decl., Doc.
4 30, ¶¶70-71. Class counsel have no conflicts with the
5 class, Harnett Decl., Doc. 31, ¶¶ 5, 7, and have devoted
6 a significant amount of time to the lawsuit, Ackermann
7 Decl., Doc. 30, ¶ 72; Harnett Decl., Doc. 31, ¶ 11.

9 In addition, the Class Representatives' interests are
10 completely aligned with those of the class. The Class
11 Representatives' interest is in maximizing their
12 recovery. Although they will each receive an additional
13 \$11,250, this amount is reasonable compensation for their
14 time and expense they devoted to pursuing this case. See
15 Harnett Decl., Doc. 31, ¶ 9.

17 2. Certification of a Class under Rule 23(b)(3).

18 Once the threshold requirements of Rule 23(a) are
19 satisfied, a class may be certified only if the class
20 action satisfies the requirements of Rule 23(b)(1),
21 (b)(2), and/or (b)(3). Here, the parties agree for
22 purposes of the Settlement only that certification of the
23 Class is appropriate under Rule 23(b)(3) because
24 "questions of law or fact common to the members of the
25 class predominate over any questions affecting only
26 individual members, and ... a class action is superior to
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28

1 other available methods for the fair adjudication of the
2 controversy." Fed. R. Civ. P. 23(b)(3).

3
4 **B. The Terms of the Preliminary Approval Have Been Satisfied.**

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

1 Service, or to an address at the request of the Class
2 Member. *Id.* Despite the Settlement Administrator's best
3 efforts, fifty-nine (59) Class Notice Packets remain
4 undeliverable because the administrator was unable to
5 find a deliverable address. *Id.*

6
7 Despite these difficulties, three-hundred and forty-
8 two (342) (61.96%) claim forms were received and accepted
9 by the Settlement Administrator. *Id.* at ¶ 14. As of the
10 filing of this Order, the Settlement Administrator
11 received a total of four late claims. The parties agreed
12 that the four untimely claims and one deficient claim
13 would be treated as valid. Therefore, there were a total
14 of 347 valid claims ultimately made amounting to
15 approximately 63% of Settlement Class. As of April 22,
16 2011, the Settlement Administrator has received one (1)
17 deficient Claim Form because they did not sign their
18 form; two (2) untimely Claim Forms; and fifteen (15) opt-
19 outs. *Id.* at ¶¶ 17-19. Additionally, no class member has
20 submitted to an objection to the Settlement. *Id.* at ¶ 21.

21
22
23 C. Approval of the Settlement.

24 "The court must approve any settlement ... of the
25 claims ... of a certified class." Fed. R. Civ. P.
26 23(e) (1) (A). A settlement may be approved only after a
27 hearing and on finding that it is fair, reasonable, and
28

1 adequate. Fed. R. Civ. P. 23(e)(1)(C). Such approval is
2 required to make sure that any settlement reached is
3 consistent with plaintiffs' fiduciary obligations to the
4 class. See *Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995,
5 996 (9th Cir. 1985). The court also serves as guardian
6 for the absent class members who will be bound by the
7 settlement, and therefore must independently determine
8 the fairness of any settlement. *Id.* However, the district
9 court's role in intruding upon what is otherwise a
10 private consensual agreement is limited to the extent
11 necessary to reach a reasoned judgment that the agreement
12 is not the product of fraud or collusion between the
13 negotiating parties, and that the settlement, taken as a
14 whole, is fair, reasonable, and adequate to all
15 concerned. *FDIC v. Alshuler*, 92 F.3d 1503, 1506 (9th Cir.
16 1996). Therefore, the settlement hearing is not to be
17 turned into a trial or rehearsal for trial on the merits.
18 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615,
19 625 (9th Cir. 1982). Ultimately, the district court's
20 determination is nothing more than an amalgam of delicate
21 balancing, gross approximations, and rough justice. *Id.*

22 In determining whether a settlement agreement is
23 fair, adequate, and reasonable to all concerned, a
24 district court may consider some or all of the following
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1 factors: (1) the strength of the Plaintiff's case (2) the
2 risk, expense, complexity, and likely duration of further
3 litigation; (3) the risk of maintaining class action
4 status throughout the trial; (4) the amount offered in
5 settlement; (5) the extent of discovery completed; (6)
6 the stage of the proceedings; (7) the views and
7 experience of counsel; (8) any opposition by class
8 members; (9) the presence of a governmental participant.
9 *Linney v. Cellular Alaska Pshp.*, 151 F.3d 1234,1242 (9th
10 Cir. 1998). This list of factors is not exclusive and the
11 court may balance and weigh different factors depending
12 on the circumstances of each case. *Torrisi v. Tucson*
13 *Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

14
15
16 1. The Relative Strengths of the Parties' Cases
17 Supports Approval of the Settlement.

