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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **IN THE COUNTY OF SAN FRANCISCO**

10 ADRIANA HAYTER, LARINE SHIELDS,
11 and TAYLOR EVANS; individually, and on
12 behalf of all other similarly situated person;
and DOES 1-100

13 Plaintiffs,

14 v.

15 EWALD & WASSERMAN RESEARCH
CONSULTANTS, LLC, a California limited
16 liability corporation; KATRINE EWALD, and
17 individual; LISA WASSERMAN, and
individual; and DOES 1-20,

18 Defendants.
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Case No. CGC-19-577753

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ATTORNEYS' FEES AND COST**

Date: November 10, 2021

Time: 9:15 a.m.

Dept: 304

Judge: Hon. Anne-Christine Massullo

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I. INTRODUCTION

This Motion seeks attorneys’ fees for the work performed by Plaintiffs’ counsel, Peretz & Associates and the Law Offices of Horowitz & Rubinoff (“Class Counsel”), in the amount of \$52,000 inclusive of litigation costs, which amounts to slightly less than 38% of the settlement fund established pursuant to the Settlement Agreement executed on or about July 19, 2021 (the “Settlement”).

During the two years of litigation, Class Counsel spent significant time and effort in working up the case and preparing it for class certification. Class Counsel reached out to each class member individually, ultimately interviewing several of the class members who worked for Defendant as a non-exempt Part-Time Telephone Interviewers. Class Counsel then engaged in several rounds of settlement negotiations to obtain the settlement that ultimately was reached by the parties. In the meantime, Class Counsel was preparing for class certification. Ultimately, the case resolved in a judicial settlement conference that was held before Hon. Honorable Mary E. Wiss of this Court.

The attorneys’ fee award to Class Counsel is therefore justified because of the extensive discovery work and motion practice involved in this case. As demonstrated by the time logs submitted by Class Counsel, Class Counsel incurred fees totaling \$106,645.00 for Peretz & Associates and \$67,350.00 for the Law Offices of Horowitz & Rubinoff, as well as costs totaling \$8,786.07. As such, a fee and cost award of \$52,000 is reasonable and justifiable, and thus this Motion should be granted.

II. PROCEDURAL BACKGROUND

This is a class case brought on behalf of a group of approximately 56 class employees for unpaid wages due from the Defendant, which is a California-based client-survey company.

This putative class action was filed on July 18, 2019. [Peretz Decl., ¶ 3.] Plaintiffs served extensive written discovery requests on Defendants shortly thereafter on August 15, 2019. [Peretz Decl., ¶ 4.] Plaintiffs filed the operative First Amended Complaint on September 16, 2019. [Peretz Decl., ¶ 5.] The parties then met and conferred and agreed to attend private mediation with John Hyland, Esq. of Rukin Hyland & Riggin LLP. [Peretz Decl., ¶ 7.] As part of the agreement to mediate, Defendants provided Plaintiffs with certain key payroll and timekeeping documents and further agreed to provide Plaintiffs with the putative class list. [Peretz Decl., ¶ 8.]

1 In order to provide Plaintiffs with the class list, including contact information for class
2 members, the parties stipulated to a form opt-out notice pursuant to *Belaire-West Landscape, Inc.*
3 *v. Superior Court* (2007) 149 Cal.App.4th 554 (“*Belaire-West*”). [Peretz Decl., ¶ 9.] This
4 stipulation was approved by the Court on December 30, 2019. [Peretz Decl., ¶ 10.] The *Belaire-*
5 *West* notices were mailed to putative class members on January 14, 2020 with an opt-out deadline
6 of February 4, 2020. [Peretz Decl., ¶ 11.] Ultimately, only three of the fifty-six (56) notices mailed
7 out were returned as undeliverable, and no members opted out of providing their contact
8 information to Plaintiff’s counsel. [Peretz Decl., ¶ 12.]

9 The parties then held a full-day session of mediation with Mr. Hyland on February 19,
10 2020. [Peretz Decl., ¶13.] However, the parties were unable to reach a settlement at that time.
11 [Peretz Decl., ¶ 14.] The parties continued to informally discuss settlement throughout the spring
12 and summer of 2020, while simultaneously exchanging further written discovery requests,
13 responses and production of documents. [Peretz Decl., ¶ 15.] In the meantime, Class Counsel
14 reached out to all class members, and interviewed several of them in preparation for class
15 certification. [Peretz Decl., ¶ 16.]

