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9 *Settlement Class Counsel*

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 BARBARA GRADY, individually and
14 on behalf of all others similarly
15 situated,

16 Plaintiffs,

17 vs.

18 RCM TECHNOLOGIES, INC.,

19 Defendant.

Case No.: 5:22-cv-00842 JLS-SHK

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
REASONABLE ATTORNEYS’ FEES
AND COSTS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: February 21, 2025

Time: 10:30 a.m.

Location:

Courtroom 8A, 8th Floor
First Street U.S. Courthouse
350 West 1st Street,
Los Angeles, CA 90012

Complaint Filed: February 7, 2022

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL CLASS MEMBERS, PARTIES AND THEIR ATTORNEYS OF
3 RECORD:

4 Please take notice that on **February 21, 2025, at 10:30 a.m.**, or as soon
5 thereafter as the matter may be heard, in the Courtroom of the Honorable Josephine
6 L. Staton, Courtroom 8A, 8th Floor, United States District Court, Central District
7 of California, First Street U.S. Courthouse, 350 West 1st Street, Los Angeles, CA
8 90012, Plaintiff Barbara Grady (“Plaintiff”), will hereby move this Court for an
9 Order awarding reasonable attorneys’ fees and costs to be paid out of the non-
10 reversionary, common settlement fund in this matter.

11 Plaintiff requests approval of attorneys’ fees in the amount of \$414,602, which
12 is twenty-five percent (25%) of the total settlement amount of \$1,658,410. This is
13 the Ninth Circuit benchmark for attorneys’ fees in common fund settlements. It is
14 also justified by Class Counsel’s lodestar. Indeed, from inception of the case
15 through December 19, 2024, Class Counsel’s offices have worked approximately
16 920 hours on this matter and have incurred attorneys’ fees of approximately
17 \$689,312. This equates to a “negative multiplier” of approximately 0.6, not
18 including work Counsel will continue to perform through final approval and all
19 settlement implementation. Similarly, Plaintiff’s request for \$47,768.17 in
20 reimbursement for out-of-pocket costs incurred during the case is reasonable and
21 well documented, as shown further herein.

22 The Motion is made following the conference of counsel pursuant to L.R. 7-3.

23 This Motion is based on the accompanying Memorandum of Points and
24 Authorities; the Declaration of Joshua G. Konecky in support of the Motion,
25 including the Joint Stipulation of Class Action and PAGA Settlement and Release
26 (**Exhibit A**); a spreadsheet in Microsoft Excel format showing Class Counsel’s billed
27 tasks in accordance the Court’s procedures (**Exhibit B**), a spreadsheet in Microsoft

1 Excel format showing Class Counsel’s ledger of out-of-pocket costs (**Exhibit C**), and
2 other exhibits documenting Counsel’s qualifications and the reasonableness of their
3 rates for purposes of the lodestar-cross check (**Exhibits D-Y**); such oral argument as
4 may be heard by the Court; and all other papers on file in this action.

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Dated: December 26, 2024

Respectfully Submitted,

**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

/s/ Joshua G. Konecky

Joshua G. Konecky
Attorney for Plaintiffs

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10 *Manual for Complex Litigation* § 14:69

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff, Barbara Ann Grady, respectfully submits this application for an award
4 of reasonable attorneys' fees and costs to compensate Class Counsel for the work
5 undertaken on a completely contingent basis to achieve the beneficial Class Action
6 and PAGA Settlement in this matter.

7 The proposed Class Action and PAGA Settlement Agreement, which the Court
8 preliminarily approved on November 13, 2024 (Dkt. 48), establishes a non-
9 reversionary common fund of \$1,658,410. This will provide secure and meaningful
10 relief to approximately 1,097 hourly-paid nurses who Defendant assigned to work at
11 Covid-19 testing and vaccination sites in California between March 1, 2020 and
12 March 7, 2023. The estimated average recovery per Class Member is \$899.31 plus
13 an average PAGA payment of approximately \$39.15 for the PAGA Members. As
14 discussed in the Court's Order Conditionally Granting Preliminary Approval, the
15 recoveries are a meaningful amount on an individual basis and a reasonable
16 percentage of the realistic trial recovery overall. *See* ECF No. 46 at 22.

