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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF RIVERSIDE**

15 RAMON WILLIAMS, an individual, on behalf
16 of himself and all others similarly situated,

17 Plaintiff,

18 v.

19 LINEAGE LOGISTICS, LLC., a Delaware
20 limited liability company, LINEAGE
LOGISTICS ICM, LLC, a limited liability
21 corporation; CASTLE & COOKE
HOLDINGS, INC., a Delaware corporation,
22 CASTLE & COOKE, INC., a Hawaiian
corporation, and DOES 1 through 100,
23 inclusive,

24 Defendants.

Case No. RIC1508745
(Assigned to Hon. Sharon J. Waters, Dept. 10)

CLASS ACTION

**NOTICE OF MOTION AND MOTION
APPROVAL OF ATTORNEYS' FEES, COSTS,
AND ENHANCEMENT AWARD IN
CONJUNCTION WITH MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

DATE: July 11, 2016
TIME: 8:30 a.m.
DEP'T: 10

[Complaint Filed July 24, 2015]

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

2 **PLEASE TAKE NOTICE** that on July 11, 2016, at 8:30 a.m., or as soon thereafter as this
3 matter may be heard in Department 10 of the above-entitled Court, located at 4050 Main Street,
4 Riverside, California 92501, the Motion for Approval of Attorney’s Fees, Costs, and Enhancement
5 Award filed by Plaintiff Ramon Williams, on his own behalf, and on behalf of the proposed settlement
6 class (“Plaintiff”), will be heard in conjunction with the motion for final approval of the class wide
7 settlement reached with Defendants Lineage Logistics, LLC and Lineage Logistics ICM, LLC
8 (“Defendants”). Defendants do not oppose this Motion.


9 This Motion is made pursuant to California Rules of Court, rule 3.769 on the grounds that the
10 Settlement reached with Defendants is reasonable, fair, and adequate, achieved as the result of
11 informed, arms-length negotiations, and deserving of approval for the benefit of the Settlement Class
12 to whom it pertains.

13 This Motion is based upon this Notice, the Memorandum of Points and Authorities in Support
14 Thereof, the Declarations of Marcus J. Bradley and Ira Spiro filed concurrently herewith and any
15 exhibits thereto, oral argument of counsel, the complete court record, and any such additional evidence
16 as the Court may consider or judicially notice.

17 DATED: June 16, 2016

MARLIN & SALTZMAN, LLP
SPIRO LAW CORP

19 By: _____


20 Marcus J. Bradley, Esq.
21 Kiley Grombacher, Esq.
22 Tina Mehr, Esq.
23 Attorneys for Plaintiff Ramon Williams
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1 **I. INTRODUCTION**

2 Plaintiff Ramon Williams (“Plaintiff”) by and through this Motion, seeks final
3 approval of the Joint Stipulation re: Class Action Settlement and Release (“Settlement”).
4 Subject to Court approval, the Plaintiff and Defendant Lineage Logistics, LLC, Lineage
5 Logistics ICM, LLC, Castle & Cook, Inc., and Castle & Cook Holdings, Inc.
6 (“Defendants”) (collectively “the Parties”), have agreed to settle Plaintiff’s and
7 approximately 4,149 Class Members’ claims on a class-wide basis. The Parties reached
8 this Settlement through extensive arms-length bargaining and after detailed factual
9 investigation and discovery. The main elements of the Settlement are as follows:

- 10 • Defendants will pay \$2,300,000.00;
- 11 • This is a guaranteed fund settlement whereby no funds shall revert to
12 Defendants;
- 13 • Class Members do not need to submit claim forms of any kind in order to
14 obtain their Individual Settlement Payments;
- 15 • All Class Members who do not request exclusion will get paid;
- 16 • For each Class Member who requests exclusion, the Settlement
17 Administrator shall proportionally increase the payment to each
18 participating Settlement Class Member such that the total payout equals
19 one hundred percent (100%);
- 20 • The average gross Individual Payment Amount per Class Member is
21 estimated to be \$554.35;
- 22 • Given that the average rate of pay for Class Members is approximately
23 \$12.70/hour, this Individual Settlement Payment represents more than one
24 full week, or forty-three hours’ worth of gross wages, for the average
25 Settlement Class Member;
- 26 • During the course of the litigation, Defendants revised their employment
27 policies and practices to better ensure that non-exempt employees are paid
28 for all hours they work, and this policy change, in turn, provides a

1 significant benefit to the Class, Defendants' current employees, and the
2 State.

3 Having obtained valuable relief for the Class Members, Plaintiff's counsel seeks an award of
4 attorneys' fees in the amount of \$776,665.90 or 33.3% of the total fund established by the settlement
5 between the parties. The requested award is fair, reasonable, and appropriate under the common fund
6 doctrine in light of the favorable results obtained, the complexities of the case, and the contingent risk
7 assumed by Class Counsel. The percentage of the fund requested is entirely consistent with fee
8 awards in similar cases, including recent decisions in wage and hour class actions that have awarded
9 33.3% of the common fund.

