

1 Kevin R. Allen, SBN 237994
2 **ALLEN ATTORNEY GROUP PC**
3 2121 North California Avenue, Suite 290
4 Walnut Creek, California 94596
5 Tel. (925) 695-4913
6 Fax (925) 334-7477
7 kevin@allenattorneygroup.com

8 Attorneys for Representative Plaintiff Rose Provencio
9 and the Certified Class

10 *Additional Counsel Listed on Next Page*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

13 **(UNLIMITED JURISDICTION)**

14 COORDINATED PROCEEDINGS SPECIAL
15 TITLE [RULE 3.550]

16 SEPHORA WAGE AND HOUR CASES

17 Included actions:

18 *Burnthorne-Martinez v. SEPHORA USA, Inc.*
19 (San Francisco OGC-16-55-894)

20 *Provencio v. SEPHORA USA, Inc.*
21 (Santa Clara 16CV294112)

22 *Hernandez et al. v. SEPHORA USA, Inc.*
23 (San Francisco OGC-17-557031)

24 *Duran v. Sephora USA, Inc.*
25 (San Francisco CGC-17-561452)

Judicial Counsel Coordinated Proceeding
No. 4911

CLASS ACTION

**COORDINATED PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, COSTS AND
SERVICE AWARDS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: April 6, 2022

Time: 2:00 p.m.

Judge: Hon. Andrew Y.S. Chang

Dept.: 613

1 Shaun Setareh, SBN 204514
2 Thomas Segal, SBN 222791
3 **SETAREH LAW GROUP**
4 9454 Wilshire Boulevard, Suite 907
5 Beverly Hills, California 90212
6 Telephone: (310) 888-7771
7 Facsimile: (310) 888-0109
8 shaun@setarehlaw.com
9 thomas@setarehlaw.com

10 Attorneys for Representative Plaintiff Alyssa Burnthorne-Martinez
11 and the Plaintiff Class

12 Alejandro P. Gutierrez, SBN 107688
13 **THE HATHAWAY LAW FIRM, LLP**
14 200 Hathaway Building
15 5450 Telegraph Road, Suite 200
16 Post Office Box 3577
17 Ventura, CA 93006-3577
18 Telephone: (805) 644-7111
19 Facsimile: (805) 644-8296
20 E-mail: agutierrez@hathawaylawfirm.com

21 Daniel J. Palay, SBN 159348
22 Brian D. Hefelfinger, SBN 253054
23 **PALAY HEFELFINGER, APC**
24 1484 E. Main Street
25 Suite 105-B
26 Ventura, CA 93001
27 Telephone: (805) 628-8220
28 Facsimile: (805) 765-8600
E-mail: djp@calemploymentcounsel.com

Attorneys for Plaintiff JESSICA DURAN, the Plaintiff Class and the Certified Subclasses

John Matthew Norton, SBN 158937
MATTHEW NORTON & ASSOCIATES, P.C.
5855 E. Naples Plaza, Suite 112
Long Beach, CA 90803
Telephone: (562) 433-3208
E-mail: Matt@Matthew-Norton.com

Matthew F. Archbold, SBN 210369
e-mail: matthew@yourlaborlawyers.com
David D. Deason (SBN 207733)
e-mail: david@yourlaborlawyers.com
DEASON & ARCHBOLD
17011 Beach Blvd., Suite 900
Huntington Beach, CA 92647
Telephone: (949) 794-9560

Attorneys for Representative Plaintiffs Lacey Hernandez, Brenda Morales
and the Plaintiff Class

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION.....2

I. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS.....2

II. LEGAL ARGUMENT.....7

 A. PLAINTIFFS' ATTORNEYS FEES ARE APPROPRIATE AND
 REASONABLE.....7

 B. THE FEE AWARD IS REASONABLE WHEN VIEWED AS A PERCENTAGE
 OF THE COMMON FUND..... 9

 C. A LODESTAR CROSS-CHECK ALSO SUPPORTS THE AWARD..... 10

 a. Class Counsels' Hourly Rates.....11

 b. Class Counsels' Hours Spent on the Case.....12

 c. Class Counsel Seeks a Reasonable Multiplier of 2.38.....13

 D. CLASS COUNSELS' COSTS ARE REASONABLE AND SHOULD BE
 AWARDED FROM THE COMMON FUND.....14

 E. NAMED PLAINTIFFS SEEK REASONABLE SERVICE AWARDS14

III. CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Bell v. Farmers Ins. Exchange
 (2004) 115 Cal.App.4th 715..... 14