17 In light of the beneficial settlement results and the significant work performed
18 to achieve them, Plaintiff now requests attorneys' fees in the accordance with the
19 Ninth Circuit benchmark for the award of reasonable attorneys' fees in similar class
20 action cases: twenty five percent (25%) the total settlement amount to be paid out of
21 the settlement fund. Plaintiff also seeks reimbursement of Class Counsel's
22 documented out-of-pocket costs in the amount of \$47,768.17, to be paid out of the
23 settlement fund.

24 Class Counsel worked diligently and in the face of several uncertainties over a
25 three-and-one-half year period to achieve the meaningful settlement results here.
26 They conducted investigations, interviewed Class Members, drafted pleadings,
27 conducted written discovery, took depositions, reviewed documents, conferred on
28 multiple occasions with opposing counsel, performed legal research, conducted

1 damages analyses, drafted several legal briefs (including points and authorities in
2 support of a motion for summary judgment), and engaged in arms-length, substantive
3 negotiations across two mediation sessions.

4 As of December 19, 2024, Class Counsel has invested approximately 920 hours
5 and incurred \$47,768.17 in out-of-pocket costs to litigate the case and achieve the
6 settlement results for the Class and PAGA Members. Attached as **Exhibits B** to
7 Counsel's Declaration is a spreadsheet in Microsoft Excel format showing Class
8 Counsel's billed tasks in accordance the Court's procedures. For further review,
9 **Exhibits B1-B5** show a breakdown of these billed tasks for each of five different
10 phases of the case. These Exhibits are being emailed to Chambers as a separate,
11 editable, electronic copy in Excel format. Attached as **Exhibit C** to Counsel's
12 Declaration is a spreadsheet in Microsoft Excel format showing Class Counsel's
13 ledger of out-of-pocket costs.

14 As discussed below, Plaintiff's fee application is amply supported by the Ninth
15 Circuit benchmark as well as the lodestar-multiplier cross check. The out-of-pocket
16 costs and expenses also are reasonable and well-documented as well. For these
17 reasons and as further discussed below, Plaintiff respectfully requests that the Court
18 grant the Motion for Reasonable Attorneys' Fees and Costs in its entirety.

19 **II. CASE SUMMARY**

20 A description of the claims and citation to the evidence presented during the
21 case can be found in Plaintiff's Motion for Class Certification, filed June 21, 2024
22 (ECF No. 41), Plaintiff's Motion for Preliminary Approval, filed July 26, 2024 (ECF
23 No. 44), and Plaintiff's Motion for Final Approval of the Class Action and PAGA
24 Settlement Agreement, filed concurrently with this Motion.

25 As detailed in those motions, Plaintiff alleges that Defendant RCM
26 Technologies (USA), Inc. (RCM) failed to provide off-duty meal and rest periods to
27 the nurses it paid on an hourly basis to work at COVID-19 testing and vaccination
28

1 sites in California during the pandemic. Plaintiff further alleges that the nurses
2 performed set-up work before their shifts and clean-up work after their shifts that
3 RCM did not fully compensate. The Class Period covered by the Settlement is March
4 1, 2020 to March 7, 2023, and the PAGA Period is July 22, 2020 until March 7, 2023.

5 As more fully described in the Motion for Class Certification, Plaintiff
6 maintains that RCM over-relied on its clients to provide the opportunity to take
7 compliant meal and rest periods, and to ensure that all compensable time was
8 recorded on the timecards. ECF No. 41 at 11:4-13:4. As Plaintiff further maintains,
9 RCM's clients did not have the contractual obligation, financial incentive, or
10 administrative capacity to perform this function, and RCM did not sufficiently
11 monitor the working conditions to safeguard the employees' rights. *Id.* at 4:16-5:13,
12 11:12-18. Plaintiff also maintains that RCM had an unlawful policy of assuming
13 Class Members received compliant meal periods and automatically deducting time
14 for them from their hours worked, without an adequate tracking mechanism to
15 identify instances when compliant breaks were not provided and premium wages not
16 paid. *Id.* at 7:5-13; 8:3-9:11; 13:5-14:27.

17 RCM vigorously disputed Plaintiff's claims and theories of liability. For
18 example, RCM maintains that its written policies were lawful on their face, and that
19 employees were instructed about their breaks and told to record all time worked.
20 RCM further argues that inasmuch as the nurses worked at the client facilities, its
21 clients had compliant processes and it was lawful for RCM to rely on the clients to
22 supervise the employees and implement schedules to allow for meal and rest periods.
23 RCM also maintains that employees could contact RCM representatives if there were
24 problems, and that the deficiencies Plaintiff alleges did not cause violations on the
25 ground.