10 The settlement obtained is unquestionably a common fund settlement. The entire amount of
11 \$2,300,000.00 will be paid out. Absolutely no settlement funds will revert to the Defendants.
12 Furthermore, each Class Member will receive his or her share without the need to even fill out or even
13 present a claim form. The Notice of Settlement informs each class member that unless they choose to
14 affirmatively opt out of the settlement, they will receive their check once the settlement is approved by
15 the Court. Steps will be taken to try to locate every class member and in the end, every dollar will be
16 paid out for the benefit of the class members, after deductions for approved fees, costs, incentive, and
17 PAGA payments. Accordingly, the proposed settlement has created a true common fund for the
18 benefit of the Class and thus, a percentage of the fund is properly awarded to class counsel as fees.

19 The United States Supreme Court has long recognized the appropriateness of awarding
20 attorneys' fees as a percentage of this type of common fund:

21 Since the decisions in *Trustees v. Greenough*, 105 U.S. 527, 26 L.Ed. 1157 (1882), and
22 *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116, 5 S.Ct. 387, 28 L.Ed. 915
23 (1885), this Court has recognized consistently that a litigant or a lawyer who recovers a
24 common fund for the benefit of persons other than himself or his client is entitled to a
25 reasonable attorney's fee from the fund as a whole. [citations omitted] The common-fund
26 doctrine reflects the traditional practice in courts of equity, *Trustees v. Greenough*, supra
27 105 U.S., at 532-537, and it stands as a well-recognized exception to the general principle
28 that requires every litigant to bear his own attorney's fees, *Alyeska Pipeline Service Co. v.*
Wilderness Society, 421 U.S., at 257-258, 95 S.Ct., at 1621-1622. The doctrine rests on the
perception that persons who obtain the benefit of a lawsuit without contributing to its cost
are unjustly enriched at the successful litigant's expense. See, e. g., *Mills v. ElectricAuto-*
Lite Co., 396 U.S., at 392, 90 S.Ct., at 625. Jurisdiction over the fund involved in the
litigation allows a court to prevent this inequity by assessing attorney's fees against the
entire fund, thus spreading fees proportionately among those benefited by the suit...
Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980).

1 Class counsel delivered significant results for the class in the face of adverse conditions and
2 assumed substantial risk in litigating this action on a contingency basis. While this case settled in the
3 early stages of litigation, Plaintiff investigated the case extensively prior to the filing of the complaint,
4 even engaging in discussions and exchanging documents directly with Defendants prior to the filing of
5 the lawsuit. One significant hurdle for the case was an arbitration clause which could have
6 theoretically forced each and every employee to litigate individually in arbitration. Resolution on a
7 class-wide basis without undergoing the arbitration process is thus a significant benefit for the Class
8 Members in this instance.

9 Prior to the complaint being filed, the parties engaged in discussion and agreed to mediation,
10 exchanged documents and data prior to mediation, participated in mediation, and then continued
11 discussion and exchange of data for months after the mediation, until a satisfactory settlement was
12 finally achieved. In total, thus far, Plaintiffs have spent 580 hours in total investigating this case prior
13 to litigation, communicating with potential class members before and after the filing of the complaint,
14 researching the relationship of the various companies, analyzing the law as it applied to the factual
15 circumstances of the employees, reviewing documents and data produced by Plaintiff and Defendants,
16 negotiating with Defendants, and drafting settlement papers and motions. It is anticipated that
17 Plaintiffs will spend another 25 – 35 hours completing the settlement process and moving for and
18 obtaining final approval.

19 Plaintiff's Counsel also seeks reimbursement of litigation costs and expenses in the amount of
20 \$10,990.11. These costs and expenses were incurred in connection with the prosecution and settlement
21 of the action and are reimbursable. Finally, Plaintiff respectfully requests that the Court award a
22 service enhancement of \$5,000 to the Class Representative. In the absence of his significant efforts
23 (as detailed in his concurrently filed declaration), no settlement would have been possible.¹

24 For the reasons set forth above and below, Plaintiff respectfully submits that the requested
25 attorneys' fees, costs and expenses, and service enhancement are fair and reasonable, and should be
26 granted by this Court.

27 _____
28 ¹ These requests were detailed in the Notice of Settlement provided to Class Members. As set forth in the Settlement Agreement entered into by the parties, Defendants agreed not to object to these requests.