18 If the litigation proceeds, Plaintiffs would face
19 significant risks. Ackermann Decl. at ¶¶ 66-9. For
20 example, the primary issue in this case revolves around
21 the provision of meal periods. However, the meaning of an
22 employer's obligation to provide meal periods under
23 California law is currently before the California Supreme
24 Court (see *Brinkley v. Public Storage, Inc.*, 198 P.3d
25 1087, 87 Cal.Rptr 674 (Jan. 14, 2009) (review granted)
26 and *Brinker Restaurant Corp. v. Superior Court*, 196 P.3d
27 216, 85 Cal.Rptr 388 (Oct. 22, 2008) (review granted). A
28

1 defense ruling in *Brinker* could impair Plaintiff's
2 ability to proceed on these causes of action.

3 Plaintiffs also face the risk that the class may not
4 be certified. The issue of whether missed meal break
5 claims for truckers may be certified is currently pending
6 before the California Supreme Court in *Brinker*. If the
7 Court adopts the *Brinker* standard, then class
8 certification of Plaintiffs' missed meal break claims
9 would be more difficult. See *Brown v. Federal Express*,
10 249 FRD 580, 585 (C.D. Cal. 2008) (denying class
11 certification of employees alleging employers denied them
12 meal breaks and rest breaks, and failed to pay additional
13 one hour of pay to employees who missed meal breaks.)
14

15
16 In light of these risks, the significant recovery is
17 fair, reasonable, and adequate, and is in the best
18 interest of the Settlement Class in light of all known
19 facts and circumstances.
20

21 2. The Settlement Amount is Fair and Reasonable.

22 The Settlement provides for a payment of up to
23 \$2,250,000 by Defendants. The average settlement share is
24 \$2,776.34 per employee. Ackermann Decl., Doc. 44 at ¶
25 71. All Settlement shares will be distributed to each
26 Claimant on the basis of the number of weeks actively
27 worked by each Claimant during the Class Period. Harnett
28

1 Decl., Doc. 43 at ¶ 60.

2 The Class Representative Payments and the Class
3 Counsel Attorneys' Fees Payment are appropriate, and are
4 separately approved below.

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

9
10 3. The Release is Appropriate.

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

3 The Settlement was reached after informed, arm's
4 length negotiations between the parties. See Ackermann
5 Decl., Doc. 44 at ¶¶ 63-4. Plaintiffs' counsel had access
6 to documents including all of the Defendant's meal and
7 rest period policies, their database of timekeeping
8 entries, and names and addresses of members of the class.
9 Id. at ¶¶ 27, 31. Plaintiffs' counsel reviewed and
10 analyzed thousands of pages of material. Id. at ¶ 31.
11 Counsel was also informed by numerous interviews with
12 witnesses to the allegations. Id. at ¶ 32, 34. In
13 addition, there is no evidence of collusion.
14

15 5. Reaction of the Class Members.

16 "The reactions of the members of a class to a
17 proposed settlement is a proper consideration for the
18 trial court." *Vasquez v. Coast Valley Roofing*, 266 F.R.D.
19 482 (E.D. Cal. 2010) (citing 5 Moore's Fed. Practice §
20 23.85[2][d]). Class Representative's opinion of the
21 settlement are especially important as "[t]he
22 representatives' views may be important in shaping the
23 agreement and will usually be presented at the fairness
24 hearing; they may be entitled to special weight because
25 the representatives may have a better understanding of
26 the case than most members of the class." Manual for
27
28

1 Complex Litigation, Third, § 30.44 (1995).

2 Here, the Class Representatives strongly support the
3 settlement. See Declaration of Lee Bond, Doc. 45, at ¶ 8-
4 9; Declaration of James Burkhart, Doc. 46, at ¶ 8-9. Each
5 of these Class Representatives and their attorneys have
6 extensive understanding of the merits of this settlement
7 having participated extensively in the strategy,
8 formulation, filing, litigation and negotiation process.
9 See Bond Decl. at ¶ 3-8; Burkhart Decl. at ¶ 3-8. There
10 have been no objections to the Settlement by Class
11 Members or any other members of the public.
12

13 The settlement is fair and reasonable.
14

15 D. Class Counsel's Requested Fees and Costs.

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

10 Here, where the Settlement requires lump sum
11 allocations to each Settlement Class and applies
12 distribution formulas pursuant to which each Class Member
13 who submits a valid claim will receive a mathematically
14 ascertainable payment, application of the percentage of
15 common fund doctrine is appropriate.