16 At a Case Management Conference on September 14, 2020, the Court ordered the parties
17 to attend a Mandatory Settlement Conference before the Honorable Mary E. Wiss. [Peretz Decl.,
18 ¶ 17.] The parties agreed to convert the conference into a judicial mediation, which took place
19 with Judge Wiss during a full-day session on November 6, 2020. [Peretz Decl., ¶ 18.] With the
20 help of Judge Wiss, the parties were able to reach a class action and PAGA settlement in this
21 matter, which was formalized into the Settlement Agreement, submitted to the Court for
22 preliminary approval. [Peretz Decl., ¶ 18.] As part of the settlement, the parties also agreed to
23 allow Plaintiffs’ counsel to file a Second Amended Complaint to allege a PAGA claim, and
24 provide notice to the California Labor and Workforce Development Agency (hereinafter
25 “LWDA”) pursuant to Cal. Lab. Code § 2699.3(a) (hereinafter the “PAGA Notice”). [Peretz
26 Decl., ¶ 20.]

27 On January 14, 2021, the parties filed a joint stipulation to file a Second Amended
28 Complaint that included the PAGA claims. [Peretz Decl., ¶ 21.] On February 1, 2021, the Court
ordered Defendants to file their responsive pleading to Plaintiff’s Second Amended Complaint,
and on February 23, 2021, the parties jointly stipulated to stay Defendants’ responsive pleading

1 deadline pending the Court’s ruling on final approval of the settlement between the Parties.
2 [Peretz Decl., ¶ 22.]

3 On June 16, 2021, the Court held a hearing on the Plaintiff’s unopposed motion for
4 Preliminary Approval of Class Action Settlement and Class Certification. [Peretz Decl., ¶ 23.]
5 Supplemental filings were submitted by both parties following the hearing. [Peretz Decl., ¶ 24.]
6 On July 19, 2021, the Court entered an order granting preliminary approval of the class action
7 settlement. [Peretz Decl., ¶ 25.]

8 **III. SUMMARY OF THE CASE**

9 **A. The Work Done by Plaintiffs’ Counsel is Unique and Thorough**

10 Over the course of two years, Class Counsel has conducted a thorough investigation of
11 both the facts and legal issues raised by this action, and through that investigation they unearthed
12 facts allowing employees to vindicate their rights by joining in the Settlement. Class Counsel
13 undertook the painstaking task of contacting, interviewing, and taking declarations of all class
14 members involved in this case. [Peretz Decl., ¶ 26.] Additionally, twice Class Counsel conducted
15 discovery on the assets of the Defendant, and attended mediation. [Peretz Decl., ¶ 27.]

16 **i. Gathering Information from Class Members**

17 Class Counsel went to great lengths to obtain class member testimony, including calling
18 class members, conducting teleconference interviews, and taking declarations. [Peretz Decl., ¶
19 28.] In total, class counsel expended dozens or hours interviewing class members, and drafting,
20 reviewing and revising declarations. [Peretz Decl., ¶ 29] During this process, Class Counsel made
21 contact with over 10 putative class members. [Peretz Decl., ¶ 30.]

22 Once Plaintiffs’ Counsel obtained the putative class list, counsel engaged in extensive
23 outreach and communications with class members both to gather supplemental evidence and
24 confirm the experience of Named Plaintiffs. [Peretz Decl., ¶ 31.] On March 6, 2020, Plaintiffs’
25 Counsel sent a letter to each and every class member providing information about this proposed
26 class action lawsuit, the basis for Plaintiffs’ claims, and inviting the Class Members to contact
27 Plaintiffs’ Counsel. [Peretz Decl., ¶ 32.] Many class members subsequently called or wrote to
28 Plaintiffs’ counsel to express their interest in learning more about the lawsuit and sharing their
experience at E&W. [Peretz Decl., ¶ 33.] Plaintiffs’ counsel had many conversations with class
members which corroborated the allegations and claims brought by Named Plaintiffs. [Peretz
Decl., ¶ 34.]

1 **B. Settlement Terms**

2 This case was settled through the mutual efforts of Class Counsel and Defendant’s
3 counsel. [A copy of the Settlement Agreement is attached to Peretz Decl., ¶ 35 as **Exhibit 1.**] The
4 terms of the Settlement are summarized below. [Peretz Decl., ¶ 35.]

