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Attorneys for Individual and Representative  
Plaintiff VICTOR MUNOZ

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VICTOR MUNOZ, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

BIG BUS TOURS LIMITED; OPEN TOP  
SIGHTSEEING SAN FRANCISCO, LLC; and  
DOES 1-20,

Defendants.

Civil Case No. 3:18-cv-05761-SK

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR FOR AWARD OF  
ATTORNEYS' FEES AND COSTS AND  
SERVICE AWARD; MEMORANDUM OF  
POINTS AND AUTHORITIES**

The Honorable Sallie Kim

Date: February 3, 2020

Time: 9:30 A.M.

Courtroom: Courtroom C, 15th Floor  
450 Golden Gate Avenue  
San Francisco, California

Judge: The Honorable Sallie Kim

**NOTICE OF MOTION AND MOTION**

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

**PLEASE TAKE NOTICE** that on February 3, 2020, at 9:30 A.M. or as soon thereafter as the matter may be heard, before the Honorable Sallie Kim, United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 15th Floor, Courtroom C, Plaintiff Victor Munoz (“Plaintiff”) will and hereby does move the Court, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an order awarding \$17,500 in attorneys’ fees, \$1,089.51 in incurred litigation costs, and a service award to Plaintiff Victor Munoz in the amount of \$5,000.00 for his service to the class. The motion will be based on this Notice, the Memorandum of Points and Authorities below, the declaration of Steven G. Tidrick, Esq. filed herewith, the other records, pleadings, and papers filed in this action, and any evidence or argument presented at the hearing on this motion.

DATED: November 15, 2019

Respectfully submitted,

THE TIDRICK LAW FIRM LLP

By: /s/ Steven G. Tidrick

STEVEN G. TIDRICK, SBN 224760

Attorneys for Individual and Representative  
Plaintiff VICTOR MUNOZ

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Through this motion, Plaintiff Victor Munoz (“Plaintiff”) seeks an order awarding \$17,500 in attorneys’ fees, \$1,089.51 in incurred litigation costs, and an enhancement payment to Plaintiff Victor Munoz in the amount of \$5,000.00 for his service to the class.

**II. NATURE OF CASE AND PROCEDURAL HISTORY**

In the interests of efficiency, Plaintiff refers the Court to (1) Plaintiff’s motion for preliminary approval of the settlement, which describes the case and its procedural history. *See*

1  
2 Docket No. 24 (“Plaintiff’s Motion for Preliminary Approval”), at ECF pages 4:6-5:5.<sup>1</sup> That  
3 motion, and the renewed motion that was filed after amending the settlement agreement,  
4 summarize the terms of the settlement agreement. *See* Plaintiff’s Motion for Preliminary  
5 Approval, at ECF pages 6:2-9:17; Plaintiff’s Renewed Motion for Preliminary Approval (Docket  
6 No. 31), ECF pages 3:13-4:6. The settlement agreement, entitled “Stipulation Re: Class Action  
7 Settlement & Release,” was filed on August 12, 2019 (ECF No. 30) (“Settlement Agreement”).  
8 The Court entered an order preliminarily approving the settlement on September 5, 2019. *See*  
9 ECF No. 33.

### 10 **III. SETTLEMENT TERMS RELEVANT TO THIS MOTION**

11 The Settlement Agreement authorizes the Court to award a service award (also known as  
12 an enhancement payment) to the Class Representative, Victor Munoz, not to exceed \$5,000, for  
13 his service to the class. *See* Settlement Agreement, ECF No. 30, at ECF page 5, § 6(a)(iv). It is  
14 within the Court’s discretion whether to award such a payment and in what amount. *See id.* The  
15 Settlement Agreement provides that any of that requested amount that the Court does not approve  
16 shall be added to the Net Settlement Amount to be distributed to the Class. *See id.* at ECF page 5,  
17 § 7.