17 The typical range of acceptable attorneys' fees in
18 the Ninth Circuit is 20% to 33 1/3% of the total
19 settlement value, with 25% considered the benchmark.
20 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000);
21 *Hanlon*, 150 F.3d at 1029; *Staton*, 327 F.3d at 952.
22 However, the exact percentage varies depending on the
23 facts of the case, and in "most common fund cases, the
24 award exceeds that benchmark." *Knight v. Red Door Salons,*
25 *Inc.*, 2009 WL 248367 (N.D. Cal. 2009); see also *In re*
26 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D.
27
28

1 Cal. 1989) ("nearly all common fund awards range around
2 30%").

3 Class Counsel seeks an attorney's fee award of
4 \$675,000, or thirty percent (30%), of the Maximum
5 Settlement Value. When assessing whether the percentage
6 requested is reasonable, courts look to factors such as:
7 (a) the results achieved; (b) the risk of litigation; (c)
8 the skill required, (d) the quality of work; (e) the
9 contingent nature of the fee and the financial burden;
10 and (f) the awards made in similar cases. *Vizcaino v.*
11 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.2002); *Six*
12 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301
13 (9th Cir.1990).
14
15

16 1. The Results Achieved.

17 The individual claims in this case concerned
18 defendants' failure to pay class members for missed, on-
19 duty and untimely meal periods; unpaid wages on days when
20 no off-duty meal break was taken; failure to pay all
21 wages due upon termination or separation of employment;
22 and failure to provide proper rest and meal periods. Such
23 claims would not ordinarily produce large recoveries per
24 claimant. Here, the recovery of up to \$2,250,000 will
25 provide the 347 claimants with an average recover of
26 approximately \$2,776.34 per claimant. Ackermann Decl.,
27
28

1 Doc. 44 at ¶ 71.

2
3 2. The Risks Involved.

4 There was some risk in pursuing this case. One of the
5 primary issues involved in this case has to do with the
6 timely provision of rest and meal periods - an issue that
7 is currently before the California Supreme Court in the
8 *Brinker* and *Brinkley* cases. It is unknown what the
9 outcome of the Supreme Court's decision will be an
10 adverse decision that could be prejudicial to the
11 recovery in this case.
12

13 The Defendants also posed serious defenses to the
14 claims. And defense counsel demonstrated that they were
15 competent in defense of their client.

16 Plaintiffs' Counsel invested \$587,315, in lodestar
17 time and \$10,000 in costs in litigating this case with no
18 guarantee of recovery.
19

20 3. The Skill Required.

21 This is a garden-variety wage and hour class action,
22 focused primarily on meal breaks, which required more
23 accounting analysis than actual legal resources. The
24 case required locating and contacting over 500 members of
25 the class, communicating with over 250 class members to
26 ensure they received appropriate forms, obtaining new
27 contact information for some members of the class,
28

1 directing the work of the settlement administrator and
2 litigating cutting-edge legal theories surrounding rest
3 and meal periods. Harnett Decl., Doc. 43 at ¶ 87. This is
4 entirely administrative work that could be accomplished
5 by paralegals. Class Counsel has extensive experience in
6 class action wage and hour litigation of this nature. See
7 *id.* at ¶¶ 5-28; Ackermann Decl., Doc. 44 at ¶¶ 4-11.

9
10 4. The Contingent Nature of the Fee and the
Financial Burden.

11 This case was conducted on a contingent fee basis
12 against a well-represented Defendant. Counsel has
13 received no money from plaintiffs or any other source to
14 litigate this case. See Ackermann Decl. Doc., 43 at ¶¶
15 78-89. The plaintiffs are all low-wage workers who could
16 not meaningfully contribute to any such expenses.
17 Plaintiffs' counsel accepted this risk. Class Counsel was
18 effective in effectuating a \$2,250,000 settlement.

