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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 ARABELLA LEMUS, individually and on  
9 behalf of all others similarly situated,

No. C 09-3179 SI

10 Plaintiff,

**ORDER GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND  
AWARDING ATTORNEYS' FEES,  
EXPENSES AND INCENTIVE AWARD**

11 v.

12 H&R BLOCK ENTERPRISES LLC.,

13 Defendant.  
\_\_\_\_\_/

14 Now before the Court are plaintiffs' motion for final approval of the class action settlement,  
15 plaintiffs' motion for award of attorneys' fees and expenses, and plaintiffs' motion for enhancement  
16 awards to the named plaintiffs. The Court has reviewed all of the papers, as well as the objections and  
17 the parties' responses thereto. For the following reasons, the Court GRANTS final approval to the  
18 settlement and GRANTS IN PART the motions for attorneys' fees and expenses and enhancement  
19 awards. Docket Nos. 121, 122 & 143.  
20

21 **BACKGROUND**

22 **I. Procedural background**

23 On June 9, 2009, plaintiff Arabella Lemus filed this putative class action against H&R Block  
24 Enterprises, LLC in San Francisco County Superior Court on behalf of a class of current and former  
25 California employees in the positions of Tax Advisor, Tax Professional, and Tax Preparer Assistant.  
26 The original complaint alleged claims for (1) violations of Cal. Labor Code § 2802; (2) failure to  
27 provide meal periods in violation of Cal. Labor Code § 226.7; (3) failure to pay overtime wages; (4)  
28

1 violation of Cal. Labor Code § 226; (5) violation of Cal. Labor Code § 203; and (6) unfair business  
2 practices, in violation of Cal. Bus. & Prof. Code § 17200 *et seq.* The overtime claim alleged in the  
3 original complaint, and all subsequent complaints, alleged that defendant failed to properly calculate  
4 the regular rate of pay for purposes of calculating the amount of overtime paid because defendant did  
5 not include non-discretionary incentive pay when calculating the regular rate of pay. *See* Compl. ¶¶ 46-  
6 52 (Docket No. 2, Ex. A); FAC ¶¶ 47-53 (Docket No. 2, Ex. C); SAC ¶¶ 47-53 (Docket No. 18); TAC  
7 ¶¶ 50-56 (Docket No. 41, Ex. A).<sup>1</sup>

8 On July 8, 2009, plaintiff Lemus filed a first amended complaint, adding claims for the alleged  
9 failure to pay commission wages, violation of Cal. Bus. & Prof. Code § 16600, and wrongful  
10 termination in violation of public policy. The claims under Cal. Bus. & Prof. Code § 16600 and for  
11 wrongful termination were brought by Lemus on an individual basis. On July 13, 2009, defendants  
12 removed this case to federal court, and the case was ultimately assigned to this Court. Shortly after  
13 removal, the parties stipulated to the filing of a second amended complaint.

14 In 2009, another action was filed in the Central District of California alleging the same or similar  
15 claims against defendant, *Delana L. Ugas v. H&R Block Enterprises, LLC*, Case No. CV09-6510 CAS.  
16 The parties involved in both cases met and conferred and agreed that certain claims, including the meal  
17 period (Cal. Labor Code § 226.7) claim, would be litigated in *Ugas*, with the other claims remaining in  
18 this action. As a result of that agreement, the parties stipulated to plaintiffs filing a third amended  
19 complaint. The third amended complaint alleged five causes of action: (1) failure to pay all wages due

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21 <sup>1</sup> The overtime claim was alleged in the original complaint and the first through third amended  
22 complaints. Each of those complaints alleged that class members worked overtime and that “[d]uring  
23 their employment with defendants, including during pay periods wherein Plaintiff Lemus and the class  
24 worked overtime, Plaintiff Lemus and the class also earned non-discretionary incentive pay (including  
25 but not limited to commissions/bonuses). Defendants, as a corporate-wide practice and policy, did not  
26 calculate and/or factor such non-discretionary pay into Plaintiff’s and class members’ regular rate of pay  
27 for purposes of calculating revised and increased overtime pay, and as such, owes Plaintiff Lemus and  
28 the class additional overtime pay.” *See, e.g.*, FAC ¶ 48. None of the complaints alleged that class  
members worked “off the clock.”