18 The Court also has the discretion to award Class Counsel attorneys’ fees of up to twenty  
19 five percent (25%) of the \$70,000 Gross Settlement Value, *i.e.*, \$17,500, and reimbursement of  
20 reasonable litigation expenses, with the total fees and costs not to exceed \$20,000. *See* Settlement  
21 Agreement, ECF No. 30, at ECF pages 5 and 9, §§ 7 and 14. The Settlement Agreement provides  
22 that any of those requested amounts that the Court does not approve shall be added to the Net  
23 Settlement Amount to be distributed to the Class. *See id.* at ECF page 5, § 7.

### 24 **IV. ARGUMENT**

#### 25 **A. Plaintiff’s Counsel Are Entitled to Recover Fees from the Common Fund**

26 Federal Rule of Civil Procedure 23 provides that, “[i]n a certified class action, the court  
27 may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the

28 <sup>1</sup> In this brief, page references for ECF-filed documents refer to the page numbers at the tops of  
the pages generated by the ECF system, not to the page numbers at the bottoms of the pages.

1  
2 parties' agreement." Fed. R. Civ. Proc. 23(h). Rule 23(h) applies to requests for attorney's fees  
3 for settled class actions. *See Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (explaining  
4 that "[a]ttorneys' fees provisions included in proposed class action agreements are, like every  
5 other aspect of such agreements, subject to the determination whether the settlement is  
6 'fundamentally fair, adequate and reasonable'"). According to the Ninth Circuit, in order to  
7 protect the due-process rights of unnamed class members, any such request must be filed prior to  
8 the deadline to object to the settlement. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988,  
9 994-95 (9th Cir. 2010) ("*In re Mercury*"). *See also Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS  
10 155472, at \*80 (C.D. Cal. Nov. 23, 2011) (applying *In re Mercury* and holding that the filing of a  
11 fee petition one week before the objection deadline comported with due process). The present  
12 motion, filed on November 15, 2019, complies with *In re Mercury*.

13 With regard to the merits of the Motion, in analyzing Rule 23(h) fee requests, courts  
14 "have an independent obligation to ensure that the award, like the settlement itself, is reasonable,  
15 even if the parties have already agreed to an amount." *Vandervort v. Balboa Capital Corp.*, 2014  
16 U.S. Dist. LEXIS 46174 (C.D. Cal. Mar. 27, 2014) (quoting *In re Bluetooth Headset Prods.*  
17 *Litig.*, 654 F.3d 936, 941 (9th Cir. 2011)).

18 The U.S. Supreme Court "has recognized consistently that a litigant or a lawyer who  
19 recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole."  
20 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton*, 327 F.3d at 967 (same). For  
21 purposes of determining a reasonable fee, "courts have discretion to employ either the lodestar  
22 method or the percentage-of-recovery method." *Greko v. Diesel U.S.A., Inc.*, 2013 U.S. Dist.  
23 LEXIS 60114, at \*23 (N.D. Cal. Apr. 26, 2013). Generally speaking, though, "[t]he lodestar  
24 method is . . . preferable when calculating statutory attorney fees, whereas the percentage-of-  
25 recovery approach is appropriate when the fees will be drawn from a common fund." *Clark v.*  
26 *Payless Shoesource, Inc.*, 2012 U.S. Dist. LEXIS 105187, at \*3-4 (W.D. Wash. July 27, 2012)  
27 (citing *In re Bluetooth Headset Prods. Litig.*, 654 F.3d at 941).

28 The Ninth Circuit has explained that, "[b]ecause the benefit to the class is easily  
4  
quantified in common-fund settlements, we have allowed courts to award attorneys a percentage

1  
2 of the common fund in lieu of the often more time-consuming task of calculating the lodestar.” *In*  
3 *re Bluetooth*, 654 F.3d at 942. *See also Elliott v. Rolling Frito-Lay Sales, LP*, 2014 WL 2761316,  
4 at \*9, 2014 U.S. Dist. LEXIS 83796, at \*25 (C.D. Cal. June 12, 2014) (C.D. Cal. June 12, 2014)  
5 (Carter, J.) (“There are significant benefits to the percentage approach, including consistency with  
6 contingency fee calculations in the private market, aligning the lawyers’ interests with achieving  
7 the highest award for the class members, and reducing the burden on the courts that a complex  
8 lodestar calculation requires.”).