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1 **III. WORK PERFORMED BY COUNSEL**

2 Exhibit B to the Konecky Declaration contains a spreadsheet in Microsoft Excel
3 format showing, in chronological order, the billed tasks performed in this case, with
4 the information set forth in the Court’s Procedures. Class Counsel exported these
5 billing entries directly from the firm’s billing software for the case. *See* Konecky
6 Decl. at ¶70. The lawyers and staff entering time into this software are instructed to
7 record their time in tenth-of-an-hour increments, as contemporaneously as possible
8 with the expenditure of time. *Id.* at ¶71.

9 A review of Exhibit B provides a chronological overview of the work Class
10 Counsel performed in the case from the time of receiving the initial intake from Ms.
11 Grady on May 19, 2021, through December 19, 2024, and the corresponding lodestar
12 associated with that time. Additional work performed after December 19, 2024 is not
13 included in the Exhibit. During this time period, the law offices of Class Counsel
14 billed approximately 920 hours to the case for a lodestar of approximately \$689,312.
15 *See* Konecky Decl. at ¶69 and Exhibit B.

16 To assist in the review of the billing, Class Counsel also has submitted Exhibits
17 B1-B5, which show the same billing in Exhibit B divided into five chronological
18 phases of the case. (Exhibits B1-B5 also appear as separate tabs in the Microsoft
19 Excel document being emailed to the Court.)

20 What Plaintiff describes as the first phase, shown on Exhibit B1, includes: the
21 initial interviews with Ms. Grady; research into RCM and client sites; legal and
22 factual analysis of the claims; drafting of the notice letter to the Labor Workforce
23 Development Agency (LWDA) for the claims asserted under the Private Attorneys
24 General Act (PAGA); obtaining discovery of records; initial communications with
25 defense counsel; drafting the Complaint; and further interviews with Ms. Grady
26 regarding the Complaint. As showed in the billing records, associate attorneys
27 performed most of this work, with paralegal support and input from and supervision
28

1 by partners. *See* Konecky Decl. at Exhibit B1. This phase occurred from May 19,
2 2021 until May 11, 2022. *Id.*¹ During this time, Class Counsel’s office billed
3 approximately 78 hours for a lodestar of \$52,049 *Id.*

4 What Plaintiff describes as the second phase of work, shown on Exhibit B2,
5 includes: drafting formal discovery; meeting and conferring with opposing counsel
6 on case management and discovery issues; preparing for and attending an informal
7 discovery conference with the Magistrate Judge; having further discussions with
8 opposing counsel regarding mediation discovery and mediation after the informal
9 discovery conference; performing an analysis of documents and data produced for
10 mediation; preparing damages models; preparing substantive mediation briefs; and
11 negotiating at the mediation. This was conducted by associates and partners, with
12 paralegal assistance. *See* Konecky Decl. at Exhibit B2. The work occurred from
13 approximately May 17, 2022 through December 9, 2022. *Id.* During this time, Class
14 Counsel’s office billed approximately 145 hours for a lodestar of approximately
15 \$113,360. *Id.*

16 What Plaintiff describes as the third phase of the case, shown on Exhibit B3,
17 consists of drafting the first set of settlement documents; negotiating with Defense
18 counsel regarding various details for that settlement; submitting the two motions for
19 preliminary approval for that settlement; designing a potential survey for class
20 members; negotiating with opposing counsel regarding the survey; working with an
21 administrator on the mechanics of using the survey and obtaining responses; and
22 reporting to the Court regarding the proposed joint survey. This work was performed
23 primarily by the lead associate and lead partner on the case, with paralegal support.
24

25 ¹ As reflected in the billing entries and memorialized in the Settlement Agreement,
26 after Plaintiff submitted the initial PAGA letter, the parties entered into a tolling
27 agreement of the statute of limitations to facilitate pre-suit resolution discussions, but
28 the discussions did not result in any resolution and Plaintiff filed the complaint in
Superior Court on February 7, 2022. *See* SA at ¶39.