Plaintiffs’ counsel state that during the course of this litigation, discovery showed that “overtime  
compensation was correctly calculated by Defendant during our class period. Specifically, once ‘end  
of season’ compensation was determined for class members, Defendant adjusted previously paid  
overtime compensation by including the end of season pay in the calculation, thus raising the overtime  
paid to class members. The increased amount of overtime pay was paid at the same time the end of  
season compensation was paid.” Lemus Decl. in Response to Merlan Decl. ¶ 3. Accordingly, plaintiffs  
dropped the overtime claim and did not include that claim in the fourth amended complaint.

1 in violation of Cal. Labor Code § 204; (2) failure to provide accurate wage statements in violation of  
2 Cal. Labor Code § 226; (3) failure to reimburse employees for necessary business expenses in violation  
3 of Cal. Labor Code § 2802; (4) failure to pay overtime wages in violation of Cal. Labor Code § 510; and  
4 (5) late payment of final wages in violation of Cal. Labor Code §§ 201-202, and resulting penalties  
5 pursuant to Cal. Labor Code § 203.

6 The parties conducted discovery, including plaintiffs' counsel taking approximately 18  
7 depositions of 16 H&R Block employees. On September 24, 2010, plaintiffs filed a motion for class  
8 certification. Docket No. 47. After the motion was filed, the parties reached a stipulation whereby (1)  
9 plaintiffs filed a fourth amended complaint, which added a second named plaintiff, Malvin Ayala, and  
10 alleged only the causes of action which discovery had confirmed to plaintiffs' counsels' satisfaction  
11 were factually and legally supported, and (2) defendants agreed to certification of the causes of action  
12 alleged in the fourth amended complaint. On November 30, 2010, the Court approved the parties'  
13 stipulation and certified a class of "all seasonal, non-exempt Tax Professional employees who were or  
14 are employed by defendants during the Class Period in California as tax preparers." The class period  
15 was defined as the period from June 9, 2006 through December 31, 2010.<sup>2</sup> The fourth amended  
16 complaint alleged claims for (1) failure to pay accurate wage statements in violation of Cal. Labor Code  
17 § 226; (2) failure to pay all wages due at time of termination of employment in violation of Cal. Labor  
18 Code § 203; and (3) civil penalties under the Private Attorney General Act, Cal. Labor Code § 2698.

19 On May 18, 2011, the parties filed cross-motions for summary judgment. Docket Nos. 68-77.  
20 On May 23, 2011, while the motions were being briefed, the parties attended a one day mediation  
21 conducted by Mr. Hunter Hughes. Sett. Agt. § 3.4. That mediation proved unsuccessful. The parties  
22 continued to engage in settlement negotiations, and continued the hearing date on the summary  
23 judgment several times. *Id.* § 3.5. On July 20, 2011, the parties attended a second full day mediation  
24 session with Mr. Anthony Piazza. *Id.* § 3.4. That session was also unsuccessful. After that session, the  
25 parties continued settlement negotiations, and on October 7, 2011, the morning of the hearing on the  
26 summary judgment motions, the parties informed the Court that they had reached a tentative resolution.

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<sup>2</sup> The class period was extended to May 15, 2011. Docket No. 120.

1 *Id.* § 3.5. The Court continued the hearing on the summary judgment motions, and on January 6, 2012,  
2 the parties signed the settlement agreement.