9 As explained by the Ninth Circuit, a “common fund” exists “when (1) the class of  
10 beneficiaries is sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the fee  
11 can be shifted with some exactitude to those benefiting.” *In re Petition of Hill*, 775 F.2d 1037,  
12 1041 (9th Cir. 1985). According to the Supreme Court, “the[se] criteria are satisfied when each  
13 member of a certified class has an undisputed and mathematically ascertainable claim to part of a  
14 lump-sum [amount].” *Boeing Co. v. Van Gemert*, 444 U.S. 444, 479 (1980). Here, the Settlement  
15 Agreement creates a common fund, as the class of beneficiaries is sufficiently identifiable, the  
16 benefits can be accurately traced, and the fee can be shifted with some exactitude to those  
17 benefiting. As explained in more detail below, Class Counsel’s requested fee award amount is  
18 reasonable, and is significantly less than the lodestar.

### 19 **B. The Requested Fees Are Within the Range of Approval**

20 The Ninth Circuit has stated that “25 percent of the fund [i]s the ‘benchmark’ award that  
21 should be given in common fund cases.” *Six (6) Mexican Workers v. Arizona Citrus Growers*,  
22 904 F.2d 1301, 1311 (9th Cir. 1990). That said, “the exact percentage varies depending on the  
23 facts of the case, and in ‘most common fund cases, the award exceeds that benchmark.’” *Johnson*  
24 *v. General Mills, Inc.*, 2013 U.S. Dist. LEXIS 90338, at \*20 (C.D. Cal. June 17, 2013) (quoting  
25 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010). Thirty percent is  
26 within the “usual range.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). *See*  
27 *also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (stating that “nearly  
28 all common fund awards range around 30%”). When the Court awards fees above or below the  
benchmark, the “record must indicate the Court’s reasons for doing so.” *Glass v. UBS Fin. Servs.*,

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2 2007 U.S. Dist. LEXIS 8476, at \*44 (N.D. Cal. Jan. 26, 2007) (citing *Powers v. Eichen*, 229 F.3d  
3 1249, 1256-57 (9th Cir. 2000)).

4 In this case, the gross settlement amount is \$70,000. The requested fee award of \$17,500  
5 in attorneys' fees represents 25% of that amount.

6 Among the circumstances the Ninth Circuit has considered relevant in assessing  
7 reasonableness are: (1) the results achieved; (2) the riskiness of prosecuting the litigation;  
8 (3) whether counsel obtained benefits for the Class above and beyond the cash settlement fund  
9 itself; and (4) the financial burden carried by counsel in prosecuting the case on a contingency  
10 basis. *Vizcaino*, 290 F.3d 1043 at 1048-50. In this case, three of the four factors favor a finding  
11 that a fee award of more than 25% would be reasonable.

12 First, Class Counsel have obtained favorable results for the class. It is no exaggeration to  
13 predict that without using the class action process, the relief that members of the class were likely  
14 to achieve ranged from negligible to zero.

15 Second, prosecuting the litigation has been risky. This case is not one in which a  
16 substantial settlement and a recovery of a large attorneys' fee was a foregone conclusion. *See*  
17 *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980) (recognizing importance of  
18 incentivizing qualified attorneys to devote their time to complex, time-consuming cases in which  
19 they risk nonpayment); *Vizcaino*, 290 F.3d at 1048 ("Risk is a relevant circumstance.").  
20 Numerous affirmative defenses have been pleaded that, if successful, could bar any recovery.  
21 Moreover, there is the risk that no FLSA collective or Rule 23 class would be certified, the risk  
22 that an order certifying an FLSA collective or a Rule 23 class would be overturned on appeal, and  
23 the risk that a certified class would later be decertified, each of which is a significant risk in a  
24 class action and collective action case such as this. Finally, even if a judgment was obtained in  
25 favor of the class, the outcome of any appeals from such a judgment, were they to proceed, would  
26 be uncertain.

