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THE HONORABLE ANGELA KAAKE  
HEARING DATE: October 18, 2024 at 9:00 a.m.  
Moving Party

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING AT SEATTLE**

**SCOTT HINES**, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

**NORTHWEST RESTAURANTS, INC.**, a  
Washington Corporation, and **DOES 1-10**,  
inclusive,

Defendant.

Case No. 23-2-04367-7 SEA

**PLAINTIFF’S UNOPPOSED  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT  
AND ATTORNEYS’ FEES AND  
COSTS**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & RELIEF REQUESTED**

3 This motion seeks final approval of a wage-and-hour class action settlement (the  
4 “Settlement”) for the escalated Gross Settlement Amount (“GSA”) of \$2,149,280.00<sup>1</sup> between  
5 Plaintiff Scott Hines (“Plaintiff”) and Defendant Northwest Restaurants, Inc. (“Defendant”) for a  
6 Settlement Class of 14,806 hourly-paid, non-exempt individuals who worked as a non-  
7 management restaurant employee for Defendant in Washington State at any time from March 10,  
8 2020 to December 31, 2023 (the “Settlement Class Period”), exclusive of any individuals who  
9 signed an arbitration agreement with a class action waiver as a condition of initial employment.  
10 Plaintiff in this case asserted class claims for failure to compensation for missed meal and rest  
11 periods, double damages, interest, and attorneys’ fees.

12 If the Court now grants final approval, 14,806 Settlement Class Members will share the  
13 non-reversionary Class Fund of \$1,345,430.67 pro rata based on their shifts worked during the  
14 Settlement Class Period. The following chart sets forth the allocation of the escalated GSA:

	<b>Total Amount</b>
Escalated GSA	<b>\$2,149,280.00</b>
Attorneys’ Fees (1/3 of the escalated GSA)	(\$716,426.67)
Litigation Costs	(\$10,422.66 <sup>2</sup> )
Class Representative Service Award	(\$10,000.00)
Settlement Administration Expenses Award	(\$64,000.00)
Reserve Fund	(\$3,000.00)
<b>Class Fund</b>	<b>\$1,345,430.67</b>

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21 As discussed below, the Class Notice was disseminated in accordance with the notice plan  
22 described in the Settlement Agreement and the Court’s Preliminary Approval Order. (Declaration

23 <sup>1</sup> Pursuant to the Settlement Agreement, “In the event the actual number of shifts worked by the Proposed Class  
24 Members during the Settlement Class Period is more than 5% greater than the 1,437,003 shifts that Class Counsel  
25 estimated as part of the Parties’ negotiation process . . . based on the data provided by the Company (i.e., 1,508,854  
26 or more total shifts), then Plaintiff will have the right to void this Agreement unless the Company agrees to  
27 proportionately increase the Gross Settlement Amount to account for all shifts beyond 1,437,003.” S.A., ¶ VI.7.e.  
The Class worked 1,625,583 shifts during the Settlement Class Period, therefore, Defendant agreed to increase the  
Gross Settlement Amount of \$1,900,000.00 by \$249,280.00 to account for the additional Class Members’ shifts  
worked during the Settlement Class Period.

<sup>2</sup> Plaintiff’s counsel is requesting litigation costs reimbursement in the amount of \$10,422.66, which is less than the  
\$12,500.00 amount preliminarily approved by this Court and noticed to the Class. CJA Decl., ¶ 16.

1 of Jennifer Forst with Respect to Settlement Administration and Class Notice, “JF Decl.,” ¶¶ 4-  
2 10). Following distribution of the Class Notice, there were no objections and only three requests  
3 for exclusion. (*Id.* ¶¶ 12-13). The foregoing facts raise a strong presumption that the Settlement  
4 is fair, reasonable, adequate, and in the best interest of the Settlement Class Members.  
5 Furthermore, this is a fair and reasonable result, considering Defendant’s factual and legal  
6 defenses and other risk factors, and a result that is in the range of recoveries that have been  
7 approved as fair and reasonable by state and federal courts in Washington when evaluating similar  
8 settlements resolving wage-and-hour class claims. (Declaration of Craig J. Ackermann in support  
9 of Plaintiff’s Motion for Preliminary Approval “CJA PA Decl.,” ¶¶12-23, 26).