5 **i. The Class and Individual Plaintiffs**

6 The “Class” “Class Members,” “Settlement Class,” or “Settlement Class Members,” are
7 defined as “all persons employed by any of the Defendants or Released Parties in a Class Position,
8 at any time during the Class Period.”

9 The “Class Period” is defined as “the time period from August 1, 2015 through the date
10 of the Court’s entry of judgment granting Preliminary Approval of the Settlement.”

11 The “Class Position” is defined as “all persons who worked for Defendants as a non-
12 exempt Part-Time Telephone Interviewer, or other similar positions, classified as an hourly, non-
13 exempt employee by the State of California during the Class Period.”

14 “Eligible Class Member” includes all members of the Class who do not opt-out from this
15 settlement.

16 **ii. Settlement Amount and Distribution**

17 Defendants will pay One Hundred Forty-Four Thousand Dollars and Zero Cents
18 (\$144,000.00) to settle this case (hereinafter the “Gross Settlement Amount”). This Gross
19 Settlement Amount includes payments to the members of the Class, attorneys’ fees, the LWDA
20 for PAGA penalties, reasonable litigation expenses, service fees to each class representative, and
21 costs of administration.

22 The Eligible Class Member Share shall encompass the Net Settlement Amount that will
23 be allocated to each Eligible Class Member as follows: first, dividing the Net Settlement Amount
24 by the total number of Eligible Work Weeks to arrive at the Eligible Work Week Rate, and then
25 second, by multiplying the resulting Eligible Work Week Rate by the total number of Eligible
26 Work Weeks for each respective Eligible Class Member. Payment of Eligible Class Member
27 Shares shall be subject to legally required withholdings, deductions, and contributions. Any
28 unclaimed funds from the Net Settlement Amount will be sent by the Class Administrator to the
 State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the
 Eligible Class Member who did not cash his or her check. The unclaimed funds shall not revert
 back to the Defendants. This amount of Eligible Class Member Shares is in addition to the Court-

1 approved Named Plaintiffs Enhancements.

2 **IV. REQUEST FOR ATTORNEYS' FEES AND COSTS**

3 Plaintiffs' Counsel seeks a fee award of no more than thirty-eight percent (38%) of the
4 Gross Settlement Amount in Class Counsel's Fees, in addition to the actual costs and expenses
5 incurred by Class Counsel related to this Action, with total fees, costs and expenses not to exceed
6 fifty-two thousand dollars (\$52,000). This total amount is inclusive of attorneys' fees and
7 estimated litigation costs. Class Counsel Fees and Costs shall be paid to Class Counsel from the
8 Qualified Settlement Fund by the Class Administrator.

9 The time logs for Peretz & Associates total over 187 hours of attorney work, and a total
10 fee amount of \$106,645.00. [A copy of the time logs for Peretz & Associates is attached to Peretz
11 Decl., ¶ 36 as **Exhibit 2.**] The invoice from the Law Offices of Horowitz & Rubinoff total \$67,350
12 based on over 89 hours worked on this case. [A copy of the time logs for the Law Offices of
13 Horowitz & Rubinoff is attached to Peretz Decl. , ¶ 37 as **Exhibit 3.**] The total litigation costs in
14 this case were no less than \$8,786.07. [A copy of the cost invoices for Peretz & Associates is
15 attached to Peretz Decl., ¶ 38 as **Exhibit 4.**] As such, the total fees and cost for Class Counsel
16 based on the loadstar method amounts to no less than \$115,432.07.

17 **V. THE SETTLEMENT ALLOCATION FOR ATTORNEYS' FEES**

18 **A. The Settlement is Reasonable in Light of the Litigation Risks and Favors**
19 **Approval**

20 The proposed Settlement provides a reasonable amount of recovery as to each of the
21 classes and the individual Plaintiffs. On average, Class Members will receive approximately
22 \$1,300, which will vary by length of employment, while also avoiding the risks, time, and expense
23 of litigation in this case. [Peretz Decl., ¶ 39.] The Class consists of approximately 56 Class
24 employees. [Peretz Decl., ¶ 40] All of these employees are wage earning employees who will
25 receive upfront cash payments. This is significant for employees who work low wage positions.