Cellphone Termination Fee Cases
 (2010) 186 Cal.App.4th 1380..... 14

Chavez v. Netflix, Inc.
 (2008) 162 Cal.App.4th 43.....9

Clark v. American Residential Services LLC
 (2009) 175 Cal.App.4th 785..... 14

Consumer Privacy Cases
 (2009) 175 Cal.App.4th 545.....9

Ketchum v. Moses
 (2001) 24 Cal.4th 1122.....11

Kullar v. Foot Locker Retail, Inc.
 (2008) 168 Cal.App.4th 116..... 5

Laffey v. Northwest Airlines, Inc.
 (D.D.C. 1983) 572 F. Supp. 354.....12

Laffitte v. Robert Half Intern. Inc.
 (2016) 1 Cal.5th 480..... 8, 9, 10, 11

Serrano v. Priest
 (1977) 20 Cal.3d 35..... 7, 8, 9

Van Vranken v. Ad. Richfield Co.
 (N.D. Cal. 1995) 901 F.Supp. 294 15

Wershba v. Apple Computer, Inc.
 (2001) 91 Cal.App.4th 224..... 10, 11, 13

Statutes

Cal. Bus. & Prof. Code § 17200..... 3

Cal. Lab. Code § 203..... 3

Cal. Lab. Code § 212..... 3

Cal. Lab. Code § 213..... 3

1 Cal. Lab. Code § 218.6..... 3
2 Cal. Lab. Code § 226..... 3
3 Cal. Lab. Code § 226.7..... 3
4 Cal. Lab. Code § 510..... 3
5 Cal. Lab. Code § 512..... 3
6 Cal. Lab. Code § 1194..... 3
7 Cal. Lab. Code § 1197..... 3
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 6, 2022 at 2:00 p.m. in Department 613 of the
3 above-entitled court located at 400 McAllister Street, San Francisco, CA 94102, Plaintiffs Alyssa
4 Burthorne-Martinez, Jessica Duran, Lacey Hernandez, Brenda Morales, and Rose Provencio,
5 (“Plaintiffs”) for themselves and the class they represent, by and through their attorneys of record,
6 will and hereby do, move the Court for an Order granting Coordinated Plaintiffs’ Motion for Fees,
7 Costs and Service Awards.

8 The motion will be based upon this Notice of Motion, the Memorandum of Points and
9 Authorities; the Declarations of Class Counsel Shaun Setareh, Alejandro P. Gutierrez, Brian
10 Hefelfinger, John M. Norton, Matthew F. Archbold, and Kevin R. Allen; the declarations of
11 Representative Plaintiffs Alyssa Burthorne-Martinez, Jessica Duran, Lacey Hernandez, Brenda
12 Morales, and Rose Provencio; the pleadings, files and records herein; and upon such other matters
13 as may be presented to the Court at the time of the hearing.

14 Dated: February 18, 2022

ALLEN ATTORNEY GROUP PC

15
16 By



17 KEVIN R. ALLEN

Attorneys for Plaintiff Rose Provencio and the Certified Class

1 **INTRODUCTION**

2 Representative Plaintiffs Alyssa Burthorne-Martinez, Jessica Duran, Lacey Hernandez,
3 Brenda Morales, and Rose Provencio (collectively “Plaintiffs”) have reached a Class Action
4 Settlement Agreement¹ with Defendant Sephora USA., Inc. (“Defendant” or “Sephora”) on behalf
5 of a class of non-exempt current and former employees of Sephora who worked at Defendant’s
6 California retail locations in California between May 23, 2013 and May 14, 2021, inclusive.

7 The proposed settlement provides for a non-reversionary payment of Twelve Million,
8 Seven Hundred and Fifty Thousand Dollars and No Cents (\$12,750,000.00) that will be used to
9 pay settlement awards to the 13,908² settlement Class Members, settlement administration costs, a
10 modest service award to the named Plaintiffs, and to pay the Labor and Workforce Development
11 Agency under PAGA. Pursuant to the Settlement, Plaintiffs’ counsel may also request from this
12 common fund (1) an award of one third of the Gross Settlement Amount or \$4,250,000.00 and (2)
13 actual litigation costs not exceeding \$300,000.00.

14 **I. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**

15
16 On March 10, 2016, Plaintiff Alyssa Burnthorne-Martinez filed her complaint in San
17 Francisco County Superior Court (“Burnthorne-Martinez matter”). On April 14, 2016, she filed a
18 First Amended Complaint adding a claim for penalties under the Private Attorneys General Act
19 (“PAGA”). Allen Decl., ¶ 11.

20 On April 20, 2016 Plaintiff Rose Provencio filed her complaint in Santa Clara County
21 Superior Court (“Provencio matter”). Allen Decl., ¶ 12.

22 On September 20, 2016, Plaintiffs Lacey-Hernandez and Brenda Morales filed their
23 complaint (“Hernandez/Morales matter”) in U.S. District Court for the Northern District of
24 California. The Hernandez/Morales plaintiffs dismissed their state court claims from the federal
25 complaint, and refiled those state court claims in the San Francisco County Superior Court on

26
27 ¹ See **Exhibit “A”** [First Amended Class Action Settlement and Agreement] (the “Settlement”). Unless
28 otherwise noted all numerical exhibits cited herein are attached to the accompanying Declaration of Kevin R. Allen in
Support of Coordinated Plaintiffs’ Motion for Fees, Costs and Service Awards (hereinafter “Allen Decl.”).

² Allen Decl., ¶ 36.