10 As part of this motion for final approval, Plaintiff and Class Counsel are also seeking final  
11 approval of attorneys’ fees in the amount of 1/3 of the escalated GSA (i.e., \$716,426.67) and  
12 reimbursement of litigation costs in the amount of \$10,422.66, which is reasonable insofar as it  
13 is less than the amount of \$12,500.00 provided for in the Parties’ Settlement Agreement and  
14 preliminarily approved by this Court. Attorneys’ fees in the amount at 1/3 of the escalated GSA  
15 is also reasonable for a wage-and-hour class action on the basis of a percentage of the common  
16 fund, where a common fund was generated as a result of the case.

17 Accordingly, Plaintiff respectfully requests that the Court issue an Order that (1) the  
18 Parties’ Settlement be finally approved; (2) Plaintiff be confirmed as Class Representative; (3)  
19 Plaintiff’s attorneys be confirmed as Class Counsel; (4) that the payment amounts as set forth in  
20 the proposed Order be approved; and (5) that final judgment is entered. Given the foregoing, there  
21 is no reason for the Court not to grant final approval.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 **A. NATURE OF THIS ACTION AND SETTLEMENT**

24 For the sake of brevity and the avoidance of redundancy, Plaintiff refers the Court to  
25 Section II of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement for a detailed  
26 account of the factual background surrounding this action prior to the Court’s preliminary  
27 approval of the Settlement. (CJA PA Decl., ¶¶3-7).

1 On May 8, 2024, this Court issued an order granting preliminary approval of the  
2 Settlement (the “PA Order”). The Court found, among other things, that the Settlement “meets  
3 the criteria for preliminary settlement approval” and “falls within the range of possible final  
4 approval as fair, adequate and reasonable, was the product of arm’s-length and informed  
5 negotiations between the Parties at a full-day mediation, and appears to treat all Class Members  
6 fairly.” (PA Order, ¶3).

7 **B. THE NOTICE PROCEDURES IN THE PA ORDER WERE PROPERLY IMPLEMENTED**

8 In its PA Order, the Court approved the Class Notice which described the basic terms of  
9 the Settlement and the rights of Proposed Class Members. (*See* PA Order, ¶¶4-7). The Court also  
10 held that the Class Notice and distribution plan provides the best notice practicable. (*Id.* ¶4).

11 The procedures for distributing notice to the Proposed Class Members established by the  
12 PA Order have been fully and properly executed. (JF Decl., ¶¶4-10). Prior to dissemination of the  
13 Class Notice, the Settlement Administrator was provided the Class List from Defendant’s counsel.  
14 (*Id.* ¶ 5). On July 23, 2024, in compliance with the PA Order, the Settlement Administrator sent  
15 the approved Notice Packet by first class mail to the 14,809 Proposed Class Members. (*Id.* ¶8).

16 **C. THE RESPONSE TO THE CLASS NOTICE SHOWS THAT THE SETTLEMENT CLASS**  
17 **OVERWHELMINGLY APPROVE OF THE SETTLEMENT**

18 The response of the Settlement Class Members to the Class Notice has been excellent:

- 19 ➤ The Settlement Administrator mailed the Notice Packet to all 14,809 Proposed  
20 Class Members. After remailing returned Notice Packets, only 513 Notice Packets  
21 were ultimately undeliverable. (JF Decl., ¶¶8-10).<sup>3</sup>  
22 ➤ Following distribution of the Class Notice, not a single Proposed Class Member  
23 has objected to the Settlement, and only three requested exclusion. (*Id.* ¶¶12-13).  
24 ➤ After payment of the Attorneys’ Fees and Costs Award, Settlement Administration  
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26 \_\_\_\_\_  
27 <sup>3</sup> Reasonable efforts must be made to reach all class members through the notice plan for distribution of the Class Notice, but each individual need not actually receive the Class Notice. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994); *see also Rannis v. Recchia*, 380 Fed.Appx. 646, 650 (9th Cir. 2010).

1 Expenses Award, the Reserve Fund, and the Class Representative Service Award,  
2 each Settlement Class Member will receive their pro rata share from the Class  
3 Fund (*Id.* ¶15).

4 Accordingly, if final approval is granted, the average Settlement Award is estimated to be  
5 \$90.87 and the highest Settlement Award is estimated to be \$1,039.61. (*Id.* at ¶16). The results of  
6 the Class Notice distribution process are excellent and suggest there is no impediment to the Court  
7 granting final approval to the Settlement.