1 **II. SUMMARY OF THE LITIGATION AND NATURE OF THE CASE**

2 Plaintiff retained the law firms of Marlin & Saltzman, LLP and Spiro Law Corp., to investigate
3 his claims. On September 11, 2014, Plaintiff sent a Letter of Intent to File to the Labor and Workforce
4 Development Agency (“LWDA”) and to Defendants, enclosing a copy of his proposed Class Action
5 Complaint. The proposed Complaint asserted the following violations, summarized as: (1) failure to
6 pay overtime, in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and Cal. Labor
7 Code §§ 510, 1194 and 1198; (2) Cal. Labor Code §§ 1194 and 1197 for failing to pay minimum
8 wage; (3) Cal. Labor Code §§ 226.7 and 512, for failing to provide duty-free rest periods;
9 (4) Industrial Welfare Commission Wage Order No. 3, §5 for failure to pay reporting time pay;
10 (5) Cal. Labor Code § 212 for issuing wages due through use of an unlawful form of payment; (6) Cal.
11 Labor Code § 203 for failing to pay all wages due and owing when employees terminated; (7) Cal.
12 Labor Code § 226 for failing to provide accurate, itemized wage statements; and (8) Cal. Bus. & Prof.
13 Code § 17200, *et seq.*, for unfair business practices. These claims were in addition to Plaintiff’s
14 express intent to seek civil penalties, pursuant to the Labor Code Private Attorneys General Act of
15 2004 (“PAGA”).

16 Shortly thereafter, Defendants’ counsel contacted Plaintiff’s counsel and indicated their desire
17 to participate in an early mediation to resolve all claims. Plaintiff agreed conditionally upon a tolling
18 agreement to preserve his claims pending the mediation, and upon the Defendants providing informal
19 discovery sufficient to allow Plaintiff to evaluate the strength of his claims. The parties executed the
20 tolling agreement on November 19, 2014.

21 In advance of mediation, Defendants agreed to provide informal discovery sufficient to allow
22 Plaintiff to evaluate his claims. As part of that informal mediation process, Defendant provided
23 information regarding the total number of California class members, total number of California
24 employees who received incentive compensation, the number of those employees who received
25 incentive compensation, average hourly wage for individuals who earned incentive pay, total incentive
26 earnings during the class period, the total number of regular, overtime and double time hours worked,
27 and the number of workweeks in the class period, as well as the average rate of pay for the entire class
28 during the class period. The Parties engaged in extensive review and discussions related to the

1 informal data and information provided by Defendants, and Plaintiff requested additional information
2 as well as clarification of the information provided prior to mediation.

3 Thus, the Parties engaged in substantive and significant discovery and investigation, sufficient
4 to apprise counsel on both sides of the issues and evidence pertaining to certification, liability,
5 damages, and ultimately, settlement.

6 On April 10, 2015, the Parties attended a full day mediation with an experienced wage and
7 hour mediator, Mark Rudy, Esq. At this mediation, the Parties reached the overall terms of a
8 settlement agreement and signed a Memorandum of Understanding, thereby resolving all claims raised
9 in the Proposed Complaint, and as to all Defendants. The Parties reached their agreement after
10 evaluating the Parties' theories of potential exposure for the underlying claims, as well as Plaintiff's
11 claims for interest and penalties. The Parties, with the assistance of the Mr. Rudy, also assessed
12 appropriate discounts to the potential liability based on Defendants' contentions and defenses.

13 **III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE**

14 The fees sought by Class Counsel relate to all efforts expended by Class Counsel for the
15 complete handling of this case, including any additional work remaining to be performed by Class
16 Counsel in securing final Court approval of the Settlement, and then ensuring that the Settlement is
17 fairly administered and fully implemented. Class Counsel submits that the effort and result justify
18 their fee request.

19 Marlin & Saltzman has extremely well documented and significant experience not only in class
20 actions generally, and employment litigation, but specifically in wage and hour class actions. As set
21 forth in the supporting declaration of Class Counsel, the firm regularly achieves exceptional results,
22 and the present settlement is no exception.

23 The efforts of Class Counsel in this action that were discussed above, confirm that a substantial
24 amount of work went into achieving what is a very beneficial resolution on behalf of the Classes. The
25 discovery, analysis and investigation performed in this case were comprehensive and entirely
26 supportive of the results achieved. Further, since reaching the settlement, substantial additional work
27 has been required to enable Counsel to obtain preliminary approval, and will be required in relation to
28 the forthcoming Motion for Final Approval of the settlement that will be heard contemporaneously

1 with this Motion.

2 **A. A FEE AWARD BASED ON A PERCENTAGE OF THE COMMON FUND IS**
3 **APPROPRIATE**

4 The Supreme Court has consistently recognized that “a litigant or a lawyer who recovers a
5 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
6 attorney's fee from the fund as a whole.” *Boeing Co.*, 444 U.S. at 478. The percentage of the fund
7 recovery or “Common Fund Doctrine” provides that when a litigant’s efforts create or preserve a fund
8 from which others derive benefits, the litigant may require the passive beneficiaries to compensate
9 those who created the fund. The purpose of this equitable doctrine is, in part, to spread litigation costs
10 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
11 alone. *See, Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769 (9th Cir. 1977).