1 February 9, 2017. Allen Decl., ¶ 13.

2 Plaintiff Duran filed her original complaint in the U.S. District Court, for the Northern
3 District of California on March 9, 2017. The Complaint was dismissed on September 18, 2017, the
4 Court finding that “state law claims predominated over the federal claim.” Duran proceeded to file
5 her class action complaint in the San Francisco County Superior Court on September 22, 2017
6 (“Duran Matter”). Allen Decl., ¶ 14.

7 The four separate matters were subsequently coordinated in front of the San Francisco
8 County Superior Court who presided over the earliest filed Burthorne-Martinez matter. The
9 coordinated proceeding was assigned JCCP Case No. JCCP04911. Allen Decl., ¶ 15.

10 Through their operative complaints Plaintiffs collectively sought unpaid wages, statutory
11 penalties, interest, attorneys' fees and costs arising from Defendant's (1) Failure to Pay Wages;
12 (Labor Code §§ 510, 1194, 1197); (2) Failure to Provide Lawful Meal and Rest Periods (Labor
13 Code §§ 226.7 and 512); (3) Failure to Pay Wages On Termination (Labor Code § 203); (4) Failure
14 to Provide Accurate Itemized Wage Statements (Labor Code § 226); (5) Failure to Reimburse
15 Business Expenses (Labor Code § 2802); (6) Failure to Keep and Provide Accurate Records; (7)
16 Failure to Pay Sick Pay; (8) Reporting Time Violations; (8) Violation of Labor Code Section 212
17 and 213; (7) Unfair Business Practices Under the Unfair Competition Law (Business & Professions
18 Code §§ 17200 *et seq.*); and, (8) Recovery Under the Private Attorney General Act (“PAGA”)
19 (Labor Code §§ 2698 *et seq.*). Allen Decl., ¶ 16.

20 In 2017 and 2018, the Parties conducted exhaustive pre-certification discovery that
21 included multiple sets of written discovery (some of which had been propounded and even
22 responded to prior to the four matters being coordinated). Defendant eventually deposed each of
23 the named Plaintiffs. Plaintiffs deposed two of Defendant's persons most knowledgeable who
24 covered sixty-three topics germane to the claims in the coordinated proceeding. Plaintiffs received
25 a class list in early 2018 and conducted dozens of class member interviews thereafter. Allen Decl.,
26 ¶ 17.

27 On April 5, 2018, Plaintiffs filed a Motion for Class Certification covering claims in all
28

1 four of the coordinated actions. There was extensive briefing over six months which included
2 opposition briefs, reply briefs, trial plans, and multiple supplemental filings. The Parties also
3 deposed at least a dozen Class Members and, on June 14, 2018, Plaintiffs' counsel deposed
4 Defendant's expert Robert Crandall. Allen Decl., ¶ 18.

5 On October 11, 2018, the Court indicated it was granting in part Plaintiffs' motion for class
6 certification. Following additional supplemental briefing, on January 29, 2019, the Court signed an
7 Order certifying two Classes and ten subclasses. Allen Decl., ¶ 19.

8 Following certification, the Parties conducted merits-based discovery. This included written
9 discovery as well as an additional person most knowledgeable deposition. As part of merits
10 discovery, Defendant was required to produce time and payroll data for the entire class. Allen
11 Decl., ¶ 20.

12 In late 2019, Plaintiffs retained expert witnesses³ in order to perform a survey and calculate
13 damages on the certified claims. The survey included the following topics: (1) The amount of time
14 spent in security checks; (2) The amount of time spent handwashing, ironing and dry-cleaning
15 Sephora provided work clothes; and (3) The amount of time spent applying makeup prior to the
16 start of a work shift and during work shifts. The survey was designed to ensure it was scientific
17 reliable. The experts prepared the survey analyzed the survey results, and calculated damages.
18 Allen Decl., ¶ 21.

19 In June and July 2020, Defendant deposed Plaintiff's expert survey witnesses who designed
20 the survey (Jeffrey Petersen) and oversaw its implementation (Dwight Steward of EmployStats).
21 Allen Decl., ¶ 22.

22 On August 7, 2020, Plaintiffs filed a Motion for Summary Adjudication covering eleven
23 issues/claims/defenses. On that same date, Defendant filed a Motion for Summary
24 Judgment/Adjudication, a Motion for Decertification, and a Motion in Limine Regarding Plaintiffs'
25 PAGA claims (and/or Pretrial Motion to Strike). Allen Decl., ¶ 23.

26
27 ³ Jeffrey Petersen (Allman & Petersen Economics, LLC) designed the survey. Bill Davis and Davis Research
28 LLC administered the survey to 537 Class Members. Dr. Dwight Steward (EmployStats) calculated the amount of
damages owed on each claim.

1 On August 24, 2020, the Court granted the Parties' stipulation to extend the briefing
2 schedule on the dispositive motions so as to accommodate a private mediation session with David
3 A. Rotman of Mediated Negotiations. Allen Decl., ¶ 24.

4 On November 11, 2020, the parties participated in a full day session with Mr. Rotman. The
5 matter did not resolve at the initial mediation session, but the Parties continued to work through
6 Mr. Rotman in an attempt to reach a class wide resolution of the Lawsuit. Allen Decl., ¶ 25.