8 Furthermore, the results obtained here (obtaining 53.2% of the maximum risk exposure  
9 for the unpaid meal and rest break claims alleged, exclusive of interest and double damages) are  
10 consistent with cases where final approval was granted to class action settlements that have been  
11 found fair and reasonable by other courts. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965  
12 (9th Cir. 2009) (approving settlement amounting to 30% of the damages estimated by the class  
13 expert); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving  
14 settlement amounting to 9% of estimated total damages); *Bickerton v. Hyatt Corp.*, 2023 U.S.  
15 Dist. LEXIS 75597 (W.D. Wash. May 1, 2023) (granting final approval to a class action  
16 settlement resolving unpaid meal and rest period claims where the settlement amount represented  
17 approximately 25% of the maximum allegedly owed). Thus, the Class's response to the  
18 Settlement, the percentage of allegedly unpaid meal break and rest break wages recovered, the  
19 average settlement awards, and the fact that the results obtained are consistent with other similar  
20 wage-and-hour cases that were approved by Washington (and other) courts, all support final  
21 approval.

22 **III. THE SETTLEMENT SHOULD BE FINALLY APPROVED AS IT MEETS ALL**  
23 **CRITERIA FOR FINAL APPROVAL**

24 **A. STANDARD OF REVIEW**

25 Approval of class action settlements is considered against the backdrop of Washington's  
26 well-established policy favoring compromise over litigation. *See Am. Safety Cas. Ins. Co. v. City*  
27 *of Olympia*, 162 Wn.2d 762, 772, 174 P.3d 54, 59 (Wash. 2007) ("Washington law strongly favors

1 the public policy of settlement over litigation”). Indeed, in the class action context, the court’s  
2 review “must be limited to the extent necessary to reach a reasoned judgment that the agreement  
3 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
4 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Pickett v.*  
5 *Holland Am Line-Westours, Inc.*, 145 Wn.2d 178, 189 (2001).

6 When considering a motion for final approval of a class action settlement under  
7 Washington State CR 23, a court must determine whether the settlement is “fundamentally fair.”  
8 *Laguna v. Coverall N. Am. Inc.*, 753 F.3d 918, 923 (9th Cir. 2014) [quoting *Hanlon v. Chrysler*  
9 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988)]. A settlement merits final approval when “the  
10 interests of the class are better served by the settlement than by further litigation.” *Manual for*  
11 *Complex Litigation* (Fourth) (“MCL 4th”) §21.61 at 424 (2014). Although Rule 23 imposes  
12 procedural requirements on the approval of a class settlement, a court’s *only* role in reviewing the  
13 substance of a settlement is to ensure that it is “fair, adequate and free from collusion.” *Hanlon*,  
14 150 F.3d at 1027 (emphasis added).

15 In determining whether a settlement is fair, reasonable and adequate, Washington courts  
16 generally consider the following factors: “the likelihood of success by plaintiffs; the amount of  
17 discovery or evidence; the settlement terms and conditions; recommendations and experience of  
18 counsel; future expense and likely duration of litigation; recommendation of neutral parties, if  
19 any; number of objectors and nature of objectors; and the presence of good faith and the absence  
20 of collusion.” *Pickett*, 145 Wn.2d at 188-89. Applying the above factors, the proposed Settlement  
21 meets all the criteria necessary for final approval.

22 **1. THE LIKELIHOOD OF SUCCESS BY PLAINTIFF AND THE RISK, EXPENSE, COMPLEXITY, AND**  
23 **LIKELY DURATION OF FURTHER LITIGATION**

24 Plaintiff will not reiterate all of the evidence and legal arguments establishing the  
25 Settlement Agreement and the negotiation process that led up to the Court making a preliminary  
26 finding that it is fair and adequate, which are set forth in detail in Plaintiff’s Motion for  
27 Preliminary Approval. However, it bears repeating that Defendant vigorously contested

1 Plaintiff's allegations that Defendant engaged in a systematic course of unlawful conduct with  
2 respect to meal and rest periods. (*See* Plaintiff's Motion for Preliminary Approval, § IV.E.; CJA  
3 PA Decl., ¶¶ 13-17).