26 While the proposed Settlement may be less than the amount that the Class could
27 potentially recover at trial, it is unlikely that Plaintiffs would have received the full amount to
28 which they believe they are entitled. First, full recovery could not have been achieved unless a
jury were to award the Class Members an amount in excess of the allegedly stolen wages from
Defendants, the amount of which remains in dispute. Second, full recovery could not have been
achieved unless the jury were to award all available penalties including multiple penalties for

1 each legal claim asserted in the litigation. However, whether to award penalties, and the quantum
2 of such penalties, is within the discretion of the court. *See, e.g., Thurman v. Bayshore Transit*
3 *Mgmt.* (2012) 203 Cal. App. 4th 1112, 1135 (affirming trial court's reduction of civil penalties
4 by thirty percent).

5 Moreover, since the COVID-19 pandemic has hit Defendants' business, coupled with the
6 amount spent litigating this action, Defendants have lost a substantial amount of income both as
7 a natural result of the pandemic as well as mounting attorneys' fees. Settling this action at this
8 time would allow the Class to recoup a significant amount of the allegedly unpaid wages from
9 Defendants while also ensuring that Defendants still have some assets left through which to settle
10 this action.

11 Absent Settlement, Plaintiffs' counsel would still have had to litigate various issues
12 regarding the scope of class discovery, the scope of the class for purposes of certification, liability,
13 not to mention the quantum of damages as well as the applicability and appropriate amount of
14 penalties. Such litigation would have been extremely costly and time consuming and would likely
15 take many months, if not years, to resolve. By contrast, this settlement has ensured timely and
16 substantial relief to all Class Members.

17 **B. The Attorneys' Fee Award Request is Reasonable and Fair**

18 An attorneys' fees award is justified where the legal action has produced its benefits by
19 way of a voluntary settlement. *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, 1290-91; *Westside Cmty.*
20 *for Indep. Living, Inc. v. Obledo* (1983) 33 Cal. 3d 348, 352-53.

21 There are two different methods for calculating attorneys' fees — the Lodestar/Multiplier
22 Method and the Common Fund. *Zucker v. Occidental Petroleum Corp.* (C.D. Cal. 1997) 968
23 F.Supp. 1396, 1400. Plaintiffs submit that an award of *no more than* \$52,000 in attorneys' fees
24 — which is equivalent to less than thirty-eight percent (38%) of the Gross Settlement Amount —
25 is justified by both the results in this case, and the time expended by Plaintiffs' Counsel in
26 obtaining this result.

27 Here, Plaintiffs' Counsel seek an award of attorneys' fees and costs under the common
28 fund doctrine, which has been approved by the California Courts and is customarily used in
assessing settlements in wage and hour class actions. *Wershba v. Apple Computer, Inc.* (2001) 91
Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26-30 (2000).
California courts have repeatedly permitted the recovery of attorneys' fees awards based upon the

1 value of the settlement achieved. *Id.* In the instant case, Plaintiffs' Counsel seeks to have the
2 Court approve attorneys' fees in the amount of approximately 38% of the Gross Settlement
3 Amount. Not only does this sum fairly reflect the value of the work done by Plaintiffs' Counsel
4 in this case, it is reasonable in light of the fact that California courts have customarily approved
5 payments of attorneys' fees amounting to approximately one-third of the common fund, and have
6 frequently granted fees as high as 40% of the common fund in comparable wage and hour class
7 actions. *Big Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, Feb. 4,
8 2004) (33% fee recovery); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct.,
9 No. 99AS01716, Dec. 26, 2000) (33.3% of \$6,000,000 settlement); *Crandall v. U-Haul* (LASC,
10 Case No. BC178775) (40% attorneys' fees in an overtime exemption class action); *Bushnell v.*
11 *Cremer, Inc.* (OCSC Case No. 657778) (attorneys' fees in the amount of 38%); *Elliott v.*
12 *Clothestime* (OCSC Case No. 01-CC00333) (40% fee in a wage and hour settled prior to class
13 certification).

14 The work done by Plaintiffs' Counsel in this case is thorough. Plaintiffs' Counsel was
15 required to advance numerous theories and research various angles in order to apply causes of
16 action under numerous Labor Code statutes as well as doing numerous hours of outside research
17 to figure out the extent of Defendants' alleged unpaid wages, given that the alleged unpaid wages
18 were not consistent and taken sporadically off of the Class Members' paychecks.

19 It is common in any contingency arrangement for tort recovery to seek for 40% and even
20 45% of the total recovery at this stage of the litigation. This case should be of no exception and
21 thus the award of attorneys' fees is reasonable for that reason.