7 Following the initial mediation, the Court granted a series of stipulations to extend the
8 deadlines for responding to the pending motions and to continue the trial date so as to provide the
9 Parties additional time to continue their negotiations.⁴Allen Decl., ¶ 26.

10 Finally, on May 7, 2021, the Parties agreed in principle to certain key terms of a proposed
11 settlement of the Class and PAGA representative claims asserted in the Lawsuit. These essential
12 terms were memorialized in a Memorandum of Understanding ("MOU") executed by the Parties
13 on May 28, 2021. Allen Decl., ¶ 27.

14 The Parties thereafter spent almost two months negotiating a long form settlement
15 agreement. On July 23, 2021, Plaintiffs filed their Motion for Preliminary Approval of Class
16 Action Settlement. A hearing was set for August 27, 2021. Allen Decl., ¶ 28.⁵

17 On August 26, 2021 the Court issued its Tentative Ruling Re: Unopposed Coordinated
18 Plaintiffs Motion for Preliminary Approval of Class Action Settlement ("Tentative Ruling"). The
19 nine-page tentative ruling vacated the hearing and asked the Parties to address certain concerns and
20 questions the Court had regarding certain provisions in the settlement. These included the scope of
21 the release, the distribution formula, how funds from uncashed settlement checks would be
22 handled, and how class member settlement awards would be treated for tax purposes. The
23 Tentative Ruling asked the Parties to modify and reorganize the proposed Notice of Settlement to
24 the Class Members as well as the procedures for filing objections and requesting exclusion. Allen
25 Decl. ¶ 29.

26 The Tentative Ruling also asked for a must more robust *Kullar* Analysis than had been

27
28 ⁴ The negotiations were also prolonged due to the mediator falling ill and not being available for over a month.

⁵ The hearing was initially noticed for August 16, 2021but subsequently continued to August 27, 2021.

1 submitted with the initial motion including the maximum potential damages for each and every
2 alleged and released class and PAGA claim and additional factual and legal explanations. Plaintiffs
3 were asked to explain and justify why each class claim was discounted from its potential maximum
4 exposure: “For each basis justifying a discount, plaintiffs should summarize (1) their contentions,
5 including the legal and factual support for her contentions; (2) defendants’ contentions, including
6 the legal and factual support for its contentions; and (3) plaintiffs’ response, including the legal and
7 factual support for plaintiffs’ response. This summary...should be sufficient to permit the court to
8 independently evaluate the fairness of the discount.”⁶ The Court also asked Plaintiffs to the same
9 information for why the PAGA allocation was discounted from its maximum potential exposure
10 value. Allen Decl. ¶ 30.

11 In response, the Parties met and conferred and agreed to amend the Settlement and Notice
12 of Settlement so as to attempt to address each of the Court’s concerns.

13 On or around November 11, 2021 the Parties executed the First Amended Class Action
14 Settlement and Agreement. *See* Allen Decl., Exhibit 1 [Settlement].

15 In addition to the revisions the Parties made to the Settlement and Notice, Plaintiffs’
16 counsel also re-engaged Dwight Steward of EmployStats so as to update and expand on the
17 damages analysis he previously performed in the case, both at time of the mediation and at class
18 certification. Allen Decl. ¶ 31.

19 On November 16, 2021, Plaintiffs filed their Supplemental Brief in Support of Coordinated
20 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and supporting documents.
21 Allen Decl. ¶ 32.

22 On December 2, 2021 the Court issued an Order granting Plaintiffs Burthorne-Martinez
23 leave to file a Second Amended Complaint so that the pleading was congruent with the scope of
24 the amended Settlement.⁷ The SAC was subsequently filed and an Answer was filed by the

25
26 ⁶ Plaintiffs were also asked to discuss the impact of the recent California Supreme Court decision, *Frlekin v.*
Apple Inc. (2020) 8 Cal.5th 1038, reh'g denied (May 13, 2020), weighing in their favor on the off-the-clock security
27 inspections claims.

28 ⁷ The SAC removed a sick leave claim and added a cause of action under the Fair Labor Standards Act of 1933
 (“FLSA”).

1 Defendant. Allen Decl. ¶ 33.

2 On December 16, 2021, the Court issued an Order granting Plaintiffs' Motion for
3 Preliminary Approval of the amended Settlement and directing that notice be issued to the Class
4 Members consistent therewith. The Order required that Plaintiffs file this present Motion for Fees
5 and Costs and Service Awards by January 18, 2022 (i.e., 14 days prior to close of the response
6 period on the class notice) and set a Final Approval Hearing for April 16, 2022 at 2:00 p.m. Allen
7 Decl. ¶ 34.

8 On January 6 2022, Defendant provided the settlement administrator, CPT Group Class
9 Action Administrators ("CPT Group") with the class data needed to calculate individual settlement
10 award amounts and issue the settlement notice. Allen Decl. ¶ 35.