4 **2. THE EXTENT OF DISCOVERY COMPLETED AND THE STAGE OF PROCEEDINGS**

5 The Settlement ultimately reached by the Parties was the product of Class Counsel's  
6 review of an extensive body of information, documents, and damages calculations based thereon  
7 (CJA PA Decl., ¶¶6, 22-23; CJA Decl., ¶13). Defendant's counsel provided Plaintiff's counsel  
8 with a thorough set of informal discovery. (CJA PA Decl., ¶6). After Plaintiff's counsel  
9 thoroughly reviewed the informal discovery, Plaintiff and Defendant engaged in settlement  
10 negotiations at a full-day, private mediation on March 20, 2024, presided over by experienced  
11 wage and hour mediator Cliff Freed, and the Parties agreed to resolve this matter on a class basis.  
12 (*Id.* ¶7). Although cordial, the settlement negotiations were at all times adversarial and non-  
13 collusive in nature. (*Id.* ¶21). Class Counsel is confident that a fair and reasonable settlement was  
14 obtained for the Proposed Class.

15 **3. THE SETTLEMENT TERMS AND CONDITIONS**

16 The terms and conditions of the Settlement, which were submitted to and reviewed by the  
17 Court, are reasonable and fair to the Proposed Class. The Court preliminarily approved the  
18 Settlement, and the lack of any objectors and the small number of requests for exclusion after the  
19 Class Notice distribution process supports a finding that the Settlement Class Members are  
20 uniformly satisfied with the Settlement as fair and reasonable. (CJA Decl., ¶13).

21 **4. THE PRESENCE OF GOOD FAITH, ARM'S LENGTH NEGOTIATIONS AND ABSENCE OF**  
22 **COLLUSION**

23 The Settlement was the product of arm's-length settlement negotiations and a full-day  
24 mediation. (CJA PA Decl., ¶¶7, 21). Additionally, counsel participating on both sides have  
25 extensive wage-and-hour class action experience. (*Id.* ¶¶26-32). Though cordial and professional,  
26 the settlement negotiations were adversarial and non-collusive in nature and conducted by counsel  
27 deeply familiar with class action litigation. (*Id.* ¶21).

1       **5. THE EXPERIENCE AND VIEWS OF COUNSEL**

2           Where Class Counsel are qualified and well-informed, their opinion that a settlement is  
3 fair, reasonable, and adequate is entitled to significant weight. *See Pelletz v. Weyerhaeuser Co.*,  
4 255 F.R.D. 537, 543 (W.D. Wash. 2009). Both Plaintiff’s counsel and Defendant’s counsel are  
5 experienced class action and employment attorneys, and have used their experience and expertise  
6 in fashioning a Settlement Agreement that is acceptable to the Parties (CJA PA Decl., ¶¶26-32;).  
7 Class Counsel maintains that the Settlement is fair and reasonable.

8       **6. THE REACTION OF CLASS MEMBERS**

9           A positive response to a settlement by the Class, as evidenced by the fact that there were  
10 no objections and only three requests for exclusion, further supports final approval. *See Pelletz*,  
11 255 F.R.D. at 543. As discussed above, only three Proposed Class Members requested exclusion,  
12 and none of them objected. (JF Decl., ¶¶12-13). Clearly, the Settlement Class supports the  
13 Settlement.

14       **7. THE CLASS NOTICE PROCESS WAS ADEQUATE TO SATISFY DUE PROCESS**

15           The Court-approved Notice Packet, and the distribution process described above,  
16 adequately protected the due-process rights of any absent Proposed Class Members. Notice of a  
17 class action settlement is adequate where notice is given in a “form and manner that does not  
18 systematically leave an identifiable group without notice.” *Mandujano v. Basic Vegetable Prods,*  
19 *Inc.*, 541 F.2d 832, 835 (9th Cir. 1976). The notice should be the best “practicable under the  
20 circumstances including individual notice to all members who can be identified through  
21 reasonable effort.” *Torrise v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993). The  
22 Notice Packet and distribution process here, which was approved by the Court in its PA Order,  
23 fully satisfied these standards. As stated *infra*, the Settlement Administrator reports that there  
24 were only 513 undeliverable Notice Packets. (JF Decl., ¶10). The Class Notice explained the  
25 proposed Settlement and rights of Proposed Class Members. (*See id.*, Ex. A).