22 In the instant case, calculating attorneys' fees on the basis of a percentage of the total
23 settlement yields *no more than* \$52,000 in fees. Plaintiffs' Counsel submits that given the result
24 obtained by counsel, this Court should approve an award of attorneys' fees equivalent to less than
25 38% of the total settlement amount, inclusive of costs.

26 **i. The Common Fund Method of Calculating Fees**

27 The recovery of attorneys' fees in "common fund" cases was addressed by the United
28 States Supreme Court in *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472. In *Boeing*, the court
held that in common fund cases, reasonable attorneys' fees can be calculated as a percentage of
the *entire judgment fund*. *Id.*, at 479. Furthermore, the court held that the fee may be based upon
the entire fund created for the class, even if some class members make no claim against the fund

1 and money that remains in the fund is returned to the defendant. *Id.* at 480-81. This approach has
2 been adopted by California state courts and the Ninth Circuit. *Serrano v. Priest* (1977) 20 Cal.3d
3 25, 34 (*Serrano III*); *Stanton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 967; *Williams v. MGM-*
4 *Pathe Communications* (9th Cir. 1997) 129 F.3d 1026, 1027.

5 California courts have repeatedly approved attorneys' fees awards based upon the value
6 of the settlement achieved. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254;
7 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26-30. In the instant case, Class
8 Counsel seeks to have the Court approve attorneys' fees in the amount of 38% of the total
9 settlement fund. Not only does this sum fairly reflect the value of the work done by counsel in
10 this case, it is reasonable in light of the fact that California courts have customarily approved
11 payments of attorneys' fees amounting to approximately one-third of the common fund, and have
12 sometimes granted fees as high as 40% of the common fund, in comparable wage and hour class
13 actions. *Crandall v. U-Haul* (LASC, Case No. BC178775) (40% attorneys' fees in an overtime
14 exemption class action); *Bushnell v. Cremar, Inc.* (OCSC Case No. 657778) (attorneys' fees in
15 the amount of 38%); *Big Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding
16 No. 4283, Feb. 4, 2004) (33% fee recovery); *Bullock v. Automobile Club of Southern California*
17 (C.D. Cal., No. SACV01-731GLT, Dec. 6, 2004) (30% of \$14,018,000 fund); *Davis v. The Money*
18 *Store, Inc.* (Sacramento Super. Ct., No. 99AS01716, Dec. 26, 2000) (33.3% of \$6,000,000
19 settlement); *Elliott v. Clothestime* (OCSC Case No. 01-CC00333) (40% fee in a wage and hour
20 settled prior to class certification); and most recently in *Devera v. Employee Equity*
21 *Administration, et al.*, Superior Court of California, County of Alameda, Case No. RG-11559690
22 (40% fee in a wage and hour case settled soon after class certification). [A copy of the order in
23 *Devera* is attached to Peretz Decl., ¶ 42 as **Exhibit 5.**]

24 Moreover, California Courts have awarded this Counsel fees aligned with the immediate
25 request. On September 29, 2017 in *Silver-Sky, et al. v. SRAC Holdings I, Inc., et al.*, Contra Costa
26 Superior Court, Case No. C12-00112, Hon. Judge Judith S. Craddick accepted a final approval of
27 a proposed class action settlement, dated September 21, 2017, wherein the Arbitrator ordered and
28 approved that the Firm's rates of \$575 per hour for principal attorney Yosef Peretz and \$425 per
hour for other associates were all reasonable rates. [A copy of the order in *Silver-Sky* is attached
to Peretz Decl., ¶ 43 as **Exhibit 5.**]

1 On August 16, 2018 in *Acar v. Crane, et al.*, San Francisco Superior Court, Case No.
2 CGC-15-545608, the Court approved rates of \$575 per hour for Mr. Peretz and between \$250-
3 \$425 per hour for associates depending on their seniority. [A copy of the order in *Acar* is attached
4 to Peretz Decl., ¶ 44 as **Exhibit 5**.]

5 On October 17, 2018, in a JAMS arbitration for an employee misclassification matter,
6 Judge James L. Warren (Ret.) granted Plaintiffs' firm motion for fees and approved a rate of \$650
7 for Mr. Peretz and \$425 for a second-year associate at the firm who worked on the case. [A copy
8 of the order in matter is attached to Peretz Decl., ¶ 45 as **Exhibit 5**.]