1 See Konecky Decl. at Exhibit B3. It occurred from approximately December 14,
2 2022 through approximately January 24, 2024. *Id.* During this time, Class Counsel’s
3 office billed approximately 120 hours for a lodestar of approximately \$98,878. *Id.*

4 What Plaintiff describes as the fourth phase of the case, shown on Exhibit B4,
5 consists of resuming the litigation after the Court’s orders denying preliminary
6 approval of the prior settlement and the joint survey proposal. This phase included:
7 drafting and propounding additional written discovery on RCM; drafting and
8 propounding third-party subpoenas on the RCM-clients and working through the
9 complications of that process; meeting and conferring with Defense counsel on
10 discovery responses; preparing for and taking the RCM corporate and management
11 depositions; meeting and preparing with Ms. Grady for her deposition and defending
12 it; conducting outreach and interviews with Class Members; and preparing the
13 Motion for Class Certification, which was a substantial undertaking. This phase of
14 work was primarily conducted by the partners and the firm’s outreach staff, with
15 paralegal support. *See* Konecky Decl. at Exhibit B4. It occurred from approximately
16 February 5, 2024 through June 25, 2024. *Id.* During this time, Class Counsel’s office
17 billed approximately 443 hours for a lodestar of approximately \$313,718. *Id.*

18 What Plaintiff describes as a fifth phase, shown on Exhibit B5, consists of
19 preparing for the second mediation; appearing for the second mediation; preparing
20 the settlement documents and approval motions; working with the settlement
21 administrator; and engaging with Ms. Grady on these matters. This work was
22 primarily conducted by the lead partner with input from another partner, further work
23 by outreach staff, and paralegal support. *See* Konecky Decl. at Exhibit B5. It occurred
24 from approximately June 27, 2024 until present. *Id.* During this time, Class Counsel’s
25 office billed approximately 128 hours for a lodestar of approximately \$1. *Id.*

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1 **IV. ARGUMENT**

2 **A. Entitlement to reasonable attorneys’ fees and costs**

3 Federal Rule of Civil Procedure 23(h) provides, “[i]n a certified class action,
4 the court may award reasonable attorney’s fees and nontaxable costs that are
5 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h); *In re Bluetooth*
6 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). At the same time,
7 “courts have an independent obligation to ensure that the award, like the settlement
8 itself, is reasonable, even if the parties have already agreed to an amount.”; *In re*
9 *Bluetooth*, 654 F.3d at 941. If a negotiated class action settlement includes an award
10 of attorneys’ fees, that fee award must be evaluated in the overall context of the
11 settlement. *Knisley v. Network Assocs.*, 312 F.3d 1123, 1126 (9th Cir. 2002); *Julio*
12 *v. Anthony, Inc.*, Case No. CV 14-03172-AB (SHx), 2015 WL 13919364, *5 (C.D.
13 Cal., June 24, 2015).

14 **B. The methods for evaluating attorneys’ fees in common fund cases**

15 Where a settlement produces a common fund for the benefit of the entire class
16 there are two methods of calculating attorneys’ fees: (1) the percentage of recovery
17 method, and (2) the lodestar/multiplier method. *In re Bluetooth Headset Prods.*, 654
18 F.3d at 941. The percentage of recovery method permits the court to award class
19 counsel a percentage of the common fund recovered for the class. *Resnick*, 779 F.3d
20 at 942. Under the lodestar method, courts multiply the number of hours the
21 prevailing party reasonably expended on the litigation by a reasonable hourly rate.
22 *Bluetooth*, 654 F.3d at 941.

23 The Court can choose either method and/or conduct a cross-check using both
24 methods. *Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d 934,
25 949 (9th Cir. 2015); *see also Staton v. Boeing Co.*, 327 F.3d 938, 972 (9th Cir. 2003);
26 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002), *cert. denied*, 537
27 U.S. 1018 (2002) (“Under Ninth Circuit law, the district court has discretion in
28 common fund cases to choose either the percentage-of-the-fund or the lodestar

1 method.”) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
2 1295–96 (9th Cir.1994)).