12 Indeed, both State and Federal courts in California have embraced the Common Fund
13 Doctrine. *Id.* at 769. Specifically, courts have historically and consistently recognized that class
14 litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages
15 are too small to economically justify individual representation. In *Paul, Johnson, Alston & Hunt v.*
16 *Gaulty*, 886 F.2d 268 (9th Cir. 1989) the Ninth Circuit endorsed this principle when it stated:

17 [I]t is well settled that the lawyer who creates a common fund is allowed an extra
18 reward, beyond that which he has arranged with his client, so that he might share the
19 wealth of those upon whom he has conferred a benefit. The amount of such a reward
20 is that which is deemed ‘reasonable’ under the circumstance. *Id.* at 271

21 Indeed, attorneys must be encouraged to incur the enormous risks of time and money necessary
22 to vindicate the public interest, and to protect the public policies underlying the wage and hour laws.
23 To fulfill this policy, California law provides that attorney fee awards should be equivalent to fees
24 paid in the legal marketplace to compensate for the result achieved and risk incurred. *See, Lealao v.*
25 *Beneficial Cal., Inc.*, 82 Cal. App.4th 19 (2000); *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007)
26 (noting that applying the percentage method of the common fund advances the judicial policy of
“award[ing] counsel the market price for legal services.”).

27 The accompanying declaration of Marcus J. Bradley establishes that the fee sought herein is
28 entirely in line with what would be generated in the legal marketplace in California if either the Class

1 as a whole, or individual Class Members, sought contingent representation. (*Bradley Decl.* ¶17).
2 Thus, here, with a gross non-reversionary recovery of \$2,300,000, Class Counsel should be entitled to
3 recover the fees that they would have freely obtained in the marketplace, which as the Bradley
4 declaration notes would be between 33.3% and 40%. Here, Class Counsel seeks a fee request of
5 33.3%.

6 In sum, a \$2,300,000.00 completely non-reversionary settlement constitutes a substantial
7 common fund. Awarding fees as a percentage of the fund in this case as well as the amount requested
8 is consistent with most other wage and hour cases. In addition, doing so aligns the interests of Class
9 Counsel and absent class members in achieving the maximum possible resolution—which was most
10 certainly done here. As set out in detail in the Preliminary Approval Motion and supporting
11 declarations as well as the Bradley declaration filed in support of this motion, the class members in
12 this matter are recovering significant sums of money for their claims. This is not by chance; instead it
13 is because Class Counsel fought for and created a common fund that will be fully paid out and enables
14 Class Members to easily obtain their share of the settlement – they are not even being required to
15 submit a claim form. The amount requested is both reasonable and consistent with the experience of
16 Class Counsel, the effort expended, and certainly with the outcome achieved for the Class. Therefore,
17 Class Counsel respectfully submits that all of the relevant factors weigh in favor of awarding Class
18 Counsel fees in the amount of \$766,665.90 or 33.3% of the common fund.

19 **B. OTHER FACTORS SUPPORT PLAINTIFF’S COUNSELS’ FEE REQUEST**

20 Aside from the results achieved and awards in comparable cases, the Ninth Circuit has held
21 that the additional factors that Courts may consider when evaluating the fairness of an award include:
22 (1) the risk of litigation; (2) the skill required and quality of work; (3) the contingent nature of the fee
23 and the financial burden carried by the plaintiffs; and (4) a lodestar cross check. *Vizcaino v. Microsoft*
24 *Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). All of these factors weigh in favor of the percentage
25 sought here.

26 **i. The Results Achieved Support the Requested Fees**

27 By taking action to enforce state labor laws, Plaintiff and Class Counsel vindicated the rights
28 of over 4,000 workers and secured \$2,300,000 in relief for their claims. The relief offered is that

1 much more valuable when viewed against the difficulties Plaintiff and Class Counsel faced in the case.
2 Here, the common fund of \$2,300,000 will be distributed to all the class members, net, of course, of
3 the fees, costs, incentive and PAGA payments, unless they elect to opt out of the class.

4 Given the outstanding results on behalf of the classes, Plaintiff's action will
5 undoubtedly deter other similarly situated employers from failing to appropriately pay
6 their employees. In a related vein, unless competent attorneys are fully compensated
7 when they take on major companies like Defendants, unlawful practices will likely go
8 unchecked.