11 On January 20, 2022, CPT Group caused the Court-approved notice of settlement to be
12 mailed to 13,908 Class Members. Class Members have until March 6, 2022 by which to request
13 exclusion, lodge an objection, and/or dispute the number of workweeks being used to calculate
14 their individual Settlement Awards. Allen Decl. ¶ 36.

15 Plaintiffs, through this Motion, seek their attorneys' fees and costs and service awards for
16 the named Plaintiffs as set forth in the Settlement. Allen Decl. ¶ 37.

17 Plaintiffs will file their Motion for Final Approval by March 14, 2022.

18 **II. LEGAL ARGUMENT**

19 **A. CLASS COUNSEL ATTORNEYS' FEES ARE APPROPRIATE**
20 **AND REASONABLE**

21 Class Counsel seeks attorneys' fees of \$4,250,000, representing 33 1/3% (one third) of the
22 settlement consideration under the "common fund" doctrine. Courts have long recognized the
23 "common fund" or "common benefit" doctrine, under which attorneys who create a common fund
24 or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund.
25 *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical*
26 *Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975)
27 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing*
28

1 *Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375,
2 391-392.

3 The California Supreme Court has held that, “when a number of persons are entitled in
4 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all
5 results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded
6 attorneys’ fees out of the fund.” *Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d
7 1; *see also Boeing, supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the
8 benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the
9 fund as a whole.”); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the
10 common fund approach in class actions).

11 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
12 stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which
13 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
14 costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111,
15 the California Supreme Court recognized that the common benefit doctrine has been applied
16 “consistently in California when an action brought by one party creates a fund in which other
17 persons are entitled to share.”

18 The California Supreme Court recently set forth guidance on how to determine whether
19 what a fee award is reasonable in a particular case. In *Laffitte v. Robert Half Intern. Inc.* (2016) 1
20 Cal.5th 480, 503 (internal citations omitted) the California Supreme Court indicated that a trial
21 court was well within its discretion to base its fee award in terms of a percentage of the total
22 recovery or monetary fund created for the Plaintiffs: “[U]se of the percentage method to calculate a
23 fee in a common fund case, where the award serves to spread the attorney fee among all the
24 beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the
25 overwhelming majority of federal and state courts in holding that when class action litigation
26 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
27 powers awards class counsel a fee out of that fund, the court may determine the amount of a
28

1 reasonable fee by choosing an appropriate percentage of the fund created. The recognized
2 advantages of the percentage method—including relative ease of calculation, alignment of
3 incentives between counsel and the class, a better approximation of market conditions in a
4 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
5 unnecessarily prolonging the litigation – convince us the percentage method is a valuable tool that
6 should not be denied our trial courts.” *Id.*

7 *Laffitte* also provided that a trial court may perform a “lodestar” cross check to ensure that
8 the percentage of the fund results in an appropriate award in a particular case. *Laffitte*, 1 Cal.5th
9 480 at 505. “A lodestar cross-check is simply a quantitative method for bringing a measure of the
10 time spent by counsel into the trial court's reasonableness determination; as such, it is not likely to
11 radically alter the incentives created by a court's use of the percentage method.” *Id.*

12 Class Counsel’s fee award is appropriate under both the percentage of the fund and lodestar
13 cross check methods of analysis.

14 **B. PLAINTIFFS FEE AWARD OF ONE THIRD IS REASONABLE**
15 **WHEN VIEWED AS A PERCENTAGE OF THE COMMON FUND**

16 Class Counsels’ fee request of 33 1/3% of the common fund is in line with awards in
17 similar wage and hour class and representative cases throughout California including that awarded
18 in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 488 [approving a one-third attorney’s
19 fee]. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (fee awards “average
20 around one-third of the recovery”) [quoting *Shaw v. Toshiba Am. Info. Sys.*, 91 F.Supp.2d 942, 972
21 (E.D. Tex. 2000)]; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 n.13 [noting that fee
22 awards in class actions average around one third of common fund]; *Urethane Cases* (S.F. Super.
23 Ct., June 25, 2013, No. CJC-04-004367) [award of one-third of settlement fund]; *Credit/Debit*
24 *Card Tying Cases* (S.F. Super. Ct., Apr. 11, 2013, No. CJC-03-004335) [29-percent fee award];
25 *Fang et al. v. United Bank, et al.* (S.F. Super. Ct., July 10, 1992, No. 873365) [award of 30-percent
26 fee]; *Sconce/Lamb Cremation Cases* (L.A. Super. Ct., February 1989, J.C.C.P. No. 2085) [30-
27 percent award]. Indeed, it is not unheard for an award to be as high as 45% of the common fund.