3  
4 **II. Principal settlement terms**

5 The principal terms of the settlement are as follows:

- 6 • Defendant agrees to pay up to a Maximum Settlement Amount of \$35 million. This sum  
7 includes payments made to claimants, a \$75,000 payment to the California Labor and  
8 Workforce Development Agency, settlement administration costs, a \$50,000 late claim  
9 fund, an award of attorneys’ fees and costs, and incentive awards to the named plaintiffs;
- 10 • The sum available for use for payments to claimants after the LWDA payment,  
11 settlement administration costs, late claimant fund, awards of attorneys’ fees and costs,  
12 and incentive awards to the named plaintiffs is designated as the Net Settlement Amount;
- 13 • Defendant agrees that it shall pay a Minimum Settlement Amount regardless of the  
14 claims rate, equal to the amount of attorneys’ fees and costs awarded plus 50% of the  
15 sum remaining from the Maximum Settlement Amount after deduction of the attorneys’  
16 fee and cost award<sup>3</sup>;
- 17 • Each class member who returns a valid and timely Claim Form will be entitled to receive  
18 a portion of the amount of the Net Settlement Amount, allocated based upon a formula  
19 set forth in the Settlement Agreement. Under the formula, class members are awarded  
20 “tax season points” for each tax season worked. Plaintiffs estimate that the average net  
21 claim is approximately \$1,200 per class member, but that class members’ recoveries will  
22 vary based upon the number of tax seasons worked during the class period and whether  
23 or not the class members earned “additional compensation” in any given season.  
24 Plaintiffs state the alleged failure to make timely payment of “additional compensation”  
25 represents the largest claim litigated in this case, as it involved a substantially longer  
26 delay in payment than the alleged delay attributable to the payment of the final hourly

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28 <sup>3</sup> Based upon the claims rate of 50.42%, defendant’s payments under the settlement will exceed  
the Minimum Settlement Amount. *See generally* Docket No. 161.

1 wages; and the settlement agreement takes this into account and awards class members  
2 who earned additional compensation in any tax season four times the recovery for that  
3 season compared to people who only earned hourly wages; and

- 4 • Class members release “any and all claims . . . arising out of the facts alleged in the  
5 Litigation, and that were asserted in the Litigation (including claims that were certified  
6 and claims that were not certified in the Litigation), with the exception of claims asserted  
7 against H&R Block in *Ugas v. H&R Block Enterprises, LLC*, for premium payments  
8 under California Labor Code section 226.7 for meal periods that were allegedly not  
9 provided and claims under California Business & Professions Code section 17200 et seq.  
10 based on the claims for premium payments for meal periods that were allegedly not  
11 provided . . . .” Sett. Agt. § 8.1.

12 According to plaintiffs’ papers, there are approximately 18,705 class members. Bui Decl. ¶ 6.  
13 As of May 7, 2012, the claims administrator had received 46 requests for exclusion; one of those  
14 requests was late, and nine were deficient. *Id.* ¶ 12. The valid and timely requests for exclusion  
15 represent 0.17% of the class. *Id.* As of August 14, 2012, 50.42% of the “points” available have been  
16 claimed by class members. Supp. Bui Decl. ¶ 7.<sup>4</sup> The claims rate of 50.42% results in the Minimum  
17 Settlement Amount being exceeded and thus eliminates the possibility of *cy pres* payments under the  
18 settlement.<sup>5</sup> Third Supp. Marlin Decl. ¶ 5.

## 20 DISCUSSION

21 Now before the Court is plaintiffs’ motion for final approval of the class settlement and  
22 objections thereto, plaintiffs’ motion for attorneys’ fees and expenses, and plaintiffs’ motion for an  
23 enhancement award for the named plaintiffs. Four objections to the proposed settlement were filed, and

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25 <sup>4</sup> The case manager for the settlement states that “[t]he total class represents 951,300 potential  
26 points. The valid Claim Forms (including the late claims filed before the late claim cut-off) represents  
27 479,660 points or 50.42% of the total points.” Supp. Bui Decl. ¶ 7. Mr. Bui also states that as of August  
28 14, 2012, there are 14 deficient claims pending which represent 440 points, and if those deficiencies are  
resolved in favor of the claimants, the overall percentage of claimed available points will increase. *Id.*  
¶ 8.

<sup>5</sup> Accordingly, the objections to the *cy pres* provision in the settlement agreement are moot.