9 **ii. The Substantial Risks of Contingent Litigation**

10 The significant risks Class Counsel and Plaintiff incurred in pursuing this litigation supports
11 the requested attorneys' fees and costs. Class Counsel took this case on a pure contingency basis, and
12 had no guarantee that they would receive any remuneration for the hours – over 580 – that they would
13 eventually spend litigating Class claims, or for the \$10,990.11 in out-of-pocket costs which they
14 reasonably incurred during the matter's pendency. Indeed, all of the financial risk of litigation was
15 born by Class Counsel, whose fee arrangement with Plaintiff and the class is entirely contingent and
16 under which Class Counsel bears all of the costs of litigation and the dedication of attorney and
17 paralegal time, which was substantial, but necessary, to achieve this beneficial result for the Classes.
18 Thus, had Class Counsels' efforts failed, they would have recovered nothing for their substantial
19 investment of time and money in this case. However, had they not taken on the risks of this case, and
20 put aside others to devote time to it, it is highly unlikely that Class Members would have recovered the
21 funds that they will in this case.

22 Litigation of this type is, by its very nature, complicated and time consuming. Any law firm
23 undertaking representation of a large number of affected employees in wage and hour actions
24 inevitably must be prepared to make a tremendous investment of time, energy, and resources. Due also
25 to the contingent nature of the customary fee arrangement, lawyers must be prepared to make this
26 investment with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.

27 The demands and risks of this type of litigation overwhelm the resources—and deter
28 participation—of many traditional claimants' firms. For these reasons, the Ninth Circuit recognizes a

1 need to reward Plaintiff’s Counsel who accept a case on a contingency basis because of the risk of
2 non-payment:

3 It is an established practice in the private legal market to reward attorneys for taking
4 the risk of non-payment by paying them a premium over their normal hourly rates for
5 winning contingency cases. *See* Richard Posner, *Economic Analysis of Law* § 21.9,
6 at 534-35 (3d ed. 1986). Contingent fees that may far exceed the market value of the
services if rendered on a non-contingent basis are accepted in the legal profession as a
legitimate way of assuring competent representation for plaintiffs who could not
afford to pay on an hourly basis regardless whether they win or lose.

7 *In re Washington Pub. Power Supply.*, 19 F.3d at 1299, 1300-01 (“in the common fund *context*,
8 attorneys whose compensation depends on their winning the case, must make up in compensation in
9 the cases they win for the lack of compensation in the cases they lose.”). As reflected in *In re*
10 *Washington*, it is axiomatic that lawyers accepting contingent fee cases should be compensated in
11 amounts greater than those earned by lawyers who bill and receive payment by the hour, as this fact
12 reflects the risks undertaken in a contingent practice.

13 Apart from these risks, Class Counsel assumed considerable additional risks in this action.
14 While Class Counsel believes that Plaintiff’s claims were well suited for certification, Class Counsel is
15 cognizant of the significant hurdles they would have had to overcome in order to obtain and maintain
16 class status. In particular, in this case, the employees signed arbitration clauses. There was a
17 significant chance that this Court could have enforced the arbitration clause; therefore resulting in
18 absolutely no recovery for the class action, and the potential filing of numerous individual cases with
19 substantial arbitration costs incurred. There is no question that the resolution of this case in settlement
20 on a class-wide basis has maximized the benefit for all parties.

21 While Class Counsel was prepared to take on significant costs if necessary, there can be no
22 doubt that the prospects of such costs presented significant risks, especially since Class Counsel would
23 lose the entire case investment of hours and costs without a victory in the case.

24 Thus, the risks of this case were substantial and presented significant hurdles. Few cases are
25 “sure things” and this case was no different. Defendants are represented by an excellent firm who did
26 and would have continued to aggressively defend their clients if a settlement had not been reached. In
27 fact, no offer was extended by Defendants until the mediation, when the settlement of this case first
28 began to take shape. Had Class Counsel, and the class representative, failed to vigorously pursue the

1 facts of this case despite significant financial risks there is no chance that this settlement could have
2 been achieved. The high contingent risk borne by Plaintiff’s counsel thus supports the fees requested.

3 **iii. The Skill of Counsel and the Work Performed Support the Fee Request**

4 Significant skill and quality work was required in pursuing this action and effectuating
5 settlement. Plaintiff’s Counsel are seasoned attorneys with considerable experience in wage and hour
6 class actions. Plaintiff’s Counsel regularly litigates wage and hour claims through certification and on
7 the merits including in trials or in binding arbitrations as well as other class actions, and also have
8 considerable experience settling wage and hour class actions. Indeed, Plaintiff’s Counsel’s skill at
9 adapting their litigation strategies to address the challenges posed by the factual circumstances of this
10 case, including Defendants’ arbitration clauses, as well as the formidable defense mounted by
11 defendants’ counsel, was critical to preparing a strong presentation of the case. Class Counsel’s
12 detailed, pressing, and determined investigation with informal discovery (numerous interviews of class
13 members) served to bring to light facts about Defendants’ conduct and practices that Class Counsel
14 believed were significant to the settlement.