1 See e.g. *Abzug v. Kerkorian* (L.A. Super. Ct., November 1990, CA-000981 [45-percent fee of \$35
2 million class action settlement]; *Haitz v. Meyer, et al.* (Alameda Super. Ct., August 20, 1990, No.
3 572968-3) [45-percent fee award]).^{8,9}

4 **C. PERFORMING A LODESTAR CROSS-CHECK ALSO SUPPORTS**
5 **THE REASONABLENESS OF CLASS COUNSELS' FEE AWARD**

6 Under *Laffitte*, California trial courts may, but are not required to conduct a “lodestar” cross
7 check. *Laffitte*, 1 Cal.5th 480 at 505. “A lodestar cross-check is simply a quantitative method for
8 bringing a measure of the time spent by counsel into the trial court's reasonableness determination;
9 as such, it is not likely to radically alter the incentives created by a court's use of the percentage
10 method.” *Id.* A trial court must first determine a “lodestar” figure based on a “careful compilation
11 of the time spent in reasonable hourly compensation for each attorney [...] involved in the
12 presentation of the case.” *Serrano v. Priest* (1977) 20 Cal.3d 25, 48. A multiplier is then applied to
13 the lodestar figure to reward Plaintiffs’ Counsel for exceptional results or to prevent Plaintiffs’
14 Counsel from being punished for reaching an early settlement.

15 Multipliers in these types of cases “can range from 2 to 4 or even higher.” *Wershba v.*
16 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (2001). The California Supreme Court has
17 indicated that the percentage is likely reasonable if the multiplier is within the “normal range.” See
18 *Laffitte*, 1 Cal.5th 480, 488.

19
20 ⁸ US District Courts in California have also recognized the reasonableness of a one third recovery in these
21 types of common fund cases. See e.g. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming
22 award of 33.3% of \$1.725 million); *Ruch v. AM Retail Grp, Inc.*, 2016 U.S. Dist. LEXIS 133832 (N.D Cal. Sept. 28,
23 2016) *10; *Donald v. Xanitos, Inc.*, 2017 U.S. Dist. LEXIS 66928, at *4 (N.D. Cal. Apr. 27, 2017); *Ching v.*
24 *Siemens Indus., Inc.*, 2014 U.S. Dist. LEXIS 89002, at *8 (N.D. Cal. June 27, 2014); *In re Pacific Enterprises Sec.*
25 *Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33% of \$12 million common fund). “[A]ttorneys' fees in
26 the amount of 30% of the common fund falls within the range of acceptable attorneys' fees in Ninth Circuit
27 cases.” *McLeod v. Bank of Am., N.A.*, 2019 U.S. Dist. LEXIS 40869, *20-21 (citing *Ching v. Siemens Indus., Inc.*,
2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014)); see also *Galeener v. Source Refrigeration & HVAC, Inc.*, 2015
28 U.S. Dist. LEXIS 193096, *4-5 N.D. Cal. Aug. 21 2015); see also *Stuart v. RadioShack Corp.*, 2010 U.S. Dist.
LEXIS 92067, at *6 (N.D. Cal. Aug. 9, 2010) (noting that “the fee award represents one-third of the settlement
amount,” which is “well within the range of percentages which courts have upheld as reasonable in other class action
lawsuits”); *Hartless v. Clorox Co.* 273 F.R.D. 630, 642–643 (S.D. Cal. June 20, 2011) [“Under the percentage
method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33
percent”].

⁹ See e.g. *Abzug v. Kerkorian* (L.A. Super.Ct., Nov. 1990) CA-000981 (45% fee award plus costs); *Haitz v.*
Meyer, et al. (Alameda Super.Ct., Aug. 20, 1990) No. 572968-3 (45% fee award).

1 Indeed, in *Laffitte* the California Supreme Court held that an award in the 2.03 to 2.13
2 multiplier range was not “extraordinary high or low” and, therefore, did not warrant an adjustment
3 from the 33% percentage being applied for by Plaintiffs’ Counsel therein. *See Laffitte*, 1 Cal.5th at
4 487 [Plaintiffs’ Counsel sought a multiplier of 2.03 to 2.13].¹⁰

5 If the Court wishes to perform a lodestar cross-check in this case, such a cross check will
6 confirm the reasonableness of Plaintiffs’ counsels’ fees.

7 In calculating an initial lodestar figure, a court considers: (1) the reasonable hours spent;
8 and (2) the prevailing hourly rates for “private attorneys in the community conducting non-
9 contingent litigation of the same type.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134 (emphasis
10 in original). These facts may be established through declaration by counsel. *Wershba v. Apple*
11 *Computer, Inc.* (2001) 92 Cal.App.4th 224, 254-255 (relying on Plaintiffs’ counsel’s declarations
12 as sufficient evidence to demonstrate the appropriate hourly rate).

13 **a. Plaintiffs’ Counsels’ Hourly Rates**

14 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
15 experience in the relevant community. *PLCM Group, Inc.* (2000) 22 Cal.4th 1084, 1095. When
16 determining a reasonable hourly rate, courts may consider factors such as skill and experience, the
17 nature of the work performed, the relevant area of expertise and the attorney’s customary billing
18 rates. *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632.