3 **C. The percentage method is appropriate in common fund cases**

4 “[A] litigant or a lawyer who recovers a common fund for the benefit of
5 persons other than himself or his client is entitled to reasonable attorney’s fees from
6 the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745,
7 749 (1980). The Ninth Circuit routinely awards attorneys’ fees pursuant to the
8 common fund approach “[b]ecause the benefit to the class is easily quantified in
9 common-fund settlements” and avoids the “often more time-consuming task of
10 calculating the lodestar.” *In re Bluetooth*, 654 F.3d at 942. The common fund
11 approach is an appropriate method for awarding attorneys’ fees because it “ensures
12 that each member of the winning party contributes proportionately to the payment of
13 attorneys’ fees.” *Staton*, 327 F.3d at 967. Under this approach, Class Members who
14 have accepted the benefits from a common fund recovery, also accept their fair *pro-*
15 *rata* responsibility to contribute towards the attorneys’ fees and costs that created the
16 fund in the first place. *Id.*

17 The common fund doctrine applies if “(1) the class of beneficiaries is
18 sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the fee can
19 be shifted with some exactitude to those benefiting.” *Paul, Johnson, Alston & Hunt*
20 *v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989) (citing *Petition of Hill*, 775 F.2d 1037,
21 1041 (9th Cir. 1985). “These criteria are easily met where, as here, ‘each member
22 of a certified class has an undisputed and mathematically ascertainable claim to part
23 of a lump-sum [settlement] recovered on his behalf.’” *Id.* (quoting *Van Gemert*, 44
24 U.S. at 479, 100 S.Ct. at 749).

25 **D. Plaintiff’s fees are reasonable under the percentage of the fund**
26 **method**

27 The Settlement Agreement permits Plaintiff to make an application for
28 attorneys’ fees in the amount of twenty five percent (25%) the Gross Settlement

1 Amount. This is the Ninth Circuit “benchmark award” for attorneys’ fees in
2 common fund cases. *Staton*, 327 F.3d at 973; *Vizcaino*, 290 F.3d at 1047 (citing *Six*
3 *(6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.1990));
4 *Julio*, 2015 WL 13919364, a *5 (“The typical range of acceptable attorneys’ fees
5 under this approach in the Ninth Circuit is 20 percent to 33 and 1/3 percent of the
6 total settlement value, with 25 percent considered a benchmark percentage.”)(citing
7 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)).²

8 Plaintiff does not seek an upward adjustment from the benchmark in this case.
9 However, many of the factors that support upward adjustments also support an award
10 at the benchmark here. “The factors that inform whether the benchmark percentage
11 should be adjusted include: (1) the benefit obtained for the class, (2) comparison with
12 counsel’s lodestar, (3) counsel’s expended effort, (4) counsel’s experience and skill,
13 (5) the complexity of the issues, (6) the risks of non-payment assumed by counsel,
14 and (7) the reaction of the class.” *Julio*, 2015 WL 13919364, a *5 (citing *In re Quintus*
15 *Sec. Litig.*, 148 F. Supp. 2d 967, 973-74 (N.D. Cal. 2001)).

16 First, with a fee award of 25% the Gross Settlement Amount, the average net
17 recovery (after subtracting the requested attorneys’ fees and costs, service award,
18 administration costs, and LWDA Payment), would be approximately \$899 per Class
19 Member and approximately \$938 on average for the Class Members who also are
20 PAGA Members. *See Konecky Decl.* at ¶38. As the Court found at preliminary

21
22 ² Additionally, as Judge Gutierrez of this District has observed, attorneys’ fees
23 “within the 30 to 33 percent range [are] often awarded in common fund cases.” *Erami*
24 *v. JP Morgan Chase Bank*, Case No. CV 15-7728 PSG (PLAx), 2018 WL 11352374,
25 *7 (C.D. Cal., Dec. 3, 2018) (citations omitted); *see also Van Vranken v. Atl. Richfield*
26 *Co.*, 901 F. Supp. 294, 297-98 (N.D. Cal. 1995) (“Class Counsel have also cited 73
27 district court opinions in which fees in the range of 30-50 percent of the common
28 fund were awarded.”); *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS
11149, at *17 (N.D. Cal. Feb. 2, 2009) (noting that ““nearly all common fund awards
range around 30% ”” and that ““fee awards in class actions average around one-third
of the recovery. ””) (quoting *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist.
LEXIS 86270 (E.D. Cal. Nov. 14, 2007); Newberg on Class Actions at § 11:24;
Manual for Complex Litigation at § 14:6.