19
20 5. Awards in Similar Cases.

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

- 24
25 • 33.3% in *Vasquez v. Coast Valley Roofing*, 266 F.R.D.
26 482 (E.D. Cal. 2010), Case No. 1:07-cv-00227 OWW DLB;
27 • 30% in *Vasquez v. Aartman*, E.D. Cal. Case No. 1:02-
28

1 CV05624 AWI LJO;

2 • 31.25% in *Baganha v. California Milk Transport*, Case
3 No. 1:01-cv-05729 AWI LJO;

4 • 33.3% in *Randall Willis et al. v. Cal Western*
5 *Transport*, and *Earl Baron et al. v. Cal Western*
6 *Transport*, Coordinated Case No. 1:00-cv-05695 AWI
7 LJO;

8
9 • 33.3% in *Benitez, et al. v. Jeff Wilbur and Lisa*
10 *Wilbur*, Case No. 1:08-cv-01122 LJO GSA;

11 • 33.3% in *Chavez, at al. v. Petrissans*, Case No. 1:08-
12 cv-00122 LJO GSA.
13

14 Based on the overall success, skill employed, legal
15 risks associated with Plaintiffs' claims, the financial
16 risks borne by Plaintiffs' Counsel, and similar awards
17 made in similar cases, under a percentage-of-fund
18 approach the requested attorney's fee award of 30% of the
19 total recovery (or \$675,000) is reasonable under the
20 circumstances.
21

22 6. Lodestar Cross-Check.

23 Calculation of the lodestar amount may be used as a
24 cross-check to assess the reasonableness of the
25 percentage award. *Fernandez v. Victoria Secret Stores*,
26 2008 WL 8150856 (C.D. Cal 2008); *Vizacaino v. Microsoft*
27 *Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002). First, the
28

1 court must calculate the lodestar amount by multiplying
 2 the number of hours reasonably expended on the litigation
 3 by a reasonable hourly rate. *Cunningham v. County of Los*
 4 *Angeles*, 879 F.2d 481 (9th Cir. 1988). Next, the court
 5 may increase or reduce the presumptively reasonable
 6 lodestar fee. *Quesada v. Thomason*, 850 F.2d 537, 539 (9th
 7 Cir. 1988) (citing *City of Riverside v. Rivera*, 477 U.S.
 8 561 (1986)).

10 The billing records of Class Counsel Wasserman,
 11 Comden, Casselman & Esensten, L.L.P and Ackermann &
 12 Tilajef, P.C. reveal the following hours billed by
 13 thirteen lawyers and three paralegals:
 14

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

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

3 The number of hours billed in this case will not be
4 approved. Although considerable discovery took place and
5 preparation for mediation was required, similar cases
6 have reached settlement with fewer than 500 billed hours
7 of attorney time. See *Alvarado v. Nederend*, 1:08-cv-
8 01099 OWW DLB (wage and hour class action involving
9 unsettled issues related to meal and rest breaks with
10 approximately 150 class members reached settlement after
11 Class Counsel expended fewer than 350 hours). No two
12 cases have the exact same litigation requirements, but
13 nothing in the record justifies more than five times the
14 effort expended in *Alvarado*.
15
16

17 Likewise, the hourly rates presented by counsel are
18 higher than normally permitted under federal law.¹
19 Prevailing hourly rates in the Eastern District of
20 California are in the \$400/hour range. One more general
21 way to examine the reasonableness of hourly rates is to
22 compare them to the Laffey Matrix, a widely recognized
23 compilation of attorney and paralegal rate data used in
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., IASC Case No. BC
414808 (2011). These cases have no precedential value, especially
in a different District, where prevailing rates are lower.