19 Class Counsel are seeking a range of hourly rates that is commensurate with each of their
20 experience and skill, expertise with wage and hour class action work and the other criteria listed
21 above. *See* Allen Decl. ¶ 48 (\$750 an hour); Setareh Decl., ¶¶ 14-26 (\$400-925 an hour) ; Norton
22 Decl. ¶¶ 29-37 \$650 an hour); Gutierrez Decl., ¶ 7-14 (\$250-450 an hour for associate billing; \$850
23 an hour for partner); Hefelfinger Decl., ¶¶ \$650-800 an hour); Matthew Archbold ¶13 (\$650 an
24 hour).

25
26
27 ¹⁰ Federal Courts in the Northern District of California have also approved of multipliers of over 2.0. *See e.g.*
28 *Esparza v. Smartpay Leasing, Inc.* (N.D. Cal. Jan. 28, 2020)[“2020 U.S. Dist. LEXIS 15912, *10 An award of
\$2,000,000 representing a lodestar multiplier of approximately 2.187 is reasonable.”].

1 The reasonableness of these rates is also supported by the Laffey Matrix¹¹ which currently
2 provides for rates of \$381 for an attorney with 1-3 years of experience; \$468 an hour for an
3 attorney with 4-7 years of experience; \$676 for an attorney with 8-10 years of experience; \$764 for
4 an attorney with 11-19 years of experience; and \$919 for an attorney with 20 or more years of
5 experience. *See* Setareh Decl. ¶ 14 and FN 5.¹² Class Counsel's rates are consistent with the Laffey
6 Matrix and, often times, less than the rate identified in the matrix. *See e.g.* Norton Decl., ¶ (22
7 years of experience; billing at \$650 an hour); Gutierrez Decl. ¶ (35 years of experience; billing at
8 \$850 an hour).

9 **b. Class Counsels' Hours Spent on the Case**

10 The fee request is supported by the amount of work performed by Class Counsel and the
11 risks undertaken in bringing and prosecuting this litigation. *See, infra*, Section II. Collectively,
12 Class Counsel for the Coordinated Plaintiffs spent over 2,589 hours¹³ litigating this case. This
13 included investigating and researching the claims, drafting the various pleadings in the case,
14 drafting and propounding written discovery, reviewing and responding to Defendant's written
15 discovery, participating in depositions of each of the clients and other witnesses, appearing for case
16 management conferences, and many hearings, both in person and remote. Class Counsel briefed
17 and successfully brought a motion for class certification and for approval of their trial plan, each of
18 which required supplemental briefings and multiple hearings. They opposed multiple dispositive
19 motions by the Defendant and filed their own.¹⁴ Class Counsel retained and worked with multiple
20 experts including a survey design expert, a damages analysis expert and a company that
21 implemented the survey. Class Counsel deposed Defendant's experts and multiple persons most

22
23 ¹¹ The *Laffey* matrix is an inflation-adjusted grid of hourly rates for lawyers of varying levels of experience in
24 Washington D.C. used for many years by the U.S. Attorney's Office for determining fees in litigation claims
(especially civil rights litigation). This matrix was approved originally in *Laffey v. Northwest Airlines, Inc.*, 572 F.
25 Supp. 354, 371-375 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C.Cir. 1984).

26 ¹² These rates are for the Washington DC area and require a cost-of-living adjustment. However, any
27 adjustments are relatively minor as Class Counsel primarily practice in the regions with similar costs of living. For
28 example, the e., the Los Angeles and San Francisco Bay Area.

¹³ *See* Allen Decl. Ex. 2 [699.8 hours]; Archbold Decl. ¶ 13 and Ex. A (82.6 hours); Gutierrez Decl. ¶ 26 and
Ex. A (557.6 hours); Hefelinger Decl., ¶ 31 and Exhibit (129 hours); Norton Decl., ¶ 38 and Exhibit 1 (354.2 hours);
Setareh Decl. ¶¶ 10-11 (766.35 hours).

¹⁴ Although the case settled before the dispositive motions were heard or decided by the Court, most of the work
was already completed on these motions at the time of settlement.

1 knowledgeable regarding the myriad topics raised in this lawsuit. While actively moving the case
2 towards trial, Class Counsel simultaneously prepared the case for mediation with David Rotman
3 which required them to research and draft multiple mediation briefs, to analyze and calculate
4 damages (again with their experts' help), and to research pending appellate cases as well as track
5 down recent settlements in lawsuits involving similar claims. Even after there was an agreement on
6 the key terms of settlement, it took a great deal of additional work negotiating the settlement
7 agreement and settlement notices, to engage and oversee the work by the Settlement Administrator,
8 and to prepare the preliminary approval papers and address the issues raised by the Court in its
9 tentative ruling at preliminary approval. Each of these hours was one fewer hour that could have
10 been spent on other cases.

11 **c. Class Counsels Seeks a Reasonable Multiplier of 2.38**

12 Multipliers in these types of cases “can range from 2 to 4 or even higher.” *Wershba v.*
13 *Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001). The California Supreme Court has
14 indicated that the percentage is likely reasonable if the multiplier is within the “normal range.” *See*
15 *Laffitte*, 1 Cal.5th 480, 488. Indeed, in *Laffitte* the California Supreme Court held that an award in
16 the 2.03 to 2.13 multiplier range was not “extraordinary high or low” and, therefore, did not
17 warrant an adjustment from the 33% percentage being applied for by plaintiffs’ counsel therein.
18 *See Id.* at 487. Federal Courts, including in this District, have also routinely awarded multipliers of
19 over 2.0. *See e.g. Esparza v. Smartpay Leasing, Inc.*, 2020 U.S. Dist. LEXIS 15912, *10 (N.D. Cal.
20 Jan. 28, 2020)[“An award of \$2,000,000 representing a lodestar multiplier of approximately 2.187
21 is reasonable.”].