1 approval, these amounts are meaningful and a reasonable percentage of the realistic
2 trial recovery. ECF 46 at 22;³ *see also Attia v. Neiman Marcus Grp.*, 2019 U.S. Dist.
3 LEXIS 240240, at *21 (C.D. Cal. Feb. 25, 2019) (finding that \$964.22 estimated
4 average per-class member recovery in a wage-and-hour case supported 33.33% fee
5 award); *Julio*, 2015 WL 13919364, a *5 (finding \$547 average award supportive of
6 fee award of one-third the total settlement fund); *Abdullah v. U.S. Sec. Assocs., Inc.*,
7 Case No. CV 09-9554 PSG (Ex), 2017 WL 11630767, at **7-8 (C.D. Cal., Dec. 4,
8 2017) (finding that average gross award of \$948 supported a fee award at one-third
9 of the common fund). These are just a few comparators illustrating the reasonableness
10 of the recovery and the 25% benchmark fee sought here.

11 Second, as discussed below, an award of attorneys' fees at 25% of the total
12 settlement amount compares favorably with Class Counsel's lodestar, resulting in a
13 "negative" multiplier of approximately 0.60. *See* Konecky Decl. at ¶69 and Exhibit
14 B. Third, as shown by Counsel's Declaration, Class Counsel put significant effort
15 into the case, including in responding to the Court's concerns in connection with the
16 previous settlement. *Id.* at ¶¶20-22, 75-79. Fourth, Class Counsel brought to this case
17 extensive experience and recognized skill in prosecuting class and representative
18 actions for recovery of unpaid wages and wage and hour violations. *Id.* at ¶¶80-90
19 and Exhibit D.

20 Fifth, this case presented complex and difficult issues. For example, it required
21 Plaintiff to carefully evaluate the written policies of the Defendant staffing agency,
22 combine this analysis with pattern and practice evidence gathered from different
23 client facilities, and combine them to show both that the Defendant staffing agency
24 did not live up to its affirmative wage and hour duties, and that this shortcoming had
25 a common impact on the members of the Class.

27 ³ These amounts are slightly higher than estimated at preliminary approval due to Plaintiff seeking
28 less in reimbursable costs than the maximum permitted under the Settlement.

1 Sixth, given the difficulties and uncertainties in pursuing a case of this nature,
2 Class Counsel assumed a significant risk of non-payment by taking the matter on a
3 fully contingent basis. *Id.* at ¶¶61-64, 99-102. Indeed, Plaintiff and Class Counsel
4 faced risks on significant and often threshold issues, including: the threshold legal
5 determination of whether Defendant’s policies were facially compliant; whether the
6 pattern and practice evidence would be sufficient to support class certification under
7 Rule 23; the scope of any class that might be certified; the extent of class-wide
8 damages that might be proven; and whether damages could be proven on a class basis
9 or would need to proceed individually. *Id.* at ¶¶61-64, 100-101. Even if Plaintiff
10 prevailed, there were still the risks, uncertainties, and delays of appeal. *Id.* at ¶61.
11 Nonetheless, Class Counsel bore the substantial risk of an uncertain outcome on each
12 of these issues and the underlying litigation overall, while prosecuting it on a wholly
13 contingency fee basis for three-and-one-half years. *Id.* This included over nine
14 hundred hours of work and significant out-of-pocket expenses. *Id.* at ¶69 and Exhibit
15 B.

16 Finally, the Settlement Notice sent by mail and email to the Class and PAGA
17 Members advises them of the amount of attorneys’ fees sought and that they can
18 review and comment on Plaintiff’s fee application. *See* Williams Decl., Exh at B
19 (Settlement Notice at ¶12. Further, this Motion for Reasonable Attorneys Fees and
20 Costs will be posted on the Settlement website for review by Class and PAGA
21 Members. *Id.* at ¶15. Plaintiff will report to the Court after the close of the objections
22 period in her reply papers as to any objections and/or comments to the attorneys’ fees
23 and costs being requested herein.

24 **E. The “lodestar-multiplier” cross-check further supports the**
25 **reasonableness of Plaintiff’s fee request**

26 “Calculation of the lodestar, which measures the lawyers’ investment of time in
27 the litigation, provides a check on the reasonableness of the percentage award.”
28 *Vizcaino*, 290 F.3d at 1050. “The lodestar figure is calculated by multiplying the

1 number of hours the prevailing party reasonably expended on the litigation (as
2 supported by adequate documentation) by a reasonable hourly rate for the region and
3 for the experience of the lawyer.” *In re Bluetooth Headset Prods.*, 654 F.3d at 941.
4 As the Ninth Circuit has observed, “while the primary basis of the fee award remains
5 the percentage method, the lodestar may provide a useful perspective on the
6 reasonableness of a given percentage award.” *Vizcaino*, 290 F.3d at 1050.