1 the District of Columbia, frequently used in fee awards
2 cases. The Laffey Matrix reflects a paralegal rate of
3 \$161, a 1-3 year lawyer rate of \$294, a 4-7 year lawyer
4 rate of \$361, an 8-10 year lawyer rate of \$522, an 11-19
5 year lawyer rate of \$589, and a 20+ year lawyer rate of
6 \$709. The district court in *Fernandez v. Victoria Secret*
7 *Stores, LLC*, 2008 WL 8150856, *15, increased the Laffey
8 Matrix amounts by the difference between the cost of
9 living increase provided to Judicial branch employees in
10 the Washington D.C. area and that provided to employees
11 in the Los Angeles area. That difference is 2.94 percent
12 as of the 2011 pay tables. Taking the top bracket as an
13 example, the adjusted Laffey Rate for a 20+ year lawyer
14 is \$729 ($\$709 * 1.0294$). Mr. Wasserman's rate of \$750 is
15 slightly higher than the adjudged Laffey Matrix for an
16 attorney with 20+ years in practice. The \$670 billed by
17 Ms. Harnett is approximately 10 percent higher than the
18 11-19 year attorney rate of \$606. Severalpo other
19 employees of Wasserman, Comden, Casselman & Esensten,
20 L.L.P. appear to be billing at similarly inflated rates.
21 The hourly rates billed by Ackermann & Tilajef, P.C. seem
22 more reasonable, although the \$175/hour rate for a "legal
23 assistant" is unjustified.

24
25
26
27 Because the lodestar is being used here as a cross-

1 check, the court may use a "rough calculation of the
 2 lodestar," *Fernandez*, 2008 WL 8150856, it is appropriate
 3 to roughly haircut the lodestar. The hourly rates of the
 4 Wasserman, Comden, Casselman & Esensten, L.L.P. are least
 5 10% over the appropriate Laffey Matrix levels, and are
 6 reasonably subject to a 10% haircut on that basis.

7
 8 Ackermann & Tilajef, P.C.'s rate billed for their legal
 9 assistant will be lowered to \$100. This results in the
 10 following recalculation of the lodestar.

NAME	HOURS	RATE	ADJUSTED RATE	TOTAL
<u>Wasserman, Comden, Casselman & Esensten, L.L.P.</u>				
Steven Wasserman, partner	1.6	\$750	\$675	\$1,080
Melissa Harnett, partner	109.2	\$670	\$603	\$65,848
Cathy Garcia, partner	52.4	\$600	\$540	\$28,296
Jesse Levin, associate	229.2	\$290	\$261	\$59,821
Gregory Scarlett, senior associate	21.5	\$500	\$450	\$9,675
Jordan Esensten, associate	8	\$290	\$261	\$2,088
Alan Juvan, paralegal	181.4	\$180	\$162	\$29,387
Andreas Nielsen, paralegal	90.9	\$180	\$162	\$14,726
Dale Gordon, paralegal	78.6	\$180	\$162	\$12,733
Susan House, paralegal	9	\$180	\$162	\$1,458
<u>Ackermann & Tilajef, P.C.</u>				
Craig Ackermann, partner	123.5	\$550	\$550	\$67,925
Tatiana Hernandez, associate	355.12	\$325	\$325	\$115,414
Barry Goldstein, consultant	16.2	\$725	\$725	\$17,617.50
Rachelle Tsarovsky, associate	70.9	\$325	\$325	\$23,043.50
Charlie Stein, associate	49.49	\$225	\$225	\$11,135.25
Pablo Orozco, associate	236.33	\$225	\$225	\$53,174.25
Devin Coyle, associate	7.7	\$225	\$225	\$1,732.50
Akiva Feinstein, legal assistant	152.6	\$175	\$100	\$15,260.00
Rosie Salinas, paralegal	96.3	\$150	\$150	\$14,445.00
Jonathan Melmed	40	\$150	\$150	\$6,000.00
Total	1929.94			\$550,859.00

26 The lodestar with adjusted hourly rates is
 27 \$550,859.00. In addition, the hours billed are excessive
 28

1 and are reasonably subject to a 30% haircut, resulting in
2 a total lodestar of \$385,601.00

3 The amount requested by Class Counsel of \$675,000.00
4 is greater than its lodestar amount of \$385,601.00.
5 However, adjustments to increase or decrease the lodestar
6 amount are sometimes appropriate to justify use of a
7 "lodestar multiplier." *Clark v. City of Los Angeles*, 803
8 F.2d 987, 991 (9th Cir. 1986); see also *Fischel v.*
9 *Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1008
10 (9th Cir. 2002). "It is an established practice in the
11 private legal market to reward attorneys for taking the
12 risk of non-payment by paying them a premium over their
13 normal hourly rates for winning contingency cases."
14 *Fischel*, 307 F.3d at 1008 (citing *In re Washington Public*
15 *Power Supply System Securities Litig. v. Continental Ins.*
16 *Co.*, 19 F.3d 1291, 1299 (9th Cir. 2002)). Generally, a
17 district court has discretion to apply a multiplier to
18 the attorney's fees calculation to compensate for the
19 risk of nonpayment. *Fischel*, 307 F.3d at 1008; see also
20 *In re Coordinated Pretrial Proceedings in Petroleum*
21 *Products Antitrust Litig. v. Exxon Corp.*, 109 F.3d 602
22 (9th Cir. 1997).
23
24
25