27 Third, Plaintiff's counsel has carried a financial burden in prosecuting the case on a  
28 contingency basis has been substantial. To date, Plaintiff's counsel have received no fees during  
the pendency of this action, which was filed on April 20, 2018, and they have also advanced all

1  
2 costs, despite the risk of no recovery. *See* Declaration of Steven G. Tidrick, Esq., filed herewith  
3 (“Tidrick Decl.”), ¶ 17.

4 The circumstances described above would support an upward adjustment from the Ninth  
5 Circuit’s benchmark of 25 percent. *See, e.g., Hopkins v. Stryker Sales Corp.*, 2013 U.S. Dist.  
6 LEXIS 16939, at \*8-9 (N.D. Cal. Feb. 6, 2013) (discussing other wage-and-hour cases in which  
7 courts awarded attorneys’ fees of 33 1/3% or more, explaining that conducting the case “on an  
8 entirely contingent fee basis against a well-represented [d]efendant” supported an upward fee  
9 adjustment, and awarding Class Counsel attorneys’ fee award of 30 percent of the common fund);  
10 *Thieriot v. Celtic Ins. Co.*, 2011 U.S. Dist. LEXIS 44852 (N.D. Cal. Apr. 21, 2011) (“It is  
11 common practice to award attorneys’ fees at a higher percentage than the 25% benchmark in  
12 cases that involve a relatively small — i.e., under \$10 million — settlement fund.”); *In re*  
13 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at\*69 (C.D. Cal. June 10, 2005) (“Here, the  
14 Court notes that Plaintiffs’ counsel proceeded entirely on contingency basis, while paying for all  
15 expenses incurred. There was no guarantee of any recovery, and thus, counsel was subjected to  
16 considerable risk of no compensation for time or no reimbursement for expenses.”); *Boyd v. Bank*  
17 *of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880, at \*28-29 (C.D. Cal. Nov. 18, 2014) (“Both of the  
18 firms representing the Class are small firms with fewer than fifteen attorneys. Firms of this size  
19 face even greater risks in litigating large class actions with no guarantee of payment. The Court  
20 finds that the considerable risk in this case due to the uncertain legal terrain, coupled with  
21 Counsel’s contingency fee arrangement, weigh in favor of an increase from the benchmark rate. .  
22 . . Decisions in analogous wage and hour suits have found awards of one third of the common  
23 fund appropriate.”) (citing cases and ordering attorneys’ fee award of one-third of the common  
24 fund).

25 Another factor favoring the requested attorneys’ fee award is that it equates to an amount  
26 that is significantly less than the lodestar, as discussed in more detail below. Thus, the requested  
27 fee award results in a “negative multiplier,” which supports a finding that the requested fee  
28 award, is reasonable and fair. *See, e.g., Pierce v. Rosetta Stone, Ltd.*, 2013 U.S. Dist. LEXIS  
138921, at \*18, 2013 WL 5402120, at \*6 (N.D. Cal. Sept. 26, 2013) (finding that “the requested



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2 fee award results in a so-called negative multiplier, which suggests that the percentage of the fund  
3 amount is reasonable and fair”); *Hopkins v. Stryker Sales Corp.*, 2013 U.S. Dist. LEXIS 16939, at  
4 \*9 (N.D. Cal. Feb. 6, 2013) (stating that in several cases in which courts awarded 33 and 1/3  
5 percent of the common fund, the requested fees were “significantly less than the lodestar,” citing  
6 cases).