15 In Plaintiff’s Counsel’s estimation, the leverage brought to bear by Class Counsel’s extensive
16 investigation and skillful presentation of Plaintiff’s claims and supporting facts played a significant
17 role in the eventual settlement.

18 **iv. The Lodestar Cross Check Attests to the Reasonableness of the Negotiated Fee**
19 **Request**

20 As set forth above, Plaintiff’s fee request is premised primarily on a percentage of the
21 settlement value, the prevailing method in cases of this kind. However, after making that
22 determination, this Court may also use a lodestar analysis as a final “cross-check” on the percentage
23 method. *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1296-98. Where the lodestar
24 method is used as a cross-check, it can be performed with a less exhaustive cataloguing and review of
25 Counsels’ hours. See *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) (“The
26 lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.”).

27 The lodestar method is calculated by multiplying “the number of hours reasonably expended
28 on the litigation . . . by a reasonable hourly rate.” *In re Bluetooth Headset Products Liab. Litig.*, 654

1 F.3d 935, 941 (9th Cir. 2011). In considering rates, courts examine the rate “prevailing in the
2 community for similar services by lawyers of reasonably comparable skill, experience, and
3 reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).

4 Here, the hourly rates for lead Plaintiff’s Counsel, Marlin & Saltzman LLP, as set forth below
5 and in supporting declarations, are comparable to those approved in similar cases in California and in
6 the Southern California community.

7 The hours billed by Plaintiff’s Counsel, of 580 are also reasonable in light of the complexity of
8 the litigation. In considering reasonable hours, “[b]y and large, the court should defer to the winning
9 lawyer’s professional judgment as to how much time he was required to spend on the case; after all, he
10 won, and might not have, had he been more of a slacker.” *Moreno v. City of Sacramento*, 534 F.3d
11 1106, 1111 (9th Cir. 2008). As discussed above, given Plaintiff’s investigation and the results
12 achieved the total number of hours incurred (including another 25 – 35 hours Counsel anticipates
13 spending on final approval matters and effectuating the settlement) is reasonable.

14 Additionally, on a lodestar cross-check of a common fund award, courts frequently apply a
15 multiplier to the base lodestar to reflect the risks involved, the complexity of the litigation, and other
16 relevant factors. Indeed, Courts have recognized that if a contingent-fee lawyer was awarded fees at
17 the same level as an hourly-fee lawyer, it would be economically irrational for any lawyer to accept a
18 contingent-fee case because there would be absolutely no incentive to accept the risks inherent in such
19 representation. *See Posner, Economic Analysis of Law* (4th ed. 1992) pp. 534, 567 (“A contingent fee
20 must be higher than a fee for the same legal services paid as they are performed. The contingent fee
21 compensates the lawyer not only for the legal services he renders but for the loan of those services.
22 The implicit interest rate on such a loan is higher because the risk of default (the loss of the case,
23 which cancels the debt of the client to the lawyer) is much higher than that of conventional
24 loans.”)(emphasis added).

25 As explained above, Plaintiff’s Counsel herein bore a particularly high contingent risk,
26 especially given the existence of the arbitration clause and class action waiver issues. Based on this
27 risk, as well as the other relevant factors, the resulting multiplier of approximately 1.85 on the lodestar
28 cross-check is on the low end of the range of multipliers that courts regularly approve as fair and

1 reasonable. In *Vizcaino*, the Ninth Circuit affirmed a lodestar multiplier of 3.65, after analyzing a
2 presentation of the most commonly applied multipliers. *Vizcaino*, 290 F.3d at 1051. This is within the
3 “3-4 range [of] common” multipliers for sophisticated class actions. *Van Vranken v. Atlantic Richfield*
4 *Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995); *see also Steiner v. American Broad. Co.*, 248 Fed. Appx.
5 780, 783 (9th Cir. 2007) (affirming fee award where the lodestar multiplier was 3.65); *McKenzie v.*
6 *Federal Express Corp.*, No. 10-02420-GAF, 2012 U.S. Dist. LEXIS 103666 (C.D. Cal. July 2, 2012)
7 (approving a multiplier of 3.2 on a lodestar cross-check in awarding percentage-based fees in wage
8 and hour class action); *Bond v. Ferguson Enters., Inc.*, No. 1:09-cv-1662-OWW, 2011U.S. Dist.
9 LEXIS 80390 (E.D. Cal. June 30, 2011)(1.75 multiplier); *Sutter Health Uninsured Pricing Cases*, 171
10 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a lodestar cross-check).

11 The application of a very modest 1.85 multiplier is further warranted given the impressive
12 results achieved for the Classes and the risks and complexity of the litigation, as higher multipliers are
13 regularly approved in similar cases. Thus, here, the lodestar “cross-check” demonstrates that the
14 requested fee of \$766,665.90 is fair and reasonable and simply clarifies that in this case, and under the
15 circumstances of the extensive litigation it necessitated, the 33.3% fee requested is appropriate.