1 one of those objections (filed by Jay W. Brandenburg), was later withdrawn.<sup>6</sup>

2  
3 **I. Objections to proposed settlement**

4 **A. Notice**

5 Mr. Brandenburg filed an objection which, *inter alia*, raised issues with the class notice. Mr.  
6 Brandenburg subsequently withdrew his objection. However, because objector Delana Ugas joined in  
7 Mr. Brandenburg’s objection, the Court addresses the objection regarding notice.<sup>7</sup>

8 Mr. Brandenburg objected that the notice was misleading because it suggested that the settlement  
9 is over and “gives a lay class member little indication that there is anything left to do except make a  
10 claim.” Brandenburg Objection at 5:1-2. Mr. Brandenburg also objected that the notice is not designed  
11 to encourage participation because the notice describes class member benefits in terms of “tax season  
12 points” and directs class members to the settlement agreement for an explanation of how benefits will  
13 be distributed.

14 The Court finds that notice was provided in compliance with the settlement agreement, and that  
15 notice satisfied due process and Federal Rule of Civil Procedure 23(e). The notice (1) accurately  
16 informed class members about the lawsuit and settlement, (2) provided sufficient information so that  
17 class members were able to accept the benefits offered, opt out and pursue their own remedies, or object  
18 to the proposed settlement, (3) provided procedures for class members to file written objections to the  
19 proposed settlement, to appear at the hearing, and to state objections to the proposed settlement, and (4)  
20 provided the time, date and place of the final fairness hearing. The notice does not suggest that the  
21 settlement is finished, and to the contrary informs class members how to participate, to request  
22 exclusion, or to object. There is nothing improper about the notice summarizing class member benefits

23 \_\_\_\_\_  
24 <sup>6</sup> One of the objectors is Maria Merlan. Ms. Merlan filed an objection and a “reply” to her  
25 objection. On August 17, 2012, plaintiffs’ counsel filed a response to “‘Notice of New Authority’ Filed  
26 by Objector Merlan.” Docket Nos. 160 & 161. Plaintiffs’ response states that plaintiffs’ counsel  
received in the mail a “Notice of New Authority” that was filed by Merlan but did not yet appear on the  
court docket. The Notice of New Authority still does not appear on the docket.

27 <sup>7</sup> Mr. Brandenburg also objected to the requested attorneys’ fees and the *cy pres* provision.  
28 Other objectors also objected to the attorneys’ fees request, and the Court addresses that issue *infra*.  
The objections to *cy pres* distribution have been mooted based upon the participation rate of class  
members.

1 and directing class members to review the settlement agreement for a fuller description of the settlement  
2 terms. The Court notes that plaintiffs’ counsel negotiated and obtained an agreement that a “no postage  
3 necessary” envelope was provided with the notice and claim form, and that approximately mid-point  
4 in the claim process, a reminder postcard was sent to class members who had not yet filed a claim.

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6 **B. Scope of release**

7 Two objectors, Maria Merlan and Delana Ugas, assert that the release in the proposed settlement  
8 is too broad. They assert that class members will be forced to release “any and all claims possible, both  
9 certified and non-certified, including without limitation claims for failure to provide meal and rest  
10 breaks (§ 226.7) and failure to pay overtime (§§ 1194 & 1198).” Merlan Objection at 2:14-17.  
11 Relatedly, Merlan and Ugas assert that the settlement is inadequate because it does not compensate class  
12 members for the overtime and meal and rest break claims.

13 The Court finds these objections unfounded. The release is limited to claims based on facts and  
14 claims alleged in this case, and thus it is not as broad as the objectors contend. The overtime claim  
15 released in this action is predicated upon the allegation that defendant incorrectly calculated the class  
16 members’ regular rate of pay, not that defendant failed to pay overtime. Thus, the release does not  
17 release claims that class members worked overtime for which they were not paid, as is alleged in *Ugas*  
18 *v. H&R Block Enterprises* pending in the Central District. In addition, the release explicitly carves out  
19 the meal break claim that was originally alleged in this case and that is currently being litigated in *Ugas*  
20 *v. H&R Block Enterprises* pending in the Central District. Finally, no rest break claim has ever been  
21 alleged in this case.