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1 **IV. THE ATTORNEYS' FEES AND LITIGATION COSTS SOUGHT ARE FAIR**  
2 **AND REASONABLE AND SHOULD BE APPROVED**

3 As a component of the Settlement, Plaintiff also seeks final approval of an award of  
4 attorneys' fees to Class Counsel in the amount of \$716,426.67 (i.e., 1/3 of the escalated GSA).  
5 Plaintiff's counsel also seeks reimbursement of litigation costs in the amount of \$10,422.66 which  
6 is the amount incurred and anticipated to be incurred by Class Counsel, and below the amount  
7 preliminarily approved by this Court and noticed to the Proposed Class. (CJA Decl., ¶¶14-16).  
8 Assuming the Court grants final approval to the Settlement, these amounts will be paid from the  
9 escalated GSA in accordance with the Settlement Agreement. The Court has preliminarily  
10 approved these deductions from the escalated GSA, Defendant does not oppose these deductions,  
11 and no Proposed Class Members have objected to these deductions. Moreover, the attorneys' fee  
12 award is warranted because the percentage requested is within the range of the percentage of fees  
13 commonly awarded in similar cases. Accordingly, these requested payments should be finally  
14 approved.

15 **A. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES AND COSTS**  
16 **UNDER WASHINGTON LAW**

17 "Attorneys' fees provisions included in proposed class action settlement agreements are,  
18 like every other aspect of such agreements, subject to the determination of whether the settlement  
19 is 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d at 963 (quoting  
20 Fed. R. Civ. P. 23(e)).

21 "In the course of judicial review, the amount of such attorneys' fees can be approved if  
22 they meet the reasonableness standard when measured against statutory fee principles." *Id.* at 972.  
23 The common fund is appropriate where, as here, a fee-shifting statute authorizes "the award of  
24 fees to ensure compensation for counsel undertaking socially beneficial litigation." *Laguna*, 753  
25 F.3d at 922; *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

26 Washington fee-shifting statutes provide for mandatory awards of attorneys' fees and  
27 costs to workers' counsel in cases in which workers recover wages owed, which is undoubtedly

1 “socially beneficial litigation.” See RCW 49.48.030 (in “any action” in which an employee  
2 recovers wages or salary owed, “reasonable attorney’s fees, in an amount to be determined by the  
3 court, shall be assessed against said employer. . . .”); RCW 49.52.070 (employer who willfully  
4 withholds wages “shall be liable... for twice the amount of wages unlawfully [withheld]...  
5 together with costs of suit and a reasonable sum for attorney’s fees...”). As shown below,  
6 Plaintiff’s request for attorneys’ fees here is reasonable and appropriate under the “common fund”  
7 method.

8 **B. THE COMMON FUND DOCTRINE AND PRECEDENT SUPPORT THE FEE AND COST**

9 **AWARD**

10 Plaintiff’s request for attorneys’ fees in the amount of 1/3 of the common fund is  
11 reasonable, justified and appropriate under the common fund doctrine because (1) it is consistent  
12 with the percentage awarded as attorneys’ fees in other similar class action cases on behalf of  
13 Washington workers; (2) it is supported by the high quality of Class Counsel’s work on this case  
14 and the results obtained for the Class; (3) it is supported by the fact that this case was handled on  
15 a contingency basis and was undertaken despite significant risks and expenses; (4) no Proposed  
16 Class Members have objected to the requested fees or costs after notice; and (5) the results  
17 obtained here were, and are, very beneficial for the Proposed Class.

18 **1. The Attorneys’ Fees Requested Here Fall Within the Reasonable Range**

19 **Awarded in Similar Cases**

20 “Under Washington law, the percentage-of-recovery approach is used in calculating fees  
21 in common fund cases.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) [citing  
22 *Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72 (1993)]. “When attorney fees are available to  
23 prevailing class action plaintiffs, plaintiffs will have less difficulty obtaining counsel and greater  
24 access to the judicial system. Little good comes from a system where justice is available only to  
25 those who can afford its price.” *Bowles*, 121 Wn.2d at 71. This is a common fund case. Thus, the  
26 percentage-of-recovery approach should be used to calculate fees.