16 The lodestar adjustment is also justified in light of delayed payment. *Missouri v Jenkins*, 491
17 US 274, 284 (1989) (“an appropriate adjustment for delay in payment” should be factored into the
18 calculation of a fee award); *see also Fischel v. Equitable Life Assur. Soc.*, 307 F3d 997 (9th Cir 2002)
19 (in common fund cases, delay in obtaining payment must be compensated); *Anderson v. Director,*
20 *Office of Workers Compensation Programs*, 91 F3d 1322 (9th Cir 1996) (“an adjustment for delay in
21 payment is an appropriate factor in the determination of what constitutes a reasonable attorneys’
22 fee.”).

23 **IV. CLASS COUNSEL ARE ENTITLED TO REIMBURSEMENT OF THEIR** 24 **REASONABLE LITIGATION EXPENSES**

25 Class Counsel requests reimbursement of their out-of-pocket expenses incurred to prosecute
26 this class action. These expenses were incidental to and necessary to the effective representation of the
27 Class. The expenses incurred in this case resulted from mediation expenses, travel, copying and
28 management of documents, postage, fax transmission expenses, transportation and other incidental

1 expenses directly related to this action.

2 As discussed above, Class Counsel performed detailed investigation, document review, and
3 also performed detailed damages analyses prior to mediation and as part of their class certification
4 preparation. By doing this, Class Counsel were able to effectively and accurately evaluate both the
5 potential damages in this case, as well as the strengths and weaknesses of the damage calculations they
6 would be prepared to present at trial.

7 **V. THE ENHANCEMENT AWARD REQUESTED SHOULD BE APPROVED**

8 “Because a named plaintiff is an essential ingredient of any class action, an incentive award is
9 appropriate if it is necessary to induce an individual to participate in the suit.” *Cook*, 142 F.3d at 1016;
10 *see also In re Linerboard Antitrust Litig.*, 2004 U.S. Dist. LEXIS 10532, at *56 (E.D. PA. June 2,
11 2004) (Where “the class representatives have conferred benefits on all other class members . . . they
12 deserve to be compensated accordingly.”).

13 By filing suit against Defendants for alleged violations of law resulting from the company’s
14 ongoing policies and practices, Plaintiff Ramon Williams sought to protect the interests of the putative
15 class over his own interests. As his declaration verifies, he elected to pursue this case on behalf of all
16 of the other similarly situated employees, placing his own interests in a position secondary to those of
17 the absent Class Members.

18 Furthermore, Mr. Williams did not just retain counsel and then stand by as an interested
19 spectator. He has been active, even instrumental, in this case. The Williams declaration details his
20 personal involvement throughout the case. As set forth therein, he has:

- 21 • Worked with his attorneys to explain the facts of this case, frame the issues, and to
22 assist them in preparing several iterations of the complaints in the action. (Declaration
23 of Ramon Williams in Support of Motion For Approval Of Attorney Fees “Williams
24 Decl.” at ¶ 5).
- 25 • Searched for, organized and produced documents that he had from his employment.
26 (*Id.* at ¶ 7).
- 27 • Reviewed the documents provided by Defendants and discussed them with his
28 attorneys. (*Id.* at ¶ 8).
- Had numerous discussions with his counsel regarding relevant events in this case. (*Id.*
at ¶ 5).

- 1 • Put the interests of the class above his own by bringing this suit despite being
2 employed by Defendants at the time. (*Id.* at ¶14).
- 3 • Mr. Williams incurred over 40 hours of his personal time in support of the claims
4 asserted in this case. (*Id.* at ¶15).

5 The enhancement award sought on behalf of the Representative Plaintiff of \$5,000 is also
6 reasonable as it represents 0.0021 of the total recovery of \$2,300,000.

7 Additionally, the requested service enhancement is justified in light of the reputational risk
8 Plaintiff assumed in bringing a lawsuit against his employer. *See Guippone v. BH S&B Holdings LLC*,
9 No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at *20 (S.D.N.Y. Oct. 28, 2011) (“Even where
10 there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit
11 recognition for assuming the risk of such for the sake of absent class members.”). Courts have
12 recognized that present day employers can easily learn via the internet whether an employee or
13 prospective employee has filed a lawsuit and that information is often used to evaluate a prospective
14 employee. *See Id.* at *4 (noting “the fact that a plaintiff has filed a federal lawsuit is searchable on the
15 internet and may become known to prospective employers when evaluating the person.”). Thus by
16 bringing this action against his employer, Plaintiff has assumed a considerable reputational risk that
17 may impact his ability to find employment in the future. In fact, upon a google search, Mr. William’s
18 name appears once on the first page and twice on the second page as having filed this case against
19 Defendants. Long after this action is forgotten by Class Members, Mr. Williams will run the risk of
20 being branded “litigious” by prospective employers, and may be denied future employment on that
21 basis alone; moreover, he will never even know that the public information on search engines was
22 used against him.