7 **C. The Lodestar “Cross-check” Confirms that the Requested Attorneys’ Fees**  
8 **Are Reasonable**

9 When setting a fee award, courts can—and should—apply the alternative lodestar method  
10 to provide “perspective on the reasonableness of a given percentage award.” *Vizcaino*, 290 F.3d at  
11 1050. According to the Ninth Circuit, “[c]alculation of the lodestar, which measures the lawyers’  
12 investment of time in the litigation, provides a check on the reasonableness of the percentage  
13 award.” *Id.* “Lodestar calculations are determined by multiplying the number of hours reasonably  
14 expended during the litigation by a reasonable hourly rate.” *In re Heritage Bond Litig.*, 2005 U.S.  
15 Dist. LEXIS 13555, at \*19 (C.D. Cal. June 10, 2005) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d  
16 1011, 1029 (1998)). It is “common for a counsel’s lodestar figure to [then] be adjusted upward by  
17 some multiplier reflecting a variety of factors such as the effort expended by counsel, the  
18 complexity of the case, and the risks assumed by counsel.” *Id.* at \*71-72 (citing *In re Linerboard*  
19 *Antitrust Litig.*, 2004 U.S. Dist. LEXIS 10532, 2004 WL 1221350, at \*16 (E.D. Pa. June 2, 2004)  
20 (recognizing that from 2001 to 2003, the average multiplier approved in common fund cases was  
21 4.35, and during the 30 year period from 1973-2003, the average multiplier approved in common  
22 fund class actions was 3.89) (citing Stuart J. Logan, et al., *Attorney Fee Awards in Common Fund*  
23 *Class Actions*, 24 *Class Action Reports* 167 (2003)), disapproved on other grounds as stated in *In*  
24 *re ATM Fee Antitrust Litig.*, 686 F.3d 741, 755 n.7 (9th Cir. 2011)).

25 Here, based on detailed, contemporaneously-kept time records, Plaintiff’s counsel’s  
26 unadjusted lodestar (*i.e.*, with no multiplier) is \$32,601.50, computed as a function of the hours  
27 and rates described in the declaration of Steven G. Tidrick, Esq., filed herewith. Both the hourly  
28 rates and the associated hours are reasonable. As to the rates, “[t]he proper reference point in  
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determining an appropriate fee award is the rates charged by private attorneys in the same legal



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2 market as prevailing counsel.” *Rutti v. Lojack Corp.*, 2012 U.S. Dist. LEXIS 107677, at \*30  
3 (C.D. Cal. July 31, 2012) (quoting *Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir. 1996)). The rates  
4 charged by private attorneys in the same legal market, in turn, are the “prevailing market rate[s]  
5 in the relevant community” for lodestar purposes. *Davis v. City of San Francisco*, 976 F.2d 1536,  
6 1547 (9th Cir. Cal. 1992) (quoting *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991), cert.  
7 denied, 112 S.Ct. 640 (1991), and citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984), vacated in  
8 part on other grounds by 984 F.2d 345 (9th Cir. 1993)). When setting rates, courts should use the  
9 attorneys’ “current” rates, *i.e.*, their rates at the time of the fee application. *See In re HPL Techs.,*  
10 *Inc. Sec. Litig.*, 366 F. Supp. 2d 912, 919–20 (N.D. Cal. 2005) (explaining that the use of current  
11 rates “simplifies the calculation and accounts for the time value of money in that lead counsel  
12 ha[ve] not been paid contemporaneously”).

13 The requested hourly rates are within the range of rates that federal courts in California  
14 have recently approved in employment class actions. For example, in *Nitsch v. DreamWorks*  
15 *Animation SKG Inc.*, 2017 WL 2423161, at \*9 (N.D. Cal. June 5, 2017), the court found that  
16 hourly rates of up to \$1,200—far above Class Counsel’s requested hourly rates here—were “fair,  
17 reasonable, and market-based, particularly for the ‘relevant community’ in which counsel work.”  
18 Similarly, in *Koz v. Kellogg Co.*, 2013 U.S. Dist. LEXIS 129205 (C.D. Cal. Sept. 10, 2013), the  
19 court approved attorney hourly rates of up to \$950. *See id.* at \*23–24. *See also Pierce v. County*  
20 *of Orange*, 905 F. Supp. 2d 1017, 1036 & n.16 (C.D. Cal. 2012) (approving rates of up to \$850  
21 per hour).