7 Counsel undertook significant work to achieve the results in this case. This
8 included pre-suit investigations; fact-intensive interviews of Ms. Grady and other
9 Class Members; written discovery; depositions; meet and confer with Defendants’
10 counsel on discovery and case management issues; preparing a motion for class
11 certification; preparing for and engaging in two mediations; post mediation
12 negotiations; and other related work. *See Konecky Decl.* ¶¶20-25, 75-79. A
13 breakdown of the hours of work and corresponding lodestar on a task-by-task basis
14 is presented in the Microsoft Excel spreadsheets attached as Exhibits B and B1-B5 to
15 Class Counsel’s Declaration. This work was in direct relation to prosecuting the case
16 and achieving the Settlement, except potentially the effort spent on seeking approval
17 of the initial settlement. (Although even the first mediation and the work that
18 followed helped Class Counsel to gain information and a perspective that proved
19 useful in prosecuting the case and negotiating the improved settlement later in the
20 case.)

21 Generally, hours are reasonable if they were “reasonably expended in pursuit
22 of the ultimate result achieved in the same manner that an attorney traditionally is
23 compensated by a fee-paying client.” *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983).
24 Further, “[w]here the use of the lodestar method is used as a cross-check to the
25 percentage method, it can be performed with a less exhaustive cataloguing and review
26 of counsel's hours.” *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO,
27 2012 WL 2117001, at *20 (E.D. Cal., June 11, 2012) (citing several authorities
28 including *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) (“The

1 lodestar cross-check calculation need entail neither mathematical precision nor bean-
2 counting”). Particularly when viewed as a cross-check, the billing records attached
3 as Exhibits B and B1-B5 to Class Counsel’s declaration show that awarding
4 attorneys’ fees at the 25% benchmark is reasonable in light of the substantial time
5 and effort put into the case.

6 As discussed above, a fee award at the 25% benchmark will result in a negative
7 multiplier on Class Counsel’s documented lodestar of approximately 0.60. While the
8 billing records need not be parsed out on a granular level when being used as a cross-
9 check, *see Schiller*, 2012 WL 2117001, at *20, they still would support the fee award
10 requested even if deductions were made as a matter of billing judgment. For example,
11 the third phase of the case described in this Motion covers the work performed over
12 the approximately 13 months during which Plaintiff worked on the initial settlement
13 agreement, motion practice related to it, and developing the joint survey instrument.
14 This consisted of approximately 120.4 hours for a lodestar of approximately \$98,878.
15 *See Konecky Decl.* at Exhibit B3. If that entire time is eliminated, Class Counsel
16 would still have approximately 800 hours and a lodestar of approximately \$590,434,
17 which would still result in a negative multiplier of 0.70. (As mentioned above, the
18 work still provided information and perspective that helped with subsequent phases
19 of the case.) This is just one illustration of how the lodestar cross-check supports the
20 reasonableness of the fee even assuming discounts could be made for inefficient or
21 nonproductive work.

22 Further, Counsel’s hourly rates are reasonable and well within the range for
23 similarly skilled Los Angeles area attorneys. The general principle for determining
24 the reasonableness of hourly rates is that they “are to be calculated according to the
25 prevailing market rates in the relevant community.” *Blum v. Stenson*, 465 U.S. 886,
26 895 n.11 (1984); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).
27 Rates are reasonable if they fall within the range of prevailing market rates in the
28 relevant community. *Wilbur v. City of Mount Vernon*, 2014 WL 11961980, at *1

1 (W.D. Wash. Apr. 15, 2014) (quoting *Dang v. Cross*, 422 F.3d 800, 813 (9th Cir.
2 2005)). Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing
3 fees in the community, and rate determinations in other cases are satisfactory to
4 establish the reasonableness of hourly rates. *United Steelworkers of Am. v. Phelps*
5 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