22 Ms. Ugas also objects that the settlement violates the Fair Labor Standards Act because “class  
23 members who do not file valid and timely claims will release their FLSA claims against Defendant, in  
24 violation of federal law.” Ugas’ Objection at 18:28-19:2. The Court finds that this objection lacks  
25 merit, as the settlement provides that the released claims are only those that were alleged in this  
26 litigation. Plaintiffs have never alleged an FLSA claim in this case.

1           **C.       Treatment of settlement monies as 1099 payments**

2           One objector, Andrea Connell, objects to the portion of the proposed settlement providing that  
3 monies received will be characterized as 1099 payments. Ms. Connell states that the monies to be paid  
4 are for “wage based claims,” such as failure to pay overtime wages and failure to make final wage  
5 payments upon termination. However, as plaintiffs explain in their response to the objection, the fourth  
6 amended complaint makes clear that the gravamen of this case is plaintiffs’ claim that defendant violated  
7 Labor Code Sections 201 and 202 by failing to pay final wages immediately upon an employee’s  
8 termination. A violation of these sections results in a penalty, *see* Cal. Labor Code § 203, and penalties  
9 are not wages and are not subject to employer or employee withholding. Similarly, plaintiffs sought  
10 penalties under Labor Code Section 226 based on their claim that end of season compensation should  
11 have been disclosed throughout each tax season on bi-weekly paychecks.

12  
13           **D.       Settlement formula and structure**

14           Ms. Ugas and Ms. Merlan object that the settlement is a claims-made settlement, with unclaimed  
15 funds reverting to defendant. They contend that there is no need for class members to file claims  
16 because the parties can identify the class members, determine when they worked, the average hours they  
17 worked, and the last day that they received their final paychecks. They assert that there is no need for  
18 a “claims-made process consisting of complicated formulas and confusing mathematical calculations.”  
19 Ugas Objection at 17:10-11.

20           Assessing a settlement proposal requires the district court to balance a number of factors:  
21 the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of  
22 further litigation; the risk of maintaining class action status throughout the trial; the  
23 amount offered in settlement; the extent of discovery completed and the stage of the  
proceedings; the experience and views of counsel; the presence of a governmental  
participant; and the reaction of the class members to the proposed settlement.

24           *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). The Court has examined these factors  
25 and concludes that the settlement is fair, adequate and reasonable. The settlement was reached after  
26 considerable discovery and after thorough and voluminous briefing on the cross-motions for summary  
27 judgment. *See* Docket Nos. 68-87, 89-92 (summary judgment briefing). As a result of those motions,  
28 the parties and the Court were acutely aware of the weaknesses in the claims and defenses, and the



1 settlement represents a fair compromise. The settlement formula, which is based upon “tax season  
2 points,” accounts for differences among class members in connection with rates of pay and  
3 compensation levels, as well as whether or not a class member received only hourly wages at the end  
4 of a tax season, or both hourly wages and “end of season” compensation. While, in general, claims-made  
5 settlements with reversions to the defendants are disfavored, here a significant portion of the class  
6 participated in the settlement, and the average class member recovery is at least \$1,200.<sup>8</sup> The positive  
7 reaction of class members to the proposed settlement also supports final approval.

8 Pursuant to *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011), the  
9 Court has also examined the settlement for collusion and finds that the settlement appears to be the  
10 product of serious, informed, non-collusive negotiations. Contrary to the assertions of the Ugas and  
11 Merlan objectors, the settlement was reached well after class certification, not in conjunction with  
12 certification.<sup>9</sup> The objectors also assert that the parties colluded because they reached a full settlement  
13 the morning of the summary judgment hearing. However, the record in this case shows that the parties  
14 reached a tentative settlement on that morning only after extensive settlement negotiations (including  
15 two mediations), and that the parties then required several additional months to finalize the settlement  
16 details. Accordingly, the Court finds the settlement appropriate for final approval under Federal Rule  
17 of Civil Procedure 23(e).