22 Other courts have approved The Tidrick Law Firm’s hours and hourly rates, including  
23 the hourly rates requested here. *See Kinney v. National Express Transit Servs. Corp.*, 2018  
24 U.S. Dist. LEXIS 10808, at \*11 (E.D. Cal. January 23, 2018) (Nunley, J.) (finding Mr.  
25 Tidrick’s hours and hourly rate of \$825/hour to be reasonable, and likewise with respect to  
26 Mr. Young’s hours and hourly rate of \$740/hour, stating “The Court finds that Class  
27 Counsel’s hours and hourly rates are reasonable.”); *Jones v. San Diego Metropolitan Transit*  
28 *System*, 2017 WL 5992360, at \*5 (S.D. Cal. Nov. 30, 2017) (Crawford, J.) (finding Mr.  
Tidrick’s hours and hourly rate of \$825/hour to be reasonable, and likewise with respect to

1  
2 Mr. Young's hours and hourly rate of \$740/hour, stating "The Court finds that counsel's hours  
3 and hourly rates are reasonable.").

4 The attorneys' fees request here, \$17,500, is about 54% of the lodestar, which is  
5 \$32,601.50. Thus, the requested fee award results in a "negative multiplier," which supports a  
6 finding that the requested percentage of the fund is reasonable and fair. *See, e.g., Pierce v.*  
7 *Rosetta Stone, Ltd.*, 2013 U.S. Dist. LEXIS 138921, at \*18, 2013 WL 5402120, at \*6 (N.D. Cal.  
8 Sept. 26, 2013) ("the requested fee award results in a so-called negative multiplier, which  
9 suggests that the percentage of the fund amount is reasonable and fair").

10 The facts here would warrant a positive multiplier. Indeed, the circumstances described  
11 above that support an upward adjustment from the Ninth Circuit's benchmark of 25 percent  
12 would also support a positive multiplier. For example, in *Boyd v. Bank of Am. Corp.*, 2014 U.S.  
13 Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014), the court considered those same factors in  
14 approving a 30% award where the lodestar was significantly less than the amount requested, such  
15 that the court accepted a multiplier of 2.58. *See id.* at \*31 (finding that a multiplier of 2.58 is "not  
16 out of the range of fees awarded for class action settlements" and citing *Vizcaino v. Microsoft*  
17 *Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) for its "finding [that] multiples ranging from one  
18 to four are frequently applied in common fund cases").

19 Alternatively, in assessing reasonableness, courts often refer to the "*Laffey*" matrix, "[a]  
20 widely recognized compilation of attorney . . . rate data" for the District of Columbia, "so named  
21 because of the case that generated the index," *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354  
22 (D.D.C. 1983). *In re Chiron Corp. Sec. Litig.*, 2007 U.S. Dist. LEXIS 91140, at \*18-19, 2007  
23 WL 4249902, \*6 (N.D. Cal. Nov. 30, 2007). *See also Langer v. Dodaiton, Inc.*, 2015 U.S. Dist.  
24 LEXIS 64805, at \*36-39 & n.53 (C.D. Cal. May 18, 2015) (noting that the court "looks to the the  
25 *Laffey* Matrix as merely another factor bearing on reasonableness")

26 Of course, several years have passed since the *In re Chiron* decision, and, as noted above,  
27 when setting rates, courts should use attorneys' current rates. In addition, since the time that *In re*  
28 *Chiron* was decided, an "adjusted" *Laffey* matrix has been published "using a methodology  
10  
11 advocated by economist Dr. Michael Kavanaugh" that "has been used by the United States

1  
2 District Court for the District of Columbia to determine the amount of a reasonable fee.”  
3 *Bywaters v. United States*, 670 F.3d 1221, 1226 n.4 (Fed. Cir. 2012). As explained by the Federal  
4 Circuit, the adjusted *Laffey* matrix “more accurately reflects the prevailing rates for legal  
5 services.” *Id.* See also *Hash v. United States*, 2012 U.S. Dist. LEXIS 53098, at \*62, 2012 WL  
6 1252624, at \*22 (D. Idaho Apr. 13, 2012) (agreeing that the “adjusted” *Laffey* matrix “is the most  
7 accurate representation of rates for legal services . . . giv[ing] weight to the Federal Circuit’s  
8 recent statement implying acceptance of the use of the Updated *Laffey* Matrix”) (citing *Bywaters*,  
9 670 F.3d at 1226 n.4). A copy of the current, adjusted *Laffey* matrix is attached as Exhibit 1 to the  
10 Declaration of Steven G. Tidrick, Esq. filed herewith.