9 Finally, On April 9, 2019, in *Yashchuk v. City Dental, et al.*, Alameda Superior Court,
10 Case No. RG-16-825152, the Court granted the firm's motion for fees and approved a rate of
11 \$675 per hour Mr. Peretz and between \$475 and \$575 for associates depending on experience. In
12 the order granting the motion, the Court determined that "the hourly rates of Plaintiff's
13 attorneys...are consistent with 'the prevailing market rate for comparable legal services where
14 counsel is located'" and that the fees were "fair and reasonably for the services rendered." The
15 Court also noted it "does not find Plaintiff's counsel's billing to be excessive, vague, or otherwise
16 improper." [A copy of the order in *Yashchuk* is attached to Peretz Decl., ¶ 46 as **Exhibit 5**.]

17 **ii. Lodestar Calculation of Fees**

18 The second method of calculating attorneys' fees is the lodestar method. As the California
19 Supreme Court explained in *Serrano III, supra*, 20 Cal.3d at 49:

20 the lodestar is the basic fee for comparable legal services in the community;
21 it may be adjusted by the court based on factors including, as relevant
22 herein, (1) the novelty and difficulty of the questions involved, (2) the skill
23 displayed in presenting them, (3) the extent to which the nature of the
24 litigation precluded other employment by the attorneys, (4) the contingent
25 nature of the fee award.

26 Absent unusual circumstances, Class Counsel is entitled to compensation for all hours that
27 were reasonably spent litigating the case. *See, e.g., Ketchum v. Moses* (2001) 24 Cal.4th 1122,
28 1133. Furthermore, time records of counsel constitute *prima facie* evidence of reasonableness.
See, e.g., Hadley v. Krepel (1985) 167 Cal. App. 3d 677, 682.

Based upon thorough, contemporaneous time records maintained by Class Counsel, a total
of 172.6 hours were expended by Class Counsel on this case thus far, as follows:

- Yosef Peretz: 62.5 Hours;

- 1 • Shane Howarter: 127.2 Hours;
- 2 • Martin M. Horowitz: 88.5 Hours;
- 3 • Stephanie Rubinoff: 1.3 Hours; and
- 4 • Paralegals and law clerks performed 11 hours of work on this case.

5 Class Counsel is entitled to compensation at hourly rates that reflect the reasonable market
6 value of their services in the community. *Serano v. Unruh* (1982) 32 Cal.3d 621, 643 n.31 (*Serano*
7 *IV*). Reasonable rates are those charged by private attorneys of comparable skill, reputation, and
8 experience for similar litigation, as measured by the prevailing rates charged by corporate counsel
9 of equal caliber. *Davis v. City & County of San Francisco*, 976 F.2d 1536, 1547 (9th Cir. 1992),
10 *affirming* 748 F.Supp. 1416, 1431 (N.D. Cal. 1990); *Bihun v. AT&T Information Systems* (1993)
11 13 Cal. App.4th 976, 997.

12 Class Counsel has substantial experience in litigating on behalf of plaintiffs in
13 employment cases, in particular, as well as in wage and hour cases, in general. Mr. Peretz
14 practiced in Israel before being admitted to the California Bar in 2000. Mr. Peretz has practiced
15 in plaintiffs' employment law for the last 17 years and represented employees in various class
16 actions as well as individual actions. His billing rate is \$750 per hour which is reasonable for his
17 level of skills and experience. [Peretz Decl., ¶ 47.]

18 Mr. Howarter attended University of California, Los Angeles School of Law and was
19 admitted to the California bar in 2016. Mr. Howarter has practiced employment law for nearly
20 four years and has represented plaintiffs in a wide variety of employment-related cases. Mr.
21 Howarter's billing rate of \$475 is reasonable for his level of skills and experience. [Peretz Decl.,
22 ¶ 48.]

23 Mr. Horowitz graduated in 1977 from the University of San Francisco Law School. Cum
24 laude, and was a member of the McAuliffe Honor Society and a recipient of the American
25 Jurisprudence Award for Constitutional Law, Labor Law, and Criminal Law. Mr. Horowitz has
26 practiced law since February 1978, and has represented plaintiff employees in the litigation of
27 civil rights, wrongful discharge, discrimination, wage and hour, and other employment cases. His
28 billing rate of \$750 per hour is reasonable for his level of skills and experience. [Peretz Decl., ¶
49.]