26 The "lodestar multiplier" is calculated by dividing
27 the percentage fee award by the lodestar calculation.
28

1 Fischel, 307 F.3d at 1008. Here, the multiplier of 1.75
2 is calculated by dividing \$675,000.00 by \$385,601.00. To
3 determine whether the lodestar multiplier is reasonable
4 the following factors may be considered: (1) the amount
5 involved and the results obtained, (2) the novelty and
6 difficulty of the questions involved, (3) the skill
7 requisite to perform the legal service properly, (4) the
8 preclusion of other employment by the attorney due to
9 acceptance of the case, (5) the customary fee, (6)
10 whether the fee is fixed or contingent, (7) time
11 limitations imposed by the client or the circumstances,
12 (8) the amount involved and the results obtained (9) the
13 experience, reputation, and ability of the attorneys,
14 (10) the 'undesirability' of the case, (11) the nature
15 and length of the professional relationship with the
16 client, and (12) awards in similar cases. *Id.* (citing
17 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 6 (9th Cir.
18 1975)).

21 First, Class Counsel achieved a good result and
22 generated a significant benefit for the class amounting
23 to the Maximum Settlement Amount of \$2,250,000 for the
24 benefit of a class of approximately 553 members. Based on
25 the claims rate, the 342 Class Members who submitted
26 claims will receive \$963,391.58 in the aggregate, an
27
28

1 average of \$2,776.34. See Bui Decl., Doc. 40.

2 Second, Plaintiff's meal break claims presented
3 arguable questions for Class Counsel because California's
4 meal break law is currently in flux with *Brinker*
5 currently pending before the California Supreme Court.
6

7 Third, Class Counsel competently performed. Class
8 Counsel avoided protracted litigation by conducting
9 significant investigation of the class claims, and
10 efficiently communicating and exchanging information with
11 Defense counsel so that the parties could successfully
12 mediate the case. In preparation for this case, Class
13 Counsel investigated the potential claims and class
14 members; comprehensively reviewed thousands of pages of
15 documents; interviewed a number of current and former
16 drivers of the Defendant; and deposed Defendant's
17 corporate representative about a number of important
18 topics. See Ackermann Decl., Doc. 44 at ¶ 36; Harnett
19 Decl., Doc. 43 at ¶ 55.
20

21 Lastly, Class Counsel undertook considerable
22 financial risks in this litigation by accepting this case
23 on a contingency basis. Harnett Decl., Doc. 43 at ¶ 92.
24 There was no guarantee they would recoup their fees or
25 costs. *Id.* Class Counsel has not received any payment for
26 their time or their expenses, which they began incurring
27
28

1 over two years ago. *Id.* Additionally, Class Counsel had
2 to forego other work in order to maintain this case. *Id.*

3 Based on the overall success, the skill with which
4 the case was prosecuted, the substantial legal risks
5 associated with Plaintiffs' claims, and the financial
6 risks borne by Plaintiffs' Counsel, Plaintiff's request
7 for a multiplier of 1.75 of its lodestar is reasonable.
8 See, e.g. *Steiner v. Am. Broadcasting Co., Inc.*, 248 Fed.
9 Appx. 780, 783 (9th Cir. 2007) (approving multiplier of
10 6.85 and citing cases with comparable or higher
11 multipliers); *Vizcaino*, 290 F.3d at 1051 (finding no
12 abuse of discretion in awarding a multiplier of 3.65).
13
14

15 E. Class Counsel's Request for Costs.

16 Class Counsel incurred out-of-pocket costs totaling
17 approximately \$11,364.46. The bulk of the incurred costs
18 included payment to court reporters for depositions,
19 mediation costs, legal research, and in-house copies of
20 documents. See *Acerkmen Decl.*, Doc. 44 at Exhibit 13.
21 Such costs are routinely reimbursed in these types of
22 cases. See, *In re United Energy Corp. Sec. Litig.*, 1989
23 WL 73211, at *6 (C.D. Cal. 1989) (quoting Newberg,
24 *Attorney Fee Awards*, § 2.19 (1987)); see e.g. *Vasquez*,
25 266 F.R.D. at 493 (Class Counsel litigation expenses
26 payment of approximately \$9,000 was fair and reasonable
27
28

1 in similar case).