11 Furthermore, according to an article reporting on a survey of law firm billing rates  
12 published in the August 10, 2012 edition of the *San Francisco Daily Journal*, reasonable hourly  
13 rates for attorneys in the San Francisco Bay Area are significantly higher than the rates indicated  
14 by the *Laffey* Matrix. According to that survey, the 2012 average billing rate in the San Francisco  
15 market was \$675 for a partner, up from \$654 in 2011, and \$482/hour for an associate, up from  
16 \$449/hour in 2011. A true and correct copy of that article is attached as Exhibit 3 to the  
17 Declaration of Steven G. Tidrick, Esq. filed herewith.

18 The hourly rates set forth in the *San Francisco Daily Journal* reflect those charged where  
19 full payment is expected promptly upon the rendition of the billing and without consideration of  
20 factors other than hours and rates. If any substantial part of the payment were to be contingent or  
21 deferred for any substantial period of time, the fee arrangement would typically be adjusted so as  
22 to compensate the attorneys for those factors. Fee awards are almost always determined based on  
23 current rates, *i.e.*, the attorney’s rate at the time when a motion for fees is made, rather than the  
24 historical rate at the time the work was performed. This is a common and accepted practice that  
25 compensates attorneys for the delay in being paid.

26 In cases where compensation is contingent on success, attorneys generally expect to  
27 receive significantly higher effective hourly rates, particularly where, as in this case, the result is  
28 uncertain. As the case law recognizes, this does not result in any undue “bonus” or “windfall.” In  
the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client

1  
2 reasonably expects that his or her compensation will be significantly greater than if no risk was  
3 involved (for example, if the client paid the bill on a monthly basis), and that the greater the risk,  
4 the greater the “enhancement.” Adjusting court-awarded fees upward in contingent fees cases to  
5 reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor makes  
6 those fee awards consistent with the legal marketplace, and thus helps to ensure that meritorious  
7 cases will be prosecuted, important public policies will be enforced, and individuals with  
8 meritorious legal claims will be better able to obtain qualified attorneys.

9 For all these reasons, Class Counsel’s attorneys’ fee request of \$17,500—substantially  
10 lower than their lodestar—is therefore reasonable.

11 **D. Class Counsel’s Requested Expense Reimbursement Is Proper**

12 “The prevailing view is that expenses are awarded in addition to the fee percentage.”  
13 *Jefferson v. H&M Hennes & Mauritz, L.P.*, 2013 U.S. Dist. LEXIS 2875, at \*9 (C.D. Cal. Jan. 7,  
14 2013) (quoting 1 Alba Conte, *Attorney Fee Awards* § 2:08 at 50–51). To date, Plaintiff’s counsel  
15 have advanced all costs incurred in this case. As reflected in the declaration of Steven G. Tidrick,  
16 the total incurred litigation expenses are \$1,089.51, and do not include the modest, but real,  
17 expenses that will be incurred in the future. These costs are reasonable. *See* Tidrick Decl. ¶ 17 &  
18 Ex. 4. *See generally Odrick v. UnionBanCal Corp.*, 2012 WL 6019495, at \*6, 2012 U.S. Dist.  
19 LEXIS 171413, at \*17 (N.D. Cal. Dec. 3, 2012) (in a common-fund settlement, noting that class  
20 counsel were seeking reimbursement of “costs for a retained expert, mediation, travel, copying,  
21 mailing, legal research, and other litigation-related costs,” and concluding that “reimbursement of  
22 these costs and expenses in their entirety is justified”); *Knight v. Red Door Salons, Inc.*, 2009  
23 U.S. Dist. LEXIS 11149, at \*20 (N.D. Cal. Feb. 2, 2009) (in a common-fund settlement, stating  
24 that class counsel’s expenses “relate to online legal research, travel, postage and messenger  
25 services, phone and fax charges, court costs, and the costs of travel”; that “[a]ttorneys routinely  
26 bill clients for all of these expenses”; and that “it is therefore appropriate for counsel here to  
27 recover these costs from the [s]ettlement [f]und”). The request should therefore be approved in  
28 full.