1 Ms. Rubinoff became a member of the California Bar in 1981 and was initially employed
2 in a general practice firm. Ms. Rubinoff has been associated in the practice of law with Mr.
3 Horowitz since January of 1987 and has been a partner in Horowitz & Rubinoff since 1992. Ms.
4 Rubinoff has represented plaintiff employees in the litigation of civil rights, wrongful discharge,
5 discrimination, wage and hour, and other employment case. Her billing rate of \$750 per hour is
6 reasonable for his level of skills and experience. [Peretz Decl., ¶ 50.]

7 The total hours expended of 276.9 hours amounts to \$165,825.00 lodestar attorneys' fees.

8 **iii. Plaintiffs' Counsel's Rates are Reasonable**

9 Plaintiffs' lead counsel's rate is \$750 and other associates' rates range from \$250-\$475,
10 depending on their seniority. In determining the reasonableness of Plaintiffs' counsel's rates, the
11 Court must compare them to the market value. The market value of legal services rendered is
12 determined by the rates charged in the relevant community by attorneys of comparable
13 knowledge, skill, experience, and reputation. *See generally, Serrano v. Unruh* (1982) 32 Cal.3d
14 621, 640 fn. 31; *Ketchum, supra*, 24 Cal.4th at p. 1133; *PLCM Group, Inc., supra* 22 Cal.4th at
15 p. 1095-96. The determination of reasonableness is left to the sound discretion of the trial court.
16 *Serrano, supra*, 20 Cal.3d at p. 49.

17 One method of determining a reasonable hourly fee, recently approved by the California
18 Court of Appeal, is to use the Laffey Matrix, adjusted for the cost of living in the San Francisco
19 Bay Area. *See Nemecek & Cole v. Horn*, (2012) 208 Cal.App.4th 641, 650-652. Under the Laffey
20 Matrix, for the year 2021, an attorney who is out of law school for 11-19 years is \$764/hour and
21 an attorney that is out of school for more than 20 years is \$919/hour. [A copy of the Laffey Matrix
22 is attached to Peretz Decl. at ¶ 51, **Exhibit 6.**]

23 Thus, the rates sought for Mr. Peretz, who has been admitted to the California Bar since
24 2000 (and in Israel in 1997), Mr. Horowitz, who has been admitted to the California Bar since
25 1978, and Ms. Rubinoff, who has been admitted to the California Bar since 1981. As such, a
26 comparison of the rates of other counsel with the rates under the Laffey Matrix demonstrate that
27 Class Counsel were actually quite conservative in setting forth their hourly rates for purposes of
28 this Motion.

Furthermore, beyond the Laffey Matrix, the courts must "evaluate the reasonable hourly
rate for each attorney and other billing professional", that a reasonable rate should be determined
by "looking at the reasonable market value of the services rendered" and "whether the requested

1 rate is within the range of reasonable rates charged by comparable attorneys performing
2 comparable work.” *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579; *Children’s*
3 *Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 783.

4 Class Counsel’s hourly rates are well within the reasonable market rate for the San
5 Francisco Bay area. For example, in *Devera v. Employee Equity Administration, et al.*, Superior
6 Court of California, County of Alameda, Case No. RG-11559690, Mr. Peretz’s 2015 request for
7 fees at a rate of \$500, with associates ranging from \$300-\$400 was granted. In 2018 in a JAMS
8 arbitration for an employee misclassification matter, Judge James L. Warren (Ret.) granted
9 Plaintiffs’ firm motion for fees and approved a rate of \$650 for Mr. Peretz and \$425 for a second-
10 year associate at the firm who worked on the case. Finally, In 2019, in *Yashchuk v. City Dental,*
11 *et al.*, Alameda Superior Court, Case No. RG-16-825152, the Court granted the firm’s motion for
12 fees and approved a rate of \$675 per hour Mr. Peretz and between \$475 and \$575 for associates
13 depending on experience.

14 **iv. Hours Expended by Class Counsels were Reasonable**

15 Hours are reasonable if “at the time rendered, [they] would have been undertaken by a
16 reasonable and prudent lawyer to advance or protect his client’s interest . . .” *Moore v. Jas. H.*
17 *Matthews & Co.* (9th Cir. 1982) 682 F. 2d 830, 839; *see also Ramon v. County of Santa Clara*
18 (2009) 173 Cal. App. 4th 915, 925. As courts have recognized, civil rights lawyers working with
19 little to no payment from their clients have little to gain from “churning” a case. *Moreno v. City*
20 *of Sacramento* (9th Cir. 2008) 534 F. 3d 1106, 1112 (“It must be kept in mind that lawyers are
21 not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees.
22 The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be
23 the highly atypical civil rights case where plaintiff’s lawyer engages in churning.”)