2 Here, the actual costs incurred are greater than the
3 estimated \$10,000, which was included in the Class Notice
4 and to which no Class Member objected. Plaintiff's
5 request, which is capped at \$10,000 is reasonable.
6

7 F. Class Representative Enhancement.

8 Pursuant to the Settlement, Plaintiff seeks an
9 enhancement in the amount of \$11,250 to the named
10 Plaintiffs Lee Bond and Richard James Burkhart. Ackermann
11 Decl., Doc. 44 at ¶ 47. This payment is intended to
12 recognize the time and efforts that the named Plaintiffs
13 spent on behalf of the Class Members. *Id.*; see also
14 Declarations of Lee Bond and Richard James Burkhart,
15 Docs. 45-46.
16

17 "Courts routinely approve incentive awards to
18 compensate named plaintiffs for the services they provide
19 and the risks they incurred during the course of the
20 class action litigation." *Ingram v. The Coca-Cola*
21 *Company*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (internal
22 quotations and citations omitted). In *Coca-Cola*, the
23 Court approved service awards of \$300,000 to each named
24 plaintiff in recognition of the services they provided to
25 the class by responding to discovery, participating in
26 the mediation process, and taking the risk of stepping
27
28

1 forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at
2 694; see, e.g., *Van Vranken v. Atl. Richfield Co.*, 901 F.
3 Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000
4 participation award to plaintiffs); *Glass v. UBS*
5 *Financial Services, Inc.*, 2007 WL 221862, at *17 (N.D.
6 Cal. Jan. 26, 2007) (approving \$25,000 enhancement to
7 each named plaintiff).
8

9 In this case, among other things, the named
10 Plaintiffs: (1) provided significant assistance to Class
11 Counsel; (2) endured lengthy interviews; (3) provided
12 written declarations; (4) searched for and produced
13 relevant documents; (5) and prepared and evaluated the
14 case for mediation, which was a full day session
15 requiring very careful consideration, evaluation and
16 approval of the terms of the Settlement Agreement on
17 behalf of the Class. See Declarations of Lee Bond and
18 Richard James Burkhart, Docs. 45-46. Moreover, as with
19 any plaintiff who files a civil action, Plaintiffs
20 undertook the financial risk that, in the event of a
21 judgment in favor of Defendant in this action, they could
22 have been personally responsible for the costs awarded in
23 favor of the Defendant. See, e.g., *Whiteway v. Fed Ex*
24 *Kinkos Office & Print Services, Inc.*, No. C 08-2320 SBA,
25 2007 WL 4531783, at **2-4 (N.D. Cal. Dec. 17, 2007).
26
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1
2
3 **G. Claims Administrator Fee.**

4 **The Class Notice provided that the Claims**
5 **Administrator would receive a fee of up to \$18,000**
6 **Plaintiffs request that the full amount of \$18,000 be**
7 **approved as Simpluris' fee. Doc. 41. The Declaration of**
8 **Michael Bui, a Case Manager at Simpluris, explains the**
9 **tasks undertaken by Simpluris to accomplish notify the**
10 **Class of the settlement and administer its terms. Mr. Bui**
11 **estimates administration costs of \$18,000, taking into**
12 **consideration both costs incurred to date and those**
13 **anticipated to be incurred in the future. This request is**
14 **substantially lower than previous administrator fees**
15 **awarded in this District. See Vasquez, 266 F.R.D.at 483-**
16 **84 (\$25,000 administrator fee awarded in wage and hour**
17 **case involving 177 potential class members).**

18
19
20 **IV. CONCLUSION**

21 **For all the reasons set forth above:**

22 **(1) The Settlement Class is CERTIFIED;**

23 **(2) The Class Settlement is APPROVED;**

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

27
28 **(4) The enhancement payment of \$11,250 to each of the**

1 named Plaintiffs, Lee Bond and Richard James Burkhart, is
2 APPROVED;

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

5 Plaintiffs shall submit a form of order consistent
6 with this decision within five (5) days following
7 electronic service.
8

9 SO ORDERED
10 Dated: June 29, 2011

11 /s/ Oliver W. Wanger
12 United States District Judge
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