6 The federal and state courts, including the Central District of California, have
7 consistently approved the rates charged by Schneider Wallace Cottrell Konecky LLP.
8 *See* Konecky Decl. at ¶97 and Exhibits F-Y. In addition, the 2023 Real Rate Report
9 compiled by Wolters Kluwer shows that Class Counsel’s rates are comparable to partner
10 and associate rates of litigators in the Los Angeles market. *Id.* at ¶¶92-95 and Exhibit
11 E1. Similarly, a 2023 article from Bloomberg Law News showing that counsel’s rates
12 are well within what other firms charge their paying clients. *Id.* at ¶96 and Exhibit
13 E2. Finally, Class Counsel have extensive experience and numerous
14 accomplishments in class action litigation, including in the wage and hour context,
15 which further support the reasonableness of the market rates they charge. *Id.* at ¶¶ 80-
16 90 and Exhibit D.

17 For all these reasons, Plaintiff’s documented lodestar provides a cross-check
18 that amply demonstrates the reasonableness of awarding them attorneys’ fees at the
19 Ninth Circuit benchmark of 25% the Gross Settlement Amount.

20 **F. Plaintiff’s requested cost reimbursements are reasonable**

21 Plaintiff’s counsel are entitled to recover the out-of-pocket costs and litigation
22 expenses they reasonably incurred in investigating, prosecuting, and resolving the
23 case. *Staton*, 327 F.3d at 974; *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp.
24 1362, 1366 (N.D. Cal. 1996); *see also* Fed. R. Civ. P. 54(d)(1) (“Costs Other Than
25 Attorney’s Fees”); Fed. R. Civ. P. 54(d)(2)(A) (“A claim for attorney’s fees and
26 *related nontaxable expenses...*”) (emphasis added)). Even though not normally
27 taxable as costs, out-of-pocket expenses incurred by an attorney that would normally
28 be charged to a fee-paying client are recoverable as attorneys’ fees. *Chalmers v. City*

1 of L.A., 796 F.2d 1205, 1216, n.7 (9th Cir. 1986), amended by 808 F.2d 1373 (9th
2 Cir. 1987). “Expenses such as reimbursement for travel, meals, lodging,
3 photocopying, long-distance telephone calls, computer legal research, postage,
4 courier service, mediation, exhibits, documents scanning, and visual equipment are
5 typically recoverable.” *Rutti v. Lojack Corp.*, 2012 U.S. Dist. LEXIS 107677, at *34
6 (C.D. Cal., July 31, 2012).

7 Here, as set forth in Counsel’s declaration, Plaintiff’s reimbursable out-of-
8 pocket expenses include: (1) filing and service costs; (2) deposition fees and
9 transcripts; (4) postage; (5) travel costs; (6) copying and printing; (7) computer legal
10 research (specific to this case); and (8) mediation fees. Konecky Decl. at ¶104 and
11 Exhibit C. Class Counsel’s Declaration contains a ledger showing each specific cost
12 incurred and for which reimbursement is sought herein. *Id.* at Exhibit C.

13 The Settlement Agreement provides that Class Counsel may seek
14 reimbursement of up to \$50,000 in out-of-pocket costs. The reimbursable costs
15 incurred by Class Counsel as of the date of this Motion are \$47,768.17. *Id.* Although
16 these costs may increase somewhat during the final approval and implementation
17 stage, Plaintiff is capping her request for reimbursement at the current costs incurred.
18 These costs were reasonable, were necessary to the prosecution of the case, and are
19 of the type customarily billed to fee-paying clients.

20 **V. CONCLUSION**

21 For the foregoing reasons, Plaintiff respectfully requests that the Court grant
22 her Motion for Reasonable Fees and Costs in its entirety.

23
24 Dated: December 26, 2024

/s/ Joshua G. Konecky

25 Joshua G. Konecky
26 **SCHNEIDER WALLACE**
27 **COTTRELL KONECKY LLP**
28 Attorney for Plaintiffs

CERTIFICAT OF COMPLIANCE

1
2 The undersigned, counsel of record for Plaintiffs, certifies that this brief
3 contains 4,849 words, which complies with the word limit of L.R. 11-6.1.

4 Dated: December 26, 2024

/s/ Joshua G. Konecky

5 Joshua G. Konecky

6 **SCHNEIDER WALLACE**

7 **COTTRELL KONECKY LLP**

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CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2024, I electronically filed the foregoing document with the Clerk of the Court using the Court’s CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Joshua G. Konecky
Joshua G. Konecky