27 As courts in the Ninth Circuit and the Washington Supreme Court have made clear, 20%–

1 33% of the common fund is a reasonable percentage for a court to award as attorney fees in a  
2 class action where a common fund was generated. *See Bowles v. Dep't. of Ret. Sys.*, 121 Wn.2d  
3 52 (1993). The fee can be adjusted—up or down—to account for any number of factors. *See, e.g.*,  
4 *Vizcaino*, 142 F.Supp.2d at 1303; *see also In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379  
5 (9th Cir. 1995) (33% fee justified because of the complexity of the issues and the risks). Here, as  
6 noted, there were very significant risks posed, which underscore the great results obtained for the  
7 Class here.

8 In relatively modest class actions where the fund is not outsized, numerous courts in the  
9 Ninth Circuit have approved fees around 1/3 of the common fund. *See e.g., Dennings v. Clearwire*  
10 *Corp.*, No. C10-1859JLR, 2013 U.S. Dist. LEXIS 64021, at \*21-22 (W.D. Wash. May 3, 2013)  
11 (granting request for 35.78% fee); *Martin v. FedEx Ground Package System, Inc.*, 2008 U.S. Dist.  
12 LEXIS 106524, at \*14-16 (N.D. Cal. Dec. 31, 2008) (approved attorneys' fees of 1/3 of common  
13 fund); *Stuart v. RadioShack Corp.*, U.S. Dist. LEXIS 92067, at \*18 (N.D. Cal. Aug. 9, 2010)  
14 (approving fee award of 1/3 of the total settlement amount and noting that the 1/3 fee award was  
15 “well within the range of percentages which courts have upheld as reasonable in other class action  
16 lawsuits”).

17 Finally, the results obtained, and the benefits conferred on the Class, averaging \$90.87 per  
18 Settlement Class Member and with a maximum estimated payment to a Settlement Class Member  
19 of \$1,039.61, are excellent considering the results for the claims at issue and the risks posed,  
20 suggesting that the fee request at 1/3 of the escalated GSA is fair and reasonable. *See, e.g., In re*  
21 *Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995).

22 **2. The High Quality of Work and Excellent Result Obtained Support the Award**

23 In addition to the fact that a class benefit was created with a \$2,149,280.00 common fund,  
24 the fairness of the requested fee award at 1/3 of that common fund is supported by the high quality  
25 of work performed by Class Counsel and the excellent result obtained for the Proposed Class.  
26 That the Settlement was uniformly embraced and supported by the Proposed Class demonstrates  
27 that Class Counsel obtained a very favorable result for the Proposed Class.

1           3.     **The Contingent Nature of Class Counsel’s Representation of Plaintiff and the**  
2                     **Proposed Class Further Supports the Fee Award**

3           An additional factor militating in favor of the granting of the requested fee award is the  
4 fact that this case was both legally and financially risky for Plaintiff’s counsel. *See Vizcaino v.*  
5 *Microsoft Corp*, 290 F.3d 1043, 1048-49 (9th Cir. 2002). As discussed above and in Plaintiff’s  
6 preliminary approval motion, Defendant vigorously asserted defenses that could pose a serious  
7 challenge to class certification and as to liability. There was also the prospect of the enormous  
8 cost inherent in class action litigation.

9           Finally, the complete absence of any objectors strongly supports the fee request. *See In re*  
10 *Heritage Bond Litig.*, U.S. Dist. LEXIS 13555, at \*70 (C.D. Cal. 2005) (“[t]he existence or  
11 absence of objectors to the requested attorneys’ fee is a factor in determining the appropriate fee  
12 award.”).

13           **C. CLASS COUNSEL SHOULD BE REIMBURSED FOR LITIGATION COSTS AND EXPENSES**

14           Class Counsel also requests reimbursement from the common fund for out-of-pocket  
15 expenses incurred and anticipated to be incurred during this litigation in the amount of  
16 \$10,422.66, which is less than the amount contemplated by the Settlement Agreement,  
17 preliminarily approved by this Court, and noticed to the Proposed Class. Plaintiff’s counsel has  
18 incurred and anticipates incurring \$10,422.66 in litigation expenses. These expenses include  
19 actual costs and costs to be incurred for filing, service, legal research, printing costs, mediation,  
20 and all costs associated with the preliminary and final approval hearings. (CJA Decl., ¶16, Ex.  
21 A).