23 Mr. Williams willingly assumed these risks, which in turn benefited all of the Class Members.
24 Absent Class Members did not have to file individual lawsuits nor did they have to bear the risks of
25 payment of fees and costs should they not prevail. Nor do they have to face the risk of difficulty in
26 finding future employment. Similarly, Class Members are not required to give a broad full and
27 complete release as is the Representative Plaintiff. In sum, an individual enhancement award to
28 Mr. Williams in the amount of \$5,000 is justified as a result of his consistent involvement in the
prosecution of this matter, the risks that he took on behalf of the Classes, and the substantial settlement

1 achieved on behalf of the Classes. Finally, Class Members were advised via the mailed Notices that
2 the \$5,000 incentive award will be requested at final approval, and will have the opportunity to
3 comment upon it.

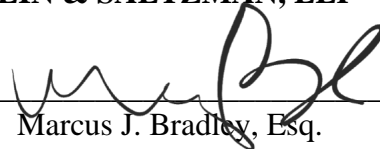
4 **VI. CONCLUSION**

5 Without any guarantee of success, Class Counsel pursued this litigation to a successful
6 resolution. The Settlement represents an excellent recovery for the Settlement Class, and stands as a
7 testament to the skill and dedication of Class Counsel. Accordingly, for the reasons set forth above
8 and in the declarations filed herewith, Plaintiff respectfully requests that the Court award Class
9 Counsel reasonable attorneys' fees of \$766,665.90 and reimbursement of expenses in the amount of
10 \$10,990.11. Additionally, the Court is respectfully requested to approve the enhancement award in the
11 amount of \$5,000.00 to Mr. Williams, for stepping forward as a Representative Plaintiff, and in
12 achieving this settlement.

13
14 DATED: June 16, 2016

MARLIN & SALTZMAN, LLP

15
16 By: _____


17 Marcus J. Bradley, Esq.
18 Kiley Grombacher, Esq.
19 David C. Leimbach, Esq.
20 Tina Mehr, Esq.
21 Attorneys for Plaintiff Ramon Williams
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28

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action. My business address is 29229 Canwood Street, Suite 208, Agoura
Hills, California 91301-1555.

5 On June 16, 2016, I served the foregoing document described as **NOTICE OF MOTION**
6 **AND MOTION APPROVAL OF ATTORNEYS' FEES, COSTS, AND ENHANCEMENT**
7 **AWARD IN CONJUNCTION WITH MOTION FOR FINAL APPROVAL OF CLASS**
SETTLEMENT on all interested parties in said action:

8 **SEE ATTACHED SERVICE LIST**

9 [] (VIA US MAIL) I caused such envelope(s) to be deposited in the mail at Agoura Hills,
California with postage thereon fully prepaid.
10 I am "readily familiar" with the firm's practice of collection and processing correspondence for
11 mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of
12 business. I am aware that on motion of party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit for mailing in
13 affidavit.

14 [X] (VIA FEDERAL EXPRESS) I caused to have served such document(s) by depositing them in
the drop box at Agoura Hills, California, for priority overnight next day delivery.

15 [] (VIA FACSIMILE) I caused such document to be faxed to the persons identified with fax
16 numbers on the attached Mailing List.

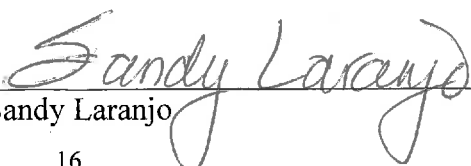
17 [] (VIA PERSONAL SERVICE) I caused hand delivery of such envelope(s) by hand to the
18 offices of the addressee.

19 [] (VIA E-MAIL) I caused to have such documents sent by electronic service [Fed. Rule Civ.
20 Proc. Rule 5(b)(2)(a)] by electronically mailing a true and correct copy through Marlin &
Saltzman's electronic mail system to the e-mail address(s) set forth below, or as stated on the
21 attached service list per agreement in accordance with Federal Rules of Civil Procedure rule
5(b).

22 [X] (STATE) I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct.

24 [] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at
25 whose direction the service was made.

26 Executed on June 16, 2016, at Agoura Hills, California.

27 
28 Sandy Laranjo

Ramon Williams v. Lineage Logistics, LLC.
Riverside County Superior Court Case No. RIC 1508745

Service List

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<p>Ira Spiro, Esq. Spiro Law Corp. 11377 W. Olympic Blvd., Fifth Floor Los Angeles, CA 90065 Telephone: (310) 235-2350 Facsimile: (310) 235-2351 ira@spiralawcorp.com</p>	<p>Co-Counsel for Plaintiff Ramon Williams</p>

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