24 Accordingly, Class Counsel should be fully compensated for taking the steps that they
25 reasonably believed were necessary to win the case: “[b]y and large, the court should defer to the
26 winning lawyer’s professional judgment as to how much time he was required to spend on the
27 case; after all, he won and might not have, had he been more of a slacker.” *Id.*

28 When determining whether counsels’ hours are reasonable, the Court examines “the *entire*
course of litigation, including pretrial matters, settlement negotiations, discovery, litigation
tactics, and the trial itself . . .” *Vo. V. Las Virgenes Municipal Utility Dist.* (2000) 79 Cal. App.
4th 440, 447 (emphasis added); *see also Peak-Las Positas Partners v. Bollag* (2009) 171 Cal.

1 App. 4th 101, 114 (fees reasonable due to complexity of issues, results obtained, and defendants’
2 aggressive litigation). Here, the pre-certification stage of this case alone far exceeded the work
3 that an ordinary case would require, including complex motion practice, extensive document
4 review, and expensive expert work. As such, the litigation of this case was not a simple one, and
5 required large amount of time and effort by Class Counsel whose firms expended more than
\$122,000 in time and expenses in the last two years. [Peretz Decl. at ¶ 52.]

6 **v. Class Counsel are Entitled to a Multiplier**

7 If this is not enough, given the success of the litigation and the hard work expanded by
8 Class Counsel, if this case were to go to trial, Class Counsel would be entitled to a multiplier due
9 to the high level of risk they assumed taking on this case. Traditionally, after determining the
10 lodestar amount, a court may adjust the figure based on “whether the total award so calculated
11 under all the circumstances of the case is more than a reasonable amount...” *Ketchum, supra*, 24
12 Cal. 4th at 1138. The court then should consider the difficulty of the litigation, the amount
13 involved, the skill required to handle the case, the attention given, the success or failure and other
14 circumstances of the case. *Id.* A trial court has discretion to include a fee enhancement to the basic
15 lodestar for contingent risk, exceptional skill or other factors. *Id.* When determining if the basic
16 lodestar should be enhanced, the trial court “should consider whether, and to what extent,
17 the attorney and client have been able to mitigate the risk of nonpayment.” *Id.* The trial court
18 “should also consider the degree to which the relevant market compensates for contingency risk,
19 extraordinary skill, or other factors under *Serrano*.” *Id.* Such a multiplier is commensurate with
20 those regularly awarded under California law. *See, e.g. Chavez v. Netflix, Inc.* (2008) 162
21 Cal.App.4th 43, 66 (affirming multiplier of 2.5); *Coalition for Los Angeles County Planning in
the Pub. Interest v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (affirming multiplier of
more than 2.0).

22 Given the inherent risk of the contingent nature of the present case, the difficulty of the
23 issues and the exceptional results achieved by Class Counsel, an enhancement multiplier would
24 be warranted if this case were in court.

25 **C. Cross-Checking Percentage and Lodestar Calculation of Fees**

26 As courts have indicated, the final method for evaluating counsel’s request for attorneys’
27 fees is to cross-check the lodestar calculation against the percentage calculation. *Young v. Polo
Retail* (N.D. Cal. March 28, 2007) 2007 U.S. LEXIS 272269 at * 6; *Manual for Complex*

1 *Litigation (Fourth), § 14.122 (FJC 2004)* (“The lodestar is at least useful as a cross-check on the
2 percentage method. . .”).


3 In the instant case, calculating attorneys’ fees on the basis of a percentage of the total
4 settlement yields \$52,000, inclusive of cost, which is significantly less than the lodestar fees of
5 \$106,645.00 *without a multiplier*. Class Counsel submits that given the favorable result obtained
6 by counsel, and in light of the fact that the percentage of fees sought is actually less than the
7 lodestar, this Court should approve an award of attorneys’ fees equivalent to 38% of the total
8 settlement amount, inclusive of costs.

8 **V. CONCLUSION**

9 For the foregoing reasons, Class Counsel request that the Court grant this motion grant
10 attorneys’ fees and costs to Class Counsel and award them \$52,000 in fees and costs. The Court
11 should also approve the billing rates of Class Counsel as reasonable as stated above.

12 Dated: September 2, 2021

PERETZ & ASSOCIATES

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15 By:  _____
16 Yosef Peretz
17 Shane Howater
18 Attorneys for Plaintiffs
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