22 Class Counsels’ fee award would amount to a 2.38 multiplier on their collective lodestar
23 (\$4,250,000/1,789,320.75). Class Counsel this is reasonable in light of the results obtained for the
24 class as well as the amount of work performed by class counsel, the costs invested and placed at
25 risk, the size of the settlement, as well as the future commitment of time Class Counsel will be
26 required to invest to ensure that the Settlement terms are fulfilled and that Class Members have
27 their questions about the settlement answered in a timely manner.

1 **D. PLAINTIFFS’ COUNSEL SHOULD BE AWARDED THEIR**
2 **LITIGATION COSTS FROM THE COMMON FUND**

3 The Settlement also provides for Class counsel’s reimbursement for up to \$300,000.00 in
4 costs expensed in this litigation. Settlement, § 8.2. Class Counsel collectively incurred \$297,289.02
5 in litigation costs prosecuting this class action against Sephora.¹⁵

6 Class Counsel assumed the risk of advancing these costs with no guarantee of
7 reimbursement. Class Counsel represented the Class Members with both efficiency and
8 zealotry, ultimately achieving a sizeable monetary recovery. Based on the reasonableness of the
9 request, coupled with the efforts of Plaintiffs’ Counsel and their willingness to accept the risks
10 associated with contingency litigation, Plaintiffs and Plaintiffs’ Counsel respectfully request the
11 Court approve an award of litigation costs in the amount of \$300,000.

12 **E. NAMED PLAINTIFFS SEEKS REASONABLE**
13 **ENHANCEMENT AWARDS**

14 The Settlement also provides for modest service enhancement awards to the representative
15 plaintiffs of up to \$20,000 each. Settlement, § 8.4. Enhancement awards, or service payments, to
16 representative plaintiffs in class action settlements compensate them for their “efforts in bringing
17 the lawsuit.” , 726. “Since without a named plaintiff there can be no class action, such
18 compensation as may be necessary to induce him to participate in the suit.” *Clark v. American*
19 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804. “[T]he rationale for making
20 enhancement or incentive awards to named plaintiffs is that they should be compensated for the
21 expense or risk they have incurred in conferring a benefit on other members of the class.” *Id.* at
22 806. “An incentive award is appropriate ‘if it is necessary to induce an individual to participate in
23 the suit.’” *Cellphone Termination Fee Cases* (2010) 186 Cal. App.4th 1380, 1394 quoting, *Clark*,
24 *supra*, at 804.

25 “Criteria courts may consider in determining whether to make an incentive award include:
26

27 ¹⁵ See Allen Decl., Ex. “3” [\$91,791.74]; Archbold Decl. ¶ 14 (\$12,808.08); Gutierrez Decl. ¶ 25 and Exhibit A
28 (\$41,687.91); Hefelinger Decl., ¶ 35 (\$248.02); Norton Decl., ¶ 39 and exhibit 2 (\$23,116.79); Setareh Decl. ¶ 7 and
Exhibit 1 (\$127,636.48).

1 (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the
2 notoriety and personal difficulties encountered by the class representative; (3) the amount of time
3 and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal
4 benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” *Id.*
5 quoting, *Van Vranken v. Ad. Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299.


6 Class Counsel is providing detailed declarations from each of the class representatives
7 addressing these elements. *See generally* Declaration of Plaintiff Alyssa Burthorne-Martinez;
8 Declaration of Plaintiff Jessica Duran; Declaration of Lacey Hernandez; Declaration of Brenda
9 Morales; and Declaration of Plaintiff Rose Provencio. These declarations reflect a significant time
10 commitment to the case and the interests of the class.¹⁶

11 **III. CONCLUSION**

12 For all of the foregoing reasons, Plaintiffs respectfully request this Court enter an order
13 granting Coordinated Plaintiffs’ Motion for Attorneys’ Fees, Costs and Service Awards.

14 Dated: February 18, 2022

ALLEN ATTORNEY GROUP PC

15
16 By 
17 KEVIN R. ALLEN
18 Attorneys for Plaintiff Rose Provencio and the Certified Class
19
20
21
22
23
24
25
26

27 ¹⁶ *See* Declaration of Plaintiff Alyssa Burthorne-Martinez ¶ 9 (85 hours); Declaration of Plaintiff Jessica Duran
28 (over 190 hours); Declaration of Lacey Hernandez ¶ 35 (50 hours just discussing the case with counsel); Declaration of
Brenda Morales ¶ 36 (several hundred hours); and Declaration of Plaintiff Rose Provencio ¶ 9 (at least 90 hours).