1  
2 **E. The Requested Enhancement Payment Is Reasonable**

3 The court has discretion to award “enhancement,” “incentive,” or “service” awards to  
4 compensate plaintiffs for work done on behalf of the class and in consideration of the risk  
5 undertaken in prosecuting the action. *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th  
6 Cir. 2009). Courts often assess the reasonableness of the award by taking into consideration:  
7 “(1) the risk to the class representative in commencing a suit, both financial and otherwise; (2) the  
8 notoriety and personal difficulties encountered by the class representative; (3) the amount of time  
9 and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal  
10 benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” *Van*  
11 *Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (approving incentive  
12 award of fifty thousand dollars (\$50,000)). *See also Graham v. Overland Solutions, Inc.*, 2012  
13 U.S. Dist. LEXIS 130113, at \*22-23 (S.D. Cal. Sept. 12, 2012) (preliminarily approving  
14 settlement that requested service awards of \$25,000 each for class representatives). Some courts  
15 have held that an incentive award of five thousand dollars (\$5,000) is presumptively reasonable.  
16 *See, e.g., Pierce*, 2013 WL 5402120, at \*6 (citations omitted).

17 Enhancement awards serve a function more than just reimbursement for time; they are to  
18 overcome the fear of reprisal, real or perceived. *See, e.g., Rodriguez*, 563 F.3d at 958-59 (such  
19 awards “are intended to compensate class representatives for work done on behalf of [a] class, to  
20 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
21 recognize their willingness to act as a private attorney general”), vacated on other grounds, 688  
22 F.3d 645, 660 (9th Cir. 2012). Courts should consider “the risk to the class representative in  
23 commencing suit, both financial and otherwise,” as well as “the amount of time and effort spent  
24 by the class representative.” *Smith v. CRST Van Expedited, Inc.*, 2013 U.S. Dist. LEXIS 6049, at  
25 \*16, 2013 WL 163293 at \*6 (S.D. Cal. Jan. 14, 2013).

26 The enhancement payment requested for the Plaintiff, Victor Munoz, in the amount of  
27 \$5,000, is reasonable and warranted. The amount requested is justified by his service to the class.  
28 Mr. Munoz spent at least 20 hours of his personal time assisting in the prosecution of the lawsuit,

1  
2 including time spent reviewing documents and conferring with counsel throughout the litigation.  
3 See Tidrick Decl. ¶ 18.

4 The enhancement payment requested is also justified because, in addition to spending time  
5 on the case, Mr. Munoz also incurred personal risk, including risks undertaken for payment of  
6 costs and stigma in connection with future employment opportunities. See, e.g., *Graham v.*  
7 *Overland Solutions, Inc.*, 2012 U.S. Dist. LEXIS 130113, at \*22-23 (S.D. Cal. Sept. 12, 2012)  
8 (preliminarily approving settlement that requested service awards of \$25,000 each for class  
9 representatives in part because “risks undertaken for the payment of costs in the event this action  
10 had been unsuccessful” and “stigma upon future employment opportunities for having initiated an  
11 action against a former employer”); *Koehl v. Verio*, 142 Cal. App. 4th 1313, 1328 (2006) (in  
12 wage and hour action where defendant prevailed at trial, named plaintiffs were held liable, jointly  
13 and severally, for defendant's attorneys' fees).

14 In light of the foregoing, the requested enhancement payment is reasonable.

15 **V. CONCLUSION**

16 Plaintiff respectfully requests that the Court grant Plaintiff's motion.

17 DATED: November 15, 2019

Respectfully submitted,

18 THE TIDRICK LAW FIRM LLP

19 By: /s/ Steven G. Tidrick

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22 Plaintiff VICTOR MUNOZ