18  
19 **II. Incentive payments**

20 Plaintiffs’ counsel also seeks incentive payments of \$25,000 each for the two named plaintiffs.  
21 The Ugas and Merlan objectors contend that this payment is too high when compared to the average  
22 recovery received by each class member. The Ninth Circuit has cautioned that where there is a “very  
23 large differential in the amount of damage awards between the named and unnamed class members,”  
24 that differential must be justified by the record. *Staton*, 327 F.3d at 978. Named plaintiffs are eligible

25 \_\_\_\_\_  
26 <sup>8</sup> Plaintiffs’ counsel estimated an average class member recovery of \$1,200 based upon, *inter*  
27 *alia*, a fee award of \$11,666,000 and named plaintiff enhancement awards of \$50,000 total. The average  
28 class member recovery will be higher than \$1,200 because the Court is awarding plaintiffs’ counsel  
\$3,983,134, and the Court has awarded the two named plaintiffs \$15,000 each as incentive awards.

<sup>9</sup> The class period was extended as part of the settlement.

1 for reasonable incentive payments, and “[t]he district court must evaluate their awards individually,  
2 using ‘relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class,  
3 the degree to which the class has benefitted from those actions, . . . the amount of time and effort the  
4 plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s] of workplace retaliation.’” *Id.*  
5 at 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998)); *see generally Staton*, 327 F.3d  
6 at 977 (discussing cases).

7 Here, the two named plaintiffs have submitted declarations describing their involvement in this  
8 litigation. Plaintiff Lemus, who filed this case in 2009, states in her declaration that she estimates that  
9 she has spent more than 75 hours on this case assisting plaintiffs’ counsel, preparing for and having her  
10 deposition taken, reviewing and responding to discovery requests, and speaking to class members.  
11 Lemus Decl. ¶¶ 4-11. Plaintiff Ayala, who joined this case after it was filed, submitted a similar  
12 declaration. Mr. Ayala estimates he has spent more than 60 hours on the same tasks. Ayala Decl. ¶¶ 4-  
13 10. Both named plaintiffs are releasing their individual claims, and are waiving meal and rest period  
14 claims that are not released by the class. The Court finds that a \$15,000 incentive award for each named  
15 plaintiff is consistent with the case law, and is fair and reasonable in light of the time and effort spent  
16 by the named plaintiffs in litigating this action and in exchange for releasing and waiving certain non-  
17 class claims.

18  
19 **III. Attorneys’ fees and costs**

20 Plaintiffs’ counsel seek \$11,666,000 in fees and \$152,063.50 in costs. Plaintiffs’ counsel arrive  
21 at the \$11,666,000 figure based upon their assertion that the settlement creates a \$35 million “common  
22 fund,” and that counsel is entitled to receive one-third of that common fund in fees. However, it is  
23 incorrect to view the Maximum Settlement Amount of \$35 million as creating a \$35 million common  
24 fund because the monies unclaimed by class members revert to defendant, and thus the total amount of  
25 the fund is less than \$35 million. Indeed, based upon a claims rate of 50.42%, calculations performed  
26 by plaintiffs’ counsel show that if the Court awarded the total amount of fees sought (and \$50,000 in  
27 enhancement awards), defendant’s total payout would be \$23,650.177, and the requested \$11,666,000  
28 fee award would constitute 49.33% of the total “fund.” *See* Docket No. 161-2.

1 Plaintiffs' counsel have submitted declarations describing the time spent by each firm on this  
2 litigation. Counsel have also filed a "Time & Task Chart" showing how their time was spent in this  
3 case. The combined lodestar of plaintiffs' counsel is \$3,983,134. "Under Ninth Circuit law, the district  
4 court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar  
5 method." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub.*  
6 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994)). The Court finds it appropriate  
7 to award counsel their lodestar rather than the \$11,666,000 sought. Awarding counsel the requested fees  
8 would result in counsel receiving slightly more than the funds that would be distributed to the class, a  
9 result that the Court finds inequitable.<sup>10</sup> In contrast, awarding plaintiffs' counsel their lodestar fully  
10 compensates counsel for their time spent litigating this case and results in a fee award that is  
11 approximately 20% of the total settlement fund.<sup>11</sup> A 20% recovery is within the "usual range" in  
12 common fund cases in the Ninth Circuit. *See Vizcaino*, 290 F.3d at 1047. The Court also awards  
13 plaintiffs' counsel their costs in the amount of \$152,063.50.