22           These out-of-pocket costs were necessary to secure the resolution of this litigation. *See In*  
23 *re Toys R Us-Delaware, Inc. - Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295  
24 F.R.D. 438, 470 (C.D. Cal. 2004) (finding that costs for filing, travel, postage, telephone, faxing,  
25 and computerized legal research are all reasonable expenses in class action litigation); *see also*  
26 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may recover  
27 reasonable expenses that would typically be billed to pay clients in non-contingency matters).

1 The Parties negotiated for litigation cost reimbursement of up to \$12,500.00, which was also  
2 preliminarily approved by the Court. Class Counsel is seeking reimbursement of litigation costs  
3 less than the amount contemplated in the Settlement Agreement and, therefore, Class Counsel’s  
4 request for litigation costs is reasonable *per se* and should be finally approved.

5 **V. THE COURT SHOULD FINALLY APPROVE THE REQUESTED CLASS**  
6 **REPRESENTATIVE SERVICE AWARD**

7 Finally, Plaintiff requests approval of the proposed Class Representative Service Award  
8 of \$10,000. This proposed award, to which no Proposed Class Member has objected, is intended  
9 to recognize the time, effort, and risk that Plaintiff undertook in bringing this case and helping to  
10 secure the relief obtained for the members of the Proposed Class. Service awards compensating  
11 named plaintiffs attempt to account for financial or reputational risks associated with litigation,  
12 and to promote the public policy of encouraging individual plaintiffs to undertake the  
13 responsibility of representative lawsuits. *See Rodriguez v. West Publishing Corp.*, 563 F.3d at  
14 958-59 (9th Cir. 2009); *Pelletz v. Weyerhaeuser Co.*, 592 F.Supp.2d 1322, 1329 (W.D. Wash.  
15 Jan. 9, 2009) (“The trial court has discretion to award incentives to the class representatives.”).  
16 In reviewing whether a service award is appropriate, the Court should take into account “the  
17 actions the plaintiffs have taken to protect the interests of the class, the degree in which the class  
18 has benefitted from those actions... [and] the amount of time and effort the plaintiffs expended  
19 in pursuing the litigation.” *Jones v. Agilysys, Inc.* 2024 U.S. Dist. LEXIS 68562, at \*8 (N.D. Cal.  
20 May 19, 2014) (quoting *Staton*, 327 F.3d at 977).

21 The proposed Class Representative Service Award here is reasonable given the time and  
22 effort the named Plaintiff devoted to this case, the valuable assistance he provided to Class  
23 Counsel, and his entering into a general release of claims that is broader than the release of the  
24 Settlement Class. The Class Representative also assumed significant reputational risk in bringing  
25 this litigation. Plaintiff provided invaluable assistance to Class Counsel and the Class, including  
26 providing factual background for the Class Complaint and mediation brief; speaking with other  
27 Proposed Class Members about their experiences working for Defendant; reviewing the

1 Complaint; providing documents and information about Defendant’s compensation plan and  
2 break practices; participating in phone calls to discuss litigation and settlement strategy; making  
3 himself available for the duration of the full-day mediation; and reviewing the settlement  
4 documents and his declaration in support of preliminary approval. (CJA PA Decl., ¶33). Plaintiff  
5 agreed to participate with no guarantee of personal benefit. (*Id.*; Declaration of Scott Hines in  
6 Support of Plaintiff’s Motion for Preliminary Approval, ¶¶4-6). Moreover, the requested Class  
7 Representative Service Award is within a range deemed reasonable in class actions. *See Pelletz*,  
8 592 F.Supp.2d at 1329-30 & n.9 (awarding \$30,000 in incentive service awards to the named  
9 plaintiffs, and collecting decisions approving awards ranging from \$5,000.00 to \$40,000.00).

10 **VI. CONCLUSION**

11 For these reasons, Plaintiff requests that the Court finally approve the Settlement in the  
12 form of the Proposed Order Granting Final Approval submitted herewith, including the escalated  
13 GSA, the requested Attorneys’ Fees and Costs Award, the Settlement Administration Expenses  
14 Award, the Reserve Fund, and the Class Representative Service Award.

15 I certify that this memorandum contains 4,173 words, in compliance with the Local Civil  
16 Rules.

17  
18 Respectfully submitted,

19 Date: October 10, 2024

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