## 14 15 CONCLUSION

16 1. Based on the foregoing, the Court GRANTS plaintiffs' motion for final approval of the  
17 settlement. The parties are directed to consummate the Settlement Agreement in accordance with its  
18 terms.

19 2. The Court GRANTS IN PART plaintiffs' motion for enhancement awards to the  
20 representative plaintiffs, and holds that each named plaintiff shall receive \$15,000 as an incentive award.

21 3. The Court GRANTS IN PART plaintiffs' motion for attorneys' fees and costs. Plaintiffs'  
22

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23 <sup>10</sup> As provided in the settlement agreement, the Net Settlement Amount is arrived at by  
24 deducting the following from \$35 million: (1) \$75,000 LWDA payment, (2) \$30,000 in incentive  
25 payments, (3) approximately \$115,000 in notice and administration costs, (4) \$50,000 late claim fund,  
26 (5) \$152,063.50 in costs, and (6) attorneys' fees. If the fees are \$11,666,000, the Net Settlement  
Amount is approximately \$22,911,936.50, of which 50.42%, or approximately \$11,552,198.38, would  
be distributed to the class.

27 <sup>11</sup> By awarding the lodestar figure of \$3,983.13, the Net Settlement Amount is \$30,594,802.50,  
28 with 50.42%, or approximately \$15,445,899.42, distributed to the class. Based upon these figures,  
defendant pays a total of approximately \$19,831,096.92, and the fee award of \$3,983,134.13 is  
approximately 20% of the total amount paid by defendant to fund the settlement.

1 counsel shall be paid \$3,983,134 in fees and \$152,063.50 for costs.

2 4. The allocation plan is hereby APPROVED as fair, adequate, and reasonable. The class  
3 settlement amount, class representative incentive awards, and attorneys' fees and costs shall be  
4 distributed in accordance with the terms of the Settlement Agreement, this Order, and any further orders  
5 of this Court.

6 5. This litigation is DISMISSED WITH PREJUDICE and without costs to any party, other  
7 than as specified in the Settlement Agreement and this order.

8 6. In consideration of the Class Settlement Amount, and for other good and valuable  
9 consideration, all settlement class members who did not properly request exclusion are deemed to have  
10 released and discharged the Releasees (as that term is defined in the Agreement) from all Released  
11 Claims as set forth in Section 8 of the Settlement Agreement, and are barred and permanently enjoined  
12 from asserting, instituting, or prosecuting, either directly or indirectly, the Released Claims. As  
13 documented by the record in this case, the Released Claims do not include (1) claims that class  
14 members worked overtime for which they were not paid, (2) the meal break claim that was originally  
15 alleged in this case and that is currently being litigated in *Ugas v. H&R Block Enterprises* pending in  
16 the Central District, and (3) claims for denials of rest breaks.

17 7. Without affecting the finality of the Judgment in this case, this Court retains jurisdiction  
18 over (a) implementation of the Settlement and the terms of the Settlement Agreement; (b) distribution  
19 of the Class Settlement Amount, the Class Representative Incentive Awards, and the Attorneys' Fees  
20 and Costs Amount; and (c) all other proceedings related to the implementation, interpretation,  
21 administration, consummation, and enforcement of the terms of the Settlement Agreement and/or the  
22 Settlement, and the administration of Claims by Settlement Class Members.

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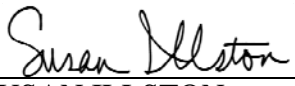
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8. In the event that the Settlement Effective Date does not occur, the Judgment shall be rendered null and void and shall be vacated, *nunc pro tunc*, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of plaintiffs, class members, and defendant.

**IT IS SO ORDERED.**

Dated: August 22, 2012

  
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SUSAN ILLSTON  